

COOPERATIVE AGREEMENT ENVIRONMENTAL LEARNING FOR KIDS

THIS COOPERATIVE AGREEMENT (this “**Agreement**”) is made and entered into as of the date of execution, 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 6060 Broadway, Denver, Colorado 80216 (“**ELK**”), jointly the “**parties**”.

RECITALS:

A. The City is the fee owner of land located at 12680 East Albrook Drive, Denver, Colorado 80239 in the City and County of Denver, Colorado, undesignated park land known as “Montbello Open Space Park”, as legally described in the attached **Exhibit A**, and as depicted on the ALTA/ACSM land improvement survey in the attached **Exhibit A** (the “**Park**”); and

B. ELK is a non-profit corporation engaged in programmatic activities for environmental education and stewardship efforts to improve and maintain natural areas and resources and cultivate a passion in science, leadership and service in underserved Colorado youth (the “**ELK Mission**”), which ELK Mission is consistent and supportive of the purposes and goals of the Denver Department of Parks and Recreation (the “**Parks Department**”); and

C. Subject to the terms of this Agreement along with obligations and use restrictions or requirements prescribed by those grant and funding agreements that provided or will provide funds used to build the Education Center (defined below) (the “**Grants**”, and the obligations and use restriction or requirements prescribed therein, the “**Grant Restrictions**”), the City agrees to enter into this Cooperative Agreement for the use by ELK of that portion of the Park generally shown on **Exhibit B** attached hereto (the “**Premises**”) for nonprofit purposes benefitting the public and consistent with the ELK Mission; and

D. The City, in cooperation with ELK, is constructing on the Premises a building to be used as an education center for ELK (the “**Education Center**”), an outdoor area immediately adjacent to the Education Center, and other improvements as have been agreed upon by the parties and as will support the ELK Mission (such other improvements, together with the Education Center, the “**Improvements**”), and in accordance with the Grant Restrictions as well as public and park purposes; and

E. The remainder of the Park outside of the Premises (the “**Open Space**”), will be available for use by both ELK, consistent with ELK’s outdoor programs and services and subject to this Agreement, and the general public as open space and natural area; and

F. By virtue of Article II, Part 4, Section 2.4.4(F) of the Charter of the City and County of Denver (the “**City Charter**”), the Executive Director of the Parks Department (the “**Director**”), subject to approval by City ordinance, is authorized to conduct negotiations for cooperative agreements with private agencies for the development of park and recreational facilities, programs and activities, and to delegate the Director’s authority and responsibility with respect thereto.

G. The City and ELK wish to enter into this cooperative agreement to provide for the development and use of the Premises and any Improvements for the enjoyment and education of the citizens of the City and County of Denver and the general public.

H. It is in the best interest of ELK, the City, and the general public that a cooperative agreement should be entered into between ELK and the City whereby ELK shall manage and operate the Premises and any Improvements and to provide services to the visiting public in the furtherance of the ELK Mission.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises contained herein, and for the purpose of setting forth the relationship between ELK and the City with respect to the Premises, any Improvements, and any related operations and activities, it is mutually agreed by the City and ELK as follows:

1. ENGAGEMENT and PURPOSE.

(a) Engagement. The City hereby retains ELK, as a non-profit organization, to maintain, manage, and operate the Premises, including the Improvements and the program operations thereon, and properties located therein or used in connection therewith, for the enjoyment and education of the public, and ELK hereby accepts such engagement subject to and on the terms and conditions set forth herein. The rights herein granted to ELK are not, and shall not be construed as, a lease, easement, or other interest in real property.

(b) Purpose. ELK shall use its best efforts to perform and fulfill its obligations under this Agreement in order to achieve the public and park purpose of this Agreement in accordance with its terms and spirit, to increase ELK's base of support, and to secure contributions of cash and property, including memberships and sponsorships, to support the ELK Mission.

(c) Charter. The public purpose of this Agreement is to provide for completion of construction and the maintenance of the Premises and the Park as may be applicable, and any related operations and activities, for the use and benefit of the people of the City and the general public through public/private cooperation between the City and the private non-profit ELK, in conformance with Article II, Part 4, Section 2.4.4(F) of the City Charter. All uses of the Premises and the Park must be restricted to "park purposes" in conformance with Section 2.4.5 of the City Charter.

2. STATUS AND AUTHORITY OF ELK.

(a) Status. ELK and the City acknowledge and agree that ELK is a private, nonprofit corporation cooperatively working with the City as an independent entity.

(b) Authority. The scope of authority ELK may exercise shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. ELK shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers. This Agreement is not intended, nor

shall this Agreement be construed, to establish or constitute a joint venture between the City and ELK.

(c) Ownership: All Improvements on the Premises shall be the property of the City and shall be subject to the terms and conditions of this Agreement.

(d) Contracts. The authority delegated under this Agreement shall not be construed to grant ELK the right or power to bind, or to impose any liability upon, the City through any contracts or agreements ELK may make, unless the prior, written approval of the Director is obtained, and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by ELK shall be in its own name and not in the name of the City. Likewise, the City shall have no authority to bind, or to impose liability upon, ELK through any contracts or agreements the City may make, unless the prior written approval of ELK is obtained.

(e) Nonprofit Status. ELK shall at all times while this Agreement is in effect take such actions as may be necessary to maintain and preserve its status as a nonprofit organization that qualifies as a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code (or any successor provision).

3. TERM AND MUTUAL TERMINATION OR ABANDONMENT.

(a) Term. The initial term of this Agreement shall commence upon final execution by all City Charter signatories (the “**Effective Date**”), and shall expire at 11:59:59 p.m. on the last day of the month that falls 20 calendar years after the Effective Date, unless otherwise terminated or extended as provided herein (the “**Initial Term**”). For example, if the Effective Date is July 15, 2022, the Initial Term shall end at 11:59:59 p.m. on July 31, 2042. This Agreement shall be automatically extended for one additional five-year period at the end of the Initial Term unless either party provides written notice of termination to the other party at least one year prior to the expiration of the Initial Term (the Initial Term together with the five year extension, if no termination notice is provided, the “**Term**”).

(b) Mutual Termination or Abandonment.

(i) The City and ELK may mutually agree to terminate this Agreement at any time by execution of a written termination agreement. If such mutual agreement to terminate occurs, ELK shall vacate the Premises in accordance with Subsection 9(a) of this Agreement.

(ii) This Agreement shall be deemed abandoned, and automatically terminated, if ELK assigns any part of the Premises or the Improvements in violation of Subsection 25(d) of this Agreement. Upon completion of construction of the Education Center, this Agreement shall be deemed abandoned, and automatically terminated, if ELK fails to occupy and use the Education Center for a continuous period of six (6) months (subject to Force Majeure) without the prior written approval of the Director. Upon occurrence of the specified abandonment, without further notice, the City shall have a right to assume control and full use of the Premises as provided in Section 9 of this Agreement.

(iii) The City or ELK may terminate this Agreement under the circumstances described in Section 13 of this Agreement in the event of serious damage to or destruction of the Premises due to fire or other casualty.

4. GRANT FUND; RESTRICTED ACCOUNT; CONSTRUCTION OF IMPROVEMENTS; FURNITURE AND EQUIPMENT.

(a) As of the Effective Date, the parties acknowledge that ELK has transferred \$1,400,000.00 in grants funds (“**ELK Grant Funds**”) to the City, which funds were deposited into a restricted account (the “**Restricted Account**”) and are restricted to the cost of the design, engineering, permitting, entitlement, and construction of the Improvements.

(b) If the City has not completed construction of the Improvements (subject only to the Punchlist) and delivered them to ELK within 12 months after the date of completion set forth in the Construction Schedule, then either party shall have the right to terminate this Agreement by written notice to the other Party and upon such termination the City shall return the remaining balance of the Restricted Account to ELK.

(c) The City shall match ELK’s contribution of \$1,500,000 for the design, engineering, permitting, entitlement, construction of the Improvements, plus up to an additional \$750,000 for construction contingency, including a parking lot adjacent to and serving the Premises and the Park as depicted on **Exhibit B** (the City’s \$1,500,000 match together with the additional \$750,000 collectively, the “**City Contribution**”). To the extent total construction costs for the Improvements do not total \$3,750,000, such excess funds shall remain with the City.

(d) The parties have agreed to (i) the size, design, and layout of the Improvements as depicted in the Permit Package issued January 12, 2021 (the “**Plans**”), (ii) the construction schedule for the Improvements (the “**Construction Schedule**”), and (iii) “Alternative Adds” to the Improvements. The Parks Department will keep ELK apprised of construction progress during construction. The City shall include ELK on the list of Plan reviewers and regularly scheduled construction meetings in order to keep ELK apprised of any changes to the Plans. ELK shall notify the Parks Department within five days of receipt of any such revised Plans that the revised Plans will impact ELK’s programming, and the Parks Department and ELK shall work in good faith to promptly resolve ELK’s concerns.

(e) The City shall design, engineer, entitle, permit, and construct the Improvements in accordance with all applicable federal, state, and local laws, rules, regulations, codes, orders, permits, entitlements, and approvals (“**Applicable Laws**”).

(f) ELK has retained not less than \$100,000 of funding (in addition to the \$1,400,000 ELK Grant Funds detailed above), which ELK shall use to purchase the furniture and equipment listed in **Exhibit C** attached hereto. All items listed on **Exhibit C** shall be the property of ELK.

5. SERVICES.

ELK agrees to provide, as consideration for and as a condition of this Agreement, the following services and uses for the Premises:

(a) General maintenance, repair and replacements of the Improvements as set forth in Section 8.

(b) Environmental educational programming and stewardship projects to improve and maintain natural areas and resources and cultivate a passion in science, leadership and service in underserved Colorado youth that will benefit Denver residents and the purposes and goals of the Parks Department, as determined by ELK in its sole and absolute discretion.

(c) Meeting space available in the Education Center, as authorized by ELK, to various public groups and community organizations, in accordance with Section 6(i).

6. USES.

(a) Uses Allowed: ELK agrees and covenants that it shall use and occupy the Premises solely for the purposes stated in this Agreement and such other purposes appropriate to the operating of a non-profit organization and for the provision and coordination of services and activities within the ELK Mission, and consistent with the Grant Restrictions (collectively, “**Permitted Uses**”). The Education Center and other Improvements may be utilized, among other Permitted Uses, as an office for ELK, and as a host location for various events, programs and activities conducted for the benefit of children, families, partner organizations and sponsors, and others interested in environmental education and stewardship efforts. If ELK is unable to obtain the necessary governmental approvals, ELK shall have the right, at its option, to terminate the Agreement by written notice to the City, and the City shall refund to ELK the ELK Grant Funds less any such funds actually spent up to the date of receipt of ELK’s termination notice. The Premises is to be improved, restored, maintained and utilized, among other things, as an open space area for ELK’s outdoor programs and services, and to comply with any Grant Restrictions. ELK may conduct events and activities on the Premises in accordance with its Permitted Uses without the prior written approval of, or a permit by, the Parks Department.

(b) Use of Open Space. ELK shall have non-exclusive use of the Open Space as a member of the general public, including without limitation, bringing groups of ELK students into the Open Space for events and activities. In addition, ELK may reserve the Open Space (or portions thereof) for its exclusive use for all or less than a full day use (within normal Park hours) up to 12 times per calendar year (to be prorated for any partial calendar year during the Term) (“**Reserved Dates**”) in accordance with the following terms and conditions. ELK shall include in the Annual Report delivered to the Director (as required herein) (i) its selected Reserved Dates within the following calendar year, (ii) the locations within the Open Space for each event/activity, and (iii) an estimate of the number of people planned for each event/activity. Subject to permits or other Parks-approved uses issued prior to Parks’ receipt of ELK’s notice, ELK shall have exclusive use of the Open Space (or described portion thereof) during the Reserved Dates provided in the Annual Report. The City shall not issue a permit for or otherwise authorize any other party to use the Open Space (or described portions thereof) during the Reserved Dates. In the event that ELK desires to change any of the Reserved Dates, it shall send a written request in the same manner as the notice for the initial request in this paragraph requesting the change, and ELK and Parks Department will

work together to provide for ELK's use of the requested space on the alternate dates, subject to prior reservation by the public. Provided the requested space is available on the requested alternate dates, ELK shall have exclusive use of the Open Space (or applicable portion thereof) on such alternate or additional dates. If ELK desires to use the Open Space (or any portion thereof) for any exclusive event or activity outside of the Reserved Dates, ELK shall send prior notification to the Parks Department, obtain approval by the Parks Department (not to be unreasonably withheld, conditioned, or delayed) and, at the discretion of the Parks Department, shall obtain a permit issued by the Parks Department. ELK's use of the Open Space shall include the right to study, install, modify, and remove plant and animal life and to install, modify, remove, maintain, repair, and replace improvements, provided that ELK shall obtain the prior written approval of the Parks Department District Superintendent before making installing, modifying, and removing plant and animal life or installing, modifying, and removing any improvements or conducting any maintenance, repair, or replacement of improvements in the Open Space other than basic cleaning, sweeping, and trash removal.

As of the execution date of this Agreement, space in the Park is not reservable by the public. In the event the Parks Departments makes portions of the Park reservable by the public, the City shall seek ELK's input in making its determination regarding those portions of the Park that will be reservable, which decision shall be at the Director's discretion.

(c) Rules and Regulations. Any event or activity conducted on the Premises in accordance with the foregoing Permitted Uses must comply with the then-in-effect applicable Parks Department policies, rules and regulations (the "**Rules and Regulations**") unless exempted by the Director in writing or as otherwise provided in this Agreement. The Rules and Regulations shall apply to the use of the Open Space; provided, however, the Rules and Regulations shall not apply to ELK employees. ELK may, with the prior written consent of the Parks Department, adopt and enforce by its own means rules and regulations governing and controlling only those operations and activities conducted or organized by ELK on the Premises, provided such rules and regulations are more restrictive than the Rules and Regulations, but not governing or controlling general park use, provided that the ELK rules and regulations are in keeping with the Grant Restrictions and the Rules and Regulations. The City shall not grant permits for any other uses on the Premises or access to the Premises for any purpose, except as otherwise expressly permitted in this Agreement.

(d) Sales; Signs. No sales activities are authorized in the Open Space without the prior written approval of the Parks Department (which consent will be given in the reasonable discretion of the Director), but may be allowed on the Premises. The sales, service, distribution, promotion or use of marijuana, tobacco, fireworks, firearms and adult materials on or about the Premises are strictly prohibited. Any proposed signs to be placed on the exterior of, or to be visible from the exterior of, the Improvements must comply with all zoning requirements and receive prior written approval from the Parks Department, which consent will be given in the reasonable discretion of the Director. The Parks Department will reasonably cooperate with and assist ELK to obtain any required permits for signs. Upon expiration or earlier termination of this Agreement, ELK shall remove such signage and repair any damage to any building fascia or remainder of the Premises resulting from the installation and removal of ELK's sign(s). The requirements of this Subsection 6(d) shall not be applicable to any signs required by Grant Restrictions or to temporary signs such as signs that describe an event location or notices the building is temporarily closed.

(e) Conditions of Use. ELK agrees and covenants that it shall use the Premises in a careful, safe, and proper manner, and shall not use or permit the Premises to be used by its officers, employees, agents, volunteers and invitees for any purpose prohibited by the laws of the United States of America, the State of Colorado, the Charter or ordinances of the City and County of Denver, the Rules and Regulations, or the Grant Restrictions. ELK shall not commit or suffer to be committed, or allow its officers, employees, agents, volunteers or invitees to commit or suffer to be committed, any waste or damage upon the Premises or the Park or any nuisance to be created or maintained thereon. ELK shall also keep the Premises free and clear from all trash, debris, and waste (consistent with the requirements of this Agreement) resulting from its use or the use by its employees, officers, agents, volunteers, and invitees and shall see that the Premises are kept in a clean, safe and sanitary condition in a manner comparable to other open space under the purview of the Parks Department. ELK shall provide all security ELK deems necessary for the Premises.

(f) Security and Safety. Security and safety precautionary measures for the Improvements shall be the responsibility of ELK, at ELK's sole expense, 24 hours a day, seven days a week, including provision of security services whether provided through a private security company retained by ELK, electronic alarm system, or provided by ELK's employees; provided, however, the City will monitor fire alarm and suppression systems and fire extinguishers pursuant to Section 8. Security and safety precautionary measures (such as security guards) for any ELK activity occurring on the Premises outside of the Improvements shall be the responsibility of ELK, at ELK's sole expense.

(g) Background Checks. With respect to its operations and programs on the Premises, ELK shall not knowingly hire, retain, or engage or permit the services of any supervisor, employee, volunteer, agent, or subcontractor, who has a felony criminal conviction or convictions, or who has been charged with a felony crime, involving physical violence, sexual acts, or illegal drugs, including any criminal attempts, solicitations, trafficking, or conspiracies relating to the same, or any crime or crimes, whether a felony or a misdemeanor, that involve children, if such supervisor, employee, volunteer, agent, or subcontractor would interact with children on the Premises as part of such person's job description. A "conviction" shall mean a plea of guilty, a plea of *nolo contendere*, a finding of guilt, a default judgment, or a deferred judgment and sentence. ELK shall use every reasonable means available to confirm (through a national criminal background check for its supervisors and a state criminal background check for all other employees, agents, and subcontractors) that its supervisors, employees, volunteers, agents, or subcontractors have not been convicted or charged as set forth above and shall immediately and fully inform the City if ELK becomes aware that any current supervisor, employee, volunteer, agent, or subcontractor conviction or charge; provided, however, ELK need not complete a background check on its volunteers. ELK shall provide proof of said background checks to the City upon request. If such a criminal conviction exists and ELK believes there are extenuating circumstances that should be considered, ELK may request, in writing, that the City waive the restrictions of this Subsection 6(g) in light of policies set forth in C.R.S. § 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights. Any waiver shall be in the absolute discretion of the Parks Department. At times when ELK program participants are on site, a supervisor shall be in attendance and responsible for overseeing and directing the actions of all employees, volunteers, agents, and subcontractors. ELK shall indemnify, hold harmless, and defend the City against any claims, actions, suits, damages, injuries, costs, penalties, judgments, awards, settlements, or other liability or expenses arising from or related to ELK's failure to comply with this Subsection 6(g).

(h) Alcohol. Subject to ELK or its agent obtaining, and complying with, any required State or Denver Excise & License permits for the sale and service of alcohol beverages and ELK or its agent obtaining and maintaining, as appropriate, liquor liability insurance as required by Denver Risk Management, ELK may sell and serve alcohol beverages at private events held, hosted, or sponsored by ELK on the Premises and is permitted to charge for private events which may include alcohol as part of the overall event charge. ELK shall obtain prior written approval from the Director for any alcohol sales and/or service outside of the Premises. ELK shall indemnify and hold harmless the City for any damages, injuries, penalties, fines or other costs resulting from or associated with such service of alcohol beverages on the Premises.

(i) Public Use of Premises.

(i) Meeting Rooms. The open classroom space(s)/meetings rooms within the Premises (the “**Public Rooms**”) are intended for ELK and public use and shall remain as such, unless authorized by the Director, and shall be available for reservation and use by the general public during regular business hours and subject to ELK’s use thereof and availability. ELK shall establish a program to manage the reservations of the Public Rooms by the general public (the “**Reservation Program**”). If any member of the general public desires to use the Public Rooms (or any of them), it shall submit a request for the same to ELK, and ELK shall process such request in accordance with its Reservation Program.

(ii) Patio; Access Ways. ELK shall have a right of vehicular and pedestrian access to the Premises directly from East Albrook Drive and by means of a Cross-Access Agreement over the adjoining property to the west depicted on Exhibit A, page 2 (“**Cross-Access Area**”). ELK shall have exclusive use of the patio on the Premises (the “**Patio**”) during ELK’s business hours, during all events and other programs that ELK hosts on the Premises, and during all Reserved Dates and other dates for which ELK has been granted exclusive use of the Open Space or portions thereof.

(j) Parking Lot. ELK shall have nonexclusive use of the parking lot adjacent to the Premises (the “**Parking Lot**”). The City will place signs at 5 parking spaces indicating such spaces are reserved for ELK’s use weekdays between the hours of 8:00 a.m. and 5:00 p.m. The City shall have no further obligation to enforce the foregoing parking restrictions.

7. INSPECTION; “AS IS” CONDITION.

(a) Inspection; Punchlist; Surrender Condition: Pursuant to the construction contract for the Improvements, within 10 business days after receipt of the construction contractor’s Notice of Substantial Completion of the Improvements, the City, ELK, and the construction company shall perform a walk-through of the Improvements and jointly prepare a punchlist of minor incomplete items that do not impede ELK from occupying the Improvements (the “**Punchlist**”). In coordination with the Director, ELK may occupy the Improvements when the City issues a Certificate of Substantial Completion as described in the construction contract for the Improvements. The City, through its construction contractor, shall complete the items on the Punchlist within 30 days after substantial completion of the Improvements, at no cost to ELK. Upon expiration or termination of this Agreement, ELK agrees that it will leave the Premises in substantially the same or better condition as the Premises were during the walk-through, with the acknowledgement that

the parties anticipate construction of the Improvements and subject to normal wear and tear, contamination, damage, defects or violations of Applicable Laws not caused by ELK, the City's maintenance, repair, and replacement activities pursuant to this Agreement, and alterations or additions to the Improvements made after the walk-through by the City or by ELK (if approved by the City).

(b) AS-IS Condition: The Premises are accepted by ELK in an "AS IS", "WHERE IS" condition, with all faults and defects with the acknowledgement that the parties anticipate construction of the Improvements. The City does not make, and disclaims, any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Premises. ELK accepts the Premises in its current environmental condition as of the Effective Date, including any asbestos and lead-based paint, if any, and without any expectation that the City will remove or remediate the environmental conditions unless conditions become such that the City is compelled by federal or state law to do so. ELK agrees to reasonably cooperate with or comply with, as may be applicable, any operations and any maintenance plan prepared by or on behalf of the City for the preservation and control of asbestos-containing material or areas containing by lead-based paint on the Premises after a copy of said plan is provided to ELK, and at the City's sole cost and expense. If the Premises is or becomes contaminated by any hazardous materials or substances (including any mold, asbestos and lead-based paint) not caused by ELK, or not as a result of ELK's use of the Park, ELK shall have the right to terminate this Agreement by written notice to the City.

8. MAINTENANCE/UPKEEP, REPAIRS and REPLACEMENTS.

(a) Maintenance and Upkeep by ELK. ELK shall provide, at its own expense, the regular day-to-day general maintenance and upkeep services for the Premises, Improvements, and ELK Personal Property (as defined below), such maintenance and upkeep to include but not be limited to janitorial and other maintenance services provided by its staff or by contract with a professional janitorial service company, at ELK's sole expense, and in doing so, to assure that the Premises and the Improvements are kept free and clear of all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors, and shall see that the Premises and Improvements are kept in a safe, clean, and sanitary condition, readily usable by the public and any other users under this Agreement. Janitorial and general maintenance and upkeep services shall include, among other things, (i) regular trash pick-up from the Premises and providing for, as needed, sweeping, vacuuming, dusting, bathroom cleaning, stain or minor graffiti removal, (ii) snow and ice removal around the exterior doors, on the patio, and those areas not accessible to Parks plowing trucks; (iii) inspections to identify minor maintenance issues and needs, and (iv) making repairs to the non-structural, non-business systems components of the interior of the Education Center that cost \$500 or less ("**Minor Repairs**"). ELK shall deposit all trash in City-supplied trash receptacles for pick-up by City sanitation services at location(s) on the Premises as reasonably specified by the City. All repairs performed by or on behalf of ELK must be performed in accordance with Applicable Laws and all applicable City codes for construction. ELK shall comply with all requirements of the Prevailing Wage ordinance, sections 20-76 et seq., D.R.M.C., as it applies to janitorial and custodial work, and shall cooperate with the City Auditor's Office with respect to enforcement of this ordinance.

(b) Maintenance and Repairs by City. Except for maintenance and upkeep performed by ELK pursuant to Section 8(a), the City will maintain, repair, and replace the structural and building systems components of the Improvements (including without limitation, the floors, foundation, ceilings, walls, windows, roof, heating and air conditioning systems and ducts, plumbing, fire and safety systems, electrical wiring and systems, and cabling), driveways, drive aisles, lighting in parking lots and along walkways, electric vehicle charging stations in parking lots, landscaping, irrigation systems, the exterior of the Education Center, and the Open Space, consistent with City procedures and in compliance with Applicable Laws. Such maintenance may include, without limitation, snow and ice removal on those portions of the Premises accessible by Parks' plowing trucks/vehicles, exterior window cleaning, HVAC service, planting, mowing, restriping, repaving, crack and pothole repair, and exterior painting. Further, the City will make all repairs to the non-structural, non-business systems components of the interior of the Education Center that cost more than \$500 ("**Major Repairs**"), with ELK reimbursing the City for the first \$10,000 of such repairs, such repairs to be completed consistent with City procedures and in compliance with all Applicable Laws. Pursuant to the preceding sentence, ELK shall be responsible for no more than 10,000.00 annually, during each year of the Term of this Lease, for such repairs. The City shall complete all maintenance, repairs, and replacements without unreasonably interfering with ELK's Permitted Uses. Approximately once per year ELK and the Parks Department will conduct a walk-through of the Premises to review repair/maintenance items. As part of such annual walk-through, ELK must complete annual training, provided by the Parks Department, regarding operation and maintenance of the Improvements. ELK may submit maintenance/repair requests to the Parks Department Contract Administrator. ELK shall, upon discovery of emergency or urgent conditions, promptly notify the Parks Department as indicated in the contact information provided by the Parks Department during the annual walk-through. If the Parks Department has not provided ELK with such information, ELK shall notify the Parks Department at a then-current phone number on the Parks' Department home page on its website. Upon receipt of such notice from ELK, the City will remedy such emergency or urgent conditions in accordance with City procedures and in compliance with Applicable Laws. Notwithstanding the foregoing, if any repairs or replacements are necessitated by damages caused by ELK or its employees, officers, agents, volunteers, invitees or visitors, ELK shall be responsible for the full cost of the repair in accordance with Subparagraph 8(e). If the City determines to perform repairs or replacement, then the repairs or replacement shall be subject to appropriation and availability of funds.

(c) Alterations. Except as provided in Section 8(b), ELK shall not: (i) make any alterations in or additions to the Premises, (ii) make any repairs costing in excess of \$500.00 per occurrence, (iii) make any repairs involving structural elements of the Improvements, nor (iv) change any locks on the Premises, without first obtaining the written authorization from the Parks Department. All such repairs by ELK must be performed in accordance with Applicable Laws and all applicable City codes for construction. Copies of all keys for replaced locks shall be provided, at no charge, to a designated representative of the Parks Department.

(d) Inspection; Correction of Repairs. Following the delivery of prior reasonable notice by the City, the Premises shall be subject to inspection at reasonable times during normal business hours and without disruption to ELK's Permitted Uses, by the City. If, upon any such inspection, the City shall be of the opinion that the repairs ELK is required to make in accordance with Section 8(a) are not being performed substantially in accordance with applicable City codes or with the plans and specifications approved under such codes, or that any of the

materials or workmanship are not of good quality or are unsound or improper, the City may order that ELK cease to conduct the work until there is satisfactory evidence that the work conforms to the approved plans and specifications, and ELK shall promptly correct any such failure and shall immediately replace any unsound or improper materials or workmanship. If ELK fails to promptly and diligently correct such failure, the City may make repairs as it deems appropriate and may require ELK to reimburse the City for the costs of such repairs, including the cost of any repairs required to remedy additional damage resulting from ELK's failure to timely correct such failure. ELK shall comply with all requirements of the Prevailing Wage ordinance, sections 20-76 *et seq.*, D.R.M.C., and the Minimum Wage ordinance, section 20-82 through section 28-84, D.R.M.C., as either apply to janitorial, custodial, maintenance and other work, and shall cooperate with the City Auditor's Office with respect to enforcement of these ordinances. The Parks Department acknowledges that some of such work may be performed by interns, externs, volunteers, students and other youth employees.

(e) Damage. ELK shall promptly notify the City of damage in excess of \$500 to repair, regardless of cause that may require repair or replacement to any portion of the Improvements or the Premises. ELK shall be responsible, at its own expense, to repair or replace any portion of the Premises damaged by ELK or its employees, officers, agents, volunteers, invitees and visitors to the Premises. All such repairs or replacements costing in excess of ten thousand dollars (\$10,000.00) per occurrence shall be performed by the City and paid for by ELK, shall require the prior written authorization from the Parks Department, and will be performed in accordance with all applicable City codes and other requirements for construction on City property.

(f) Easements. If necessary to perform its maintenance and repair obligations in accordance with Section 8(a), ELK shall be entitled to exercise the rights of the City as owner of the Premises under the 1) Cross-Access Area under the Grant of Easement and Right of Use Agreement recorded with the Denver Clerk and Recorder's Office at reception no. 2009162836; 2) the Storm Water and Detention Facility Easement recorded with the Denver Clerk and Recorder's Office at reception no. 2009162837; and 3) the Drainage Facilities Management and Access Easement recorded with the Denver Clerk and Recorder's Office at reception no. 2009162838, and, upon the exercise of such rights, ELK shall be responsible for complying with all restrictions related to performing maintenance, repairs or replacement for work under such easement documents. However, City and ELK do not anticipate that ELK will perform such work. Any such maintenance, repairs or replacement costing \$10,000 or more shall be performed by the City in conformance with Subsection 8(b).

(g) Contracting. All work or service which ELK is obligated to perform under this Agreement may be contracted and shall, unless specific waiver is granted in writing by the City, be subject by the contract terms to each and every provision of this Agreement that would apply to such work or service had it been performed by ELK. Any such service or work contract shall also be subject to Applicable Laws, including Prevailing Wages, Minimum Wages, and the provision of bond or other surety, to the extent applicable. Compliance with the terms and restrictions of this Subsection 8(g) is the responsibility of ELK. ELK shall, upon request, provide the City a copy of any written contract or agreement for work or services provided on the Premises. ELK understands that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. (2003). In the event of a request to the City for disclosure of such contracts or agreements, the City shall advise ELK of such request in order to

give ELK the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and ELK agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. ELK further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of ELK's intervention to protect and assert its claim of privilege against disclosure under this Subsection 8(g) including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

(h) City Services. In addition to any other services the City is required to provide in accordance with this Agreement, the City shall provide the following services to the Premises during the Term:

- (i) Trash removal from City trash receptacles located on the Premises by City sanitation services;
- (ii) Removal of significant graffiti; playground inspections and repairs;
- (iii) Landscaping and Irrigation: planting; landscape maintenance; irrigation including system maintenance; mowing natural areas 1-2 times per year;
- (iv) Snow removal: parking lots; walks within the right-of-way and accessible to Parks plowing trucks;
- (v) Natural areas: maintenance and general upkeep.

(i) Indemnification. For any maintenance, repairs or replacements by ELK, ELK shall make such authorized repairs or replacements and shall indemnify and hold the City harmless against any liability, loss, damage, costs or expenses, including attorneys' fees, on account of any claims of any nature whatsoever, including but not limited to claims of liens by laborers, material suppliers, or others for work performed, or materials or supplies furnished to ELK or persons claiming under ELK.

(j) Following the delivery of prior reasonable notice by the City, ELK shall permit the City or its duly authorized representatives, or any person or their duly authorized representatives specified in the Grant Restrictions, to enter into and upon the Premises to inspect the same. Such entry shall only occur at reasonable times during normal business hours and without disruption to the Permitted Uses. ELK shall provide a master key or key-pad code to the City for any secured (locked) structure on the Premises for emergency and inspection purposes.

9. SURRENDER OF THE PREMISES.

(a) Delivery; Re-Entry. At the expiration or earlier termination of this Agreement, ELK shall deliver the Premises to the City in accordance with Section 7(a). ELK shall promptly remove all of the ELK Personal Property and vacate the Premises. If ELK fails to deliver

the Premises as set forth herein at the expiration or earlier termination of this Agreement, the City shall have the right to re-enter and occupy the Premises and the Improvements without further notice.

(b) ELK's Personal Property. All unattached personal property, including but not limited to furniture, equipment and other belongings and effects of ELK at the Premises ("**ELK Personal Property**") shall be and remain the sole property of ELK; provided however, that any of the ELK Personal Property not removed from the Premises within one hundred twenty (120) days after vacation by ELK or re-entry by the City shall be conclusively deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to ELK or any other person, and without obligation to account therefor, and ELK shall pay the City all expenses incurred in connection with such ELK Personal Property. ELK shall not permanently attach any personal property to the Improvements in such a manner that it may become a fixture without the prior written approval of the Director.

(c) Financial Obligations. ELK shall pay, before delinquency, any and all financial liabilities and obligations related to ELK's occupancy and use of, and any business conducted on, the Premises, ELK Personal Property which is or was located on the Premises, or ELK's operations or conduct of business on the Premises, including any taxes, assessments, and other costs and charges, any of which become payable during the Term. ELK shall be solely responsible for repair and maintenance of all ELK Personal Property.

10. UTILITIES AND SERVICES.

The City shall pay the costs of water and sewer supplied to the Premises. As of the Effective Date, gas and electrical utilities are in the name of, and billed to, the City. A submeter shall separately measure ELK's electricity usage on the Premises, and ELK shall reimburse the City for such usage during the Term within thirty (30) days of receipt of each invoice from the City for such usage. The City may, if permitted by the electrical and/or gas utility providers and if requested by ELK, authorize ELK to be invoiced directly for such utilities, and remit such payments directly to, the applicable utility provider, and ELK shall timely pay all such invoices. The City shall supply the Education Center with internet service and phone service at no cost to ELK. For any other services not supplied to the Premises, and which ELK desires to receive, ELK shall arrange and pay for such services directly with the applicable service provider.

11. PERSONNEL.

(a) ELK Employees. All employees hired or engaged by ELK to work at the Premises shall be employees of ELK and not of the City ("**ELK Employees**"). ELK shall have the sole authority to hire, fix the compensation and benefits of, supervise, train, evaluate, discipline and discharge all ELK Employees, in conformance with all laws governing private employers. Under no circumstances shall ELK Employees be regarded as employees of the City; however, all ELK Employees are expected to comply with the terms and conditions of this Agreement.

(b) Prevailing Wages. ELK shall comply with provisions of Section 20-76 of the Denver Revised Municipal Code, as may be amended from time to time, regarding the payment of applicable prevailing wages for covered workers ("**Prevailing Wages**"). A copy of the applicable prevailing wage rate schedule is attached as Exhibit D and incorporated herein by reference.

(c) Minimum Wage. ELK shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. sections. By executing this Agreement, ELK expressly acknowledges that ELK is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by ELK, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

(d) Personnel Policy. ELK shall maintain a written personnel policy to govern the conduct and rights of ELK Employees as ELK may deem necessary and appropriate. ELK shall provide the Director a copy of its current personnel rules and regulations and code of ethics (which ever applies) by no later than ninety days after mutual execution of this Agreement. ELK shall provide changes to the policy, if any made, in its Annual Report, in accordance with Section 20.

12. CAPITAL IMPROVEMENTS.

(a) Capital Improvements.

(i) The parties understand and agree that, upon the City's completion of the initial construction of the Improvements, the City will perform any capital alterations or additions to the Improvements ("**Capital Improvements**") subject to this Subsection 12(a). The City may elect to perform any Capital Improvements at its discretion and at its sole cost and expense, except as provided below for Capital Improvements requested by ELK. Prior to commencing any Capital Improvements, the City will prepare plans and designs appropriate given the nature of the Capital Improvements for the proposed Capital Improvements and provide them to ELK for review and comment. The City shall complete all Capital Improvements in compliance with all applicable City codes for construction, and without unreasonably interfering with ELK's Permitted Uses.

(ii) In the event ELK wishes the City to make Capital Improvements to the Premises, (i) ELK shall obtain the prior written approval of the Director, which approval will be given in the reasonable discretion of the Director; (ii) upon approval by the Director, the City shall perform such Capital Improvements; and (iii) ELK shall pay in advance for the costs of any such Capital Improvements (provided, however, that the City may agree in its sole discretion to pay for some or all of such requested Capital Improvements). In requesting approval for Capital Improvements, including any modifications to previously-approved Capital Improvements, ELK shall submit conceptual plans and specifications to the Director. The conceptual plans and specifications will be approved or disapproved, in writing, with the reasons for any disapproval being stated, within 30 calendar days after receipt by the Director of complete sets of the plans and specifications. Any deficiencies in said plans and specifications shall be remedied by ELK, to the reasonable satisfaction of the Director. Upon the Director's approval of such conceptual plans and specifications, the City shall prepare (to the extent appropriate given the nature of the Capital Improvements) schematic plans, design development plans, and construction drawings for the Capital Improvements, at ELK's expense, and provide them to ELK for approval, prior to the commencement of the applicable Capital Improvements.

(b) Periodic Meeting. ELK and DPR shall meet periodically, subject to mutual coordination and agreement, to discuss the status of ongoing projects and proposed projects.

13. LOSS OR DAMAGE.

The City shall not be liable or responsible to ELK for any loss or damage to any property or person occasioned by theft, fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or regulatory order of any governmental entity. In the event of a fire or other casualty in or to the Premises, ELK shall immediately give notice thereof to the Parks Department. If the Premises are totally destroyed by fire or other casualty, this Agreement shall immediately terminate. If the Premises should be partially damaged by fire or other casualty so as to render the Premises untenable, whether or not the fire or casualty is due to fault or neglect of ELK, its agents, employees, volunteers, invitees, or visitors, the City shall be free to elect to repair or replace the damaged portions of the Premises or to terminate this Agreement. If the Premises are not damaged due to fault or neglect, in whole or part, of ELK, its agents, employees, volunteers, invitees, or visitors, ELK may elect to terminate this Agreement or to continue this Agreement if the City elects to repair the Premises. If the Premises are damaged as the result of fault or neglect, in part or whole, of ELK, its agents, employees, volunteers, invitees, or visitors, ELK agrees to promptly pay to the City, upon request, an amount equivalent to the deductible on any property insurance the City may carry for the Premises, even if this Agreement is terminated under Sub-section 3.B. or the City elects to terminate this Agreement under this Section 13.

14. GENERAL OPERATIONAL REQUIREMENTS.

(a) Political Activity. No City funds shall be used by ELK in connection with any activities of a political nature, including, but not limited to, any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat, or final content of any legislation or ballot proposal. A strict accounting of all other funds used by ELK for political activity shall be maintained and available for public review.

(b) Governance. ELK shall be governed by its then-current bylaws (“**Bylaws**”). ELK shall provide modification or amendments to governance documents with its Annual Report, in accordance with Section 20. ELK herewith endorses the policy of actively encouraging diversity within its membership, and it shall continually strive to achieve such diversity so long as this Agreement is in effect.

(c) Cooperative Statement. ELK and the City acknowledge that the following is an accurate summary of the basis for this Agreement:

The Education Center is established and maintained by Environmental Learning for Kids, a Colorado non-profit corporation, for the people of the City and County of Denver and for the general public in cooperation with the Denver Parks and Recreation Department.

Accordingly, ELK shall include the foregoing statement (or such modification thereof as the Director shall approve or disapprove within fifteen (15) calendar days of receipt, which approval shall not unreasonably be withheld so long as the essence of the statement is incorporated, and which approved modification shall be included in its Annual Report in accordance with Section 20), on one prominent sign posted at the Premises, and in documentation prepared for the Premises where it is appropriate to acknowledge the nature of the relationship, including letterhead, annual or institutional reports, websites, newsletters, periodicals, grant applications, and other materials distributed generally by ELK to organizations, institutions, and the public. It is understood ELK may, from time to time, be expected or obligated to include other statements of support and cooperation (e.g., by specific donors) and ELK may combine the above statement with such other statements of support and cooperation. For purposes of letterhead and fund-raising materials, it is understood the following shorter version of the cooperative statement may be used in lieu of that set forth above:

In Cooperation with the City and County of Denver.

Postings shall conform, in graphic design and quality, to uniform standards established by ELK and approved by the Director. The Director shall approve or disapprove ELK's uniform standards by no later than thirty (30) calendar days after receipt. The Director may, in the Director's sole discretion, waive all or any of the requirements of this Subsection 14(c), subject to such terms or conditions as the Director may specify.

15. GIFTS; SPONSORSHIPS; and GRANTS.

(a) Gifts and Sponsorships. ELK shall have the right to accept and utilize, for the benefit and use of the Premises and ELK, grants, gifts, donations, and contributions of money and personal property ("**Gifts**") and money and personal property provided by individuals and/or for-profit and nonprofit entities in return for which the contributor is granted naming rights for all or any portion of the Improvements (e.g., the "Denver Post Conference Room") ("**Sponsorships**"). ELK shall obtain the Director's consent (not to be unreasonably withheld, conditioned, or delayed) prior to accepting any Sponsorships, and such naming rights shall conform to Parks Department Rules and Regulations.

The term or length of any Sponsorship agreement or arrangement may not exceed the Term. ELK may, in its sole and absolute discretion, refuse to accept any Gift or Sponsorship if ELK determines that such Gift or Sponsorship would not be in the best interests of the Premises or ELK. ELK shall develop policies regarding the solicitation and use of Sponsorships; acceptability of and compliance with any terms and conditions on Sponsorships; any formal recognition, acknowledgments, or memorials associated with Sponsorships, including but not limited to signs on the Premises and the naming of the Premises. Prior to accepting any Sponsorships, these policies must be submitted to and approved by the Director or designee, and in conformance with the terms and conditions of this Agreement and with City laws, rules and regulations.

(b) Grants. ELK shall have the right to apply for, accept and utilize, for the benefit and use of ELK, additional grants and other governmental or private financial assistance other than the Grants ("**Future Grants**") for use on the Premises; provided, however, ELK shall

obtain the City's prior consent for any Future Grants that require the addition of any improvements to the Premises, which consent shall not be unreasonably withheld, conditioned, or delayed. ELK and the City shall collaborate and support each other's efforts to obtain Future Grants for the improvement of the Premises and the support and enhancement of programs and activities conducted by ELK. Any matching fund requirement of a Future Grant shall be the responsibility of ELK unless the City has approved the matching fund requirement in accordance with City ordinance and appropriated its share of the matching funds. Any Future Grant which requires certain covenants, conservation easements, or other restrictions be imposed on the Premises, in whole or part, as a condition of obtaining the Grant must be approved by the City through the City's established contract process.

(c) Compliance. For all Gifts, Sponsorships, Grants, and Future Grants accepted and utilized by ELK, including any donations of money and grant money received by the City for the Premises and turned over to ELK, ELK shall be responsible for complying with the terms and conditions of those Gifts, Sponsorships, Grants, and Future Grants, except as otherwise provided in this Agreement.

16. FUNDING.

In order for ELK to achieve and continue the public purpose of this Agreement, funding shall be provided or permitted from the following sources to be expended for the purposes stated in this Agreement:

(a) Appropriations made annually at the discretion of the City shall be made available in such amounts as the City determines, in its reasonable discretion, to be necessary or desirable to pay costs and expenses for the management, operation, maintenance, modification, and improvement of the Premises. Unless otherwise provided in the bill for ordinance making the appropriation, the City will remit the entire annual amount so approved at the beginning of the fiscal year for which the funds were budgeted.

(b) Other appropriations may be authorized from time to time by the City in its discretion, such as Capital Improvement project funds, and shall be applied by the City in the manner specified in the appropriation.

(c) ELK may charge fees for admission to ELK-hosted fundraising events with the Parks' Department's prior review. ELK may charge fees for admission to other programs and events held within the Education Center or on the Premises with the Parks Department's approval. These fees, and program and activity participation fees and charges, shall be collected and deposited by ELK in its accounts, in accordance with ELK's typical accounting practices.

(d) Revenues from rentals and concessions operated by ELK at the Premises shall be received and deposited by ELK in its accounts, in accordance with ELK's typical accounting practices.

(e) Funds accepted by ELK for Gifts, Sponsorships, and Future Grants, income earned by ELK on its investments, and all other operating net revenues received by ELK shall be retained and deposited by ELK in its accounts, spent, or remitted or donated directly to contractors,

vendors, partners, agents, and other recipients, in accordance with ELK's typical accounting practices.

(f) Donations of money or grants made to the City for the use and benefit of the Park shall be transferred to the control of ELK unless the donor or grantee has provided to the contrary. Any such donation or grant not transferred to the control of ELK shall be set aside in a fund established by the City's Manager of Finance for the use and benefit of the Park.

(g) Bond funds may be authorized by the people and issued by the City in the amounts and for the purposes stated in the authorization ordinance.

It is understood that neither the City nor ELK is hereby obligated to provide any specific level of funding for the purposes set forth in this Agreement, and if any party for any reason reduces any funding previously provided, no other party shall be obligated to increase its funding as a result thereof.

17. INSURANCE.

(a) City's Insurance. The City and County of Denver is self-insured with respect to Commercial General Liability, Business Auto Liability, and Workers' Compensation insurance. The City and County of Denver qualifies as a Self-Insurer pursuant to State of Colorado Self-Insurer requirements.

(b) ELK's Insurance – General Conditions. ELK agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. ELK shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. To the extent available, each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, ELK shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by ELK. ELK shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the ELK. ELK shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(c) Proof of Insurance. ELK may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. ELK shall provide

the Parks Department with a certificate of insurance, preferably an ACORD certificate, within thirty days of execution of this Agreement that complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of ELK's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements, at the City's sole cost and expense.

(d) Additional Insureds. For Commercial General Liability, ELK and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(e) Waiver of Subrogation. For all coverages required under this Agreement, the City and ELK hereby each waive and release the other from any and all claims or any loss or damage that may occur to Premises, Improvements, Open Space, or Park, or personal property located thereon, by reason of fire or other casualty regardless of cause or origin, including the negligence or misconduct of either party, but only to the extent of the insurance proceeds paid to such releasor under its policies of insurance or, if it fails to maintain the required policies, the insurance proceeds that would have been paid to such releasor if it had maintained such policies. Each party to this Agreement shall promptly give to its insurance company written notice of the mutual waivers contained in this subparagraph, and shall cause its insurance policies to be properly endorsed, if necessary, to incorporate the waiver of subrogation contained herein and to prevent the invalidation of any insurance coverages by reason of the mutual waivers contained in this subparagraph.

(f) Subcontractors and Subconsultants of ELK: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of ELK, as applicable. ELK shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. ELK agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

(g) Workers' Compensation/Employer's Liability Insurance. ELK shall maintain the coverage as required by statute and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

(h) Commercial General Liability. ELK shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(i) Business Automobile Liability. ELK shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in association with this Agreement, to the extent that ELK owns or hires any vehicles.

(j) Property Insurance. ELK shall provide 100% replacement cost for ELK's tenant improvements and personal property. Business Interruption coverage shall be included with limits not less than the annual payments due to the City under the term of the agreement. ELK understands and acknowledges that the City does not provide any insurance coverage for any property of ELK, its agents, employees or assignees located in the Leased Premises and ELK acknowledges and agrees that ELK, its agents, employees and assignees have no claim against the City for any damage or loss of personal property and belongings of ELK, its agents, employees or assignees in the Leased Premises.

(k) Additional Provisions.

(1) For Commercial General Liability, the policy must provide the following:

- (i) That the Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside of the limits of liability;
- (iii) A severability of interests, separation of insureds or cross liability provision;
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and County of Denver; and
- (v) No exclusion for sexual abuse, molestation or sexual misconduct.

(2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) ELK shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At ELK's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, ELK shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

(l) ELK's Failure to Maintain Insurance. In addition to its other rights and remedies in this Agreement, if it should be determined by the Parks Department that the Agreement should remain in effect, the City shall have the right to obtain any insurance coverage specified in this Section 17 as Denver Risk Management deems necessary to remedy the deficiency in ELK's policies, and ELK agrees to promptly and fully reimburse the City for the costs of such insurance coverage upon being provided a bill for the costs. Denver Risk Management reserves the right every five (5) years to review the sufficiency of the coverage under this Section 17, and, if it deems appropriate, to require ELK to provide reasonable additional coverage so long as it can be obtained at a reasonable cost.

18. INDEMNIFICATION; IMMUNITY and CLAIMS.

(a) Indemnification. ELK hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to violation of the provisions of this Agreement or ELK's use or occupancy of the Park under this Agreement ("**Claims**"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of ELK or its officers, employees, agents, volunteers, invitees, or subcontractors, either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

(b) ELK's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. ELK's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

(c) ELK will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of ELK under the terms of this indemnification obligation. ELK shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

(f) Immunity. The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S., and any other applicable law.

(g) Notice of Legal Actions. In the event that any claim, demand, suit or other action is made or brought in writing by any person, firm, corporation or other entity against ELK related in any way to this Agreement or ELK's operation of the Premises, ELK shall give written notice thereof to the City within five (5) working days after being notified of such claim, demand, suit or other action. Such notice shall state the date and hour of such notification and shall include a copy of any such claim, demand, suit or other action received by ELK. Such written notice shall be submitted, as provided in this Agreement, to the Director and the City Attorney, 1437 Bannock Street, Room 353, Denver, Colorado 80202.

19. TAXES; LICENSES; LIENS, and DEBTS.

(a) Taxes. ELK shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) Licenses. ELK shall take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of its obligations under this Agreement. The Director will endeavor to facilitate ELK's effort to obtain any such license, permit, or other authorization. When feasible, the Director will seek to obtain fee waivers from City departments and agencies for City licenses, permits, or other authorizations.

(c) Liens. ELK shall not permit any mechanic's or materialman's lien or any other lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for ELK, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

(d) Debts. ELK shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of the Premises and shall not permit the same to become delinquent. ELK shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Agreement or its rights to the Premises.

(e) Final Adjudication. ELK may, diligently and in good faith, resist, bond over, or contest the collection, application or imposition of any such tax, fee, lien, bill, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. ELK may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication.

20. ANNUAL REPORTS.

Each year during the Term, ELK shall prepare and submit to the Director, or the Director's designated representative, an annual report in a format reasonably satisfactory to the Director (the "**Annual Report**"). Such Annual Report shall be submitted on or before March 1st of each year for the preceding calendar year. At a minimum, the Annual Report must include, as applicable, (i) amendments to ELK personnel rules and regulations and code of ethics, (ii) amendments to ELK bylaws and other governance documents, (iii) amendments to the Cooperative Statement, (iv) proposed admission fees changes for the upcoming year, (v) list of Sponsorships sold and Sponsorships intended for sale; (vi) events or special use undertaken or held in the Open Space during the preceding year, (vii) amendments to Gift/Sponsorship policies, (viii) number of participants served for the preceding year, (ix) a listing of classes/programs offered on the Premises during the preceding year, and (xi) a listing of classes/programs to be offered on the Premises during the upcoming year; (xii) Reserved Dates for the upcoming year, locations within the Open Space for each event/activity, and estimated number of people planned for each event/activity;

(xiii) narrative of ELK's accomplishments and operations over the past year and how they are consistent with its stated goals and services and the ELK Mission. The Report should also include its plans for the upcoming year and how the public will be benefited by such proposed plans. The Director may elect to present this Annual Report to a committee of the City Council and may require the presence of a representative of ELK at the committee to help in the presentation and to answer the questions or concerns of Council members.

21. NON-DISCRIMINATION.

ELK agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability in connection with membership on ELK board, access to any of the Open Space and Premises, and participation in any public program at the Open Space and Premises. In connection with the performance of work under the Agreement, ELK may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. ELK shall insert the foregoing provision in all subcontracts.

22. ALCOHOL & DRUGS POLICY; SMOKING POLICY.

(a) ELK, its directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and its Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring ELK from City facilities or participating in City operations. ELK, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. ELK shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. ELK agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.

(b) ELK agrees comply to with Executive Order No. 99 and any rules, regulations, or policies adopted by the Director and generally applicable to specified facilities under the auspices of Parks and Recreation.

23. ENVIRONMENTAL COMPLIANCE.

ELK shall obtain all federal, state, and local environmental permits necessary for, and shall comply with all applicable federal, state, and local environmental permit requirements related to, performance of ELK's obligations under this Agreement. ELK shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders related to performance of ELK's obligations under this Agreement (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding

releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos, asbestos-containing soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, any Colorado statutes serving a similar purpose for environmental regulation, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Notwithstanding the preceding provisions of this Section 23, ELK is not responsible for curing any environmental hazard or remediating or removing any Hazardous Materials, or curing any violation of Environmental Requirements, which existed prior to the delivery of the Improvements to ELK, is caused by the City or its appointed or elected officials, agents, or employees, or is merely discovered, exposed, or exacerbated by ELK, and the City shall promptly commence and diligently pursue all such remediation, removal, and cures to completion in accordance with all Environmental Requirements, at the City’s sole cost and expense.

24. DEFAULT AND TERMINATION.

Except as otherwise expressly provided herein, this Agreement may be terminated only as follows:

(a) ELK Default. In the event that ELK shall default or breach, on its part, in the performance or fulfillment of one or more material term(s), promise(s), or condition(s) of this Agreement (“**ELK Default**”) and shall fail to cure such ELK Default within ninety (90) days (subject to Force Majeure) following delivery of written notice from the Director specifying the ELK Default and the date on which the City may exercise its right to terminate this Agreement if such ELK Default is not cured, the City may, in its sole and absolute discretion, terminate this Agreement by written notice to ELK. Any disputes between City and ELK regarding default shall proceed in accordance with the Department of Parks and Recreation’s Administrative Citations Rules, as may be amended or modified.

(b) City Default. In the event the City shall default or breach, on its part, in the performance or fulfillment of one or more material term(s), promise(s), or condition(s) of this Agreement (“**City Default**”) and shall fail to cure such City Default within ninety (90) days following delivery of written notice from ELK specifying the City Default and the date on which ELK may exercise its right to terminate this Agreement if such City Default is not cured, ELK may, in its sole and absolute discretion, terminate this Agreement by written notice to the City.

(c) Extension of Cure Period. Upon mutual agreement of the parties, in the non-defaulting party’s sole and absolute discretion, the time to cure any ELK Default or City Default may be extended to a date certain and the manner and extent of cure may be modified. The deadline for any cure under this Section 24 shall not excuse the obligation of any defaulting party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to Premises, or neighboring property or any existing or imminent threat to public health and safety.

(d) ELK Termination for Convenience. ELK may terminate this Agreement, with or without cause, with at least six (6) months' prior written notice to the City.

(e) Effect of Termination.

(i) Upon termination of this Agreement, including termination or expiration of this Agreement as provided in Section 3(b), the Park, the Premises and all other permanent improvements contained therein or upon any other City-owned property shall remain the property of the City, and all of the ELK Personal Property shall immediately become the property of the City if it cannot be removed from City land within one hundred twenty (120) days in accordance with Section 9(b). Upon request, ELK shall execute and timely deliver bills of sale to the City for the transfer of the Premises. ELK shall take all reasonable measures to turn over the Premises and any other City-owned property to the City in a timely manner and in accordance with Section 7(a). Any public funds that have not been used by ELK under this Agreement and not needed to cover ELK's remaining obligations incurred in performing its duties under this Agreement shall be promptly returned to the City. All remaining funds (including, without limitation, funds held by ELK as endowment) and other personal property held by ELK (not otherwise conveyed to the City under this subparagraph 24(e)(i)) shall be used or distributed by ELK as ELK determines in its sole and absolute discretion.

(ii) If this Agreement is terminated for any reason permitted by this Agreement, other than ELK's breach, prior to expiration of the initial Term, then within 30 days after such termination, the City shall refund to ELK a prorated share of the ELK Grant Funds equal to: the aggregate amount of ELK Grant Funds multiplied by a fraction, the numerator of which is the number of full calendar months that remain after the Effective Date and the denominator of which is the number of calendar months in the initial Term (the "**Prorated Reimbursement**"). If the City terminates this Agreement for ELK's breach, the City, in its sole discretion, may elect to return the Prorated Reimbursement to ELK.

25. GENERAL PROVISIONS.

(a) Examination of Records and Audits. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to ELK's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. ELK shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require ELK to make disclosures in violation of state or federal privacy laws. ELK shall at all times comply with D.R.M.C. 20-276.

(b) Appropriation. Notwithstanding any provision of this Agreement to the contrary, financial obligations of the City, if any, under this Agreement is contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available, and any commitments by the City to provide services is contingent upon the necessary funds being budgeted, appropriated, and otherwise made available and the necessary discretionary actions being taken by the City Council and the Mayor. The parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(c) Good Faith. The City and ELK agree to work diligently and in good faith to perform and fulfill the duties and obligations and achieve the purposes of this Agreement and to resolve any unforeseen issues or disputes under this Agreement as quickly and fairly as possible.

(d) Assignment. ELK shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the prior written consent of the City, and unless the assignee or transferee (1) shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of ELK under this Agreement and (2) shall agree to be bound by the terms, covenants, and conditions contained in this Agreement to be performed or satisfied by ELK with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the Term. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

(e) Contracting or Subcontracting. ELK shall, upon request, provide to the Director a copy of any written contract or subcontract entered by ELK for work or services covered by this Agreement.

(f) Non-waiver. No party shall be excused from complying with any provision of this Agreement by the failure of the other party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said party.

(g) Applicable Law. The parties agree to comply with all Applicable Laws in existence as of the Effective Date or as may be subsequently enacted or adopted and applicable to this Agreement. The Director agrees to provide ELK with reasonable notice of and an opportunity to review and comment on any changes proposed by the Director in City ordinances and Parks and Recreation rules, regulations, and policies applicable to the Premises before such changes are enacted or adopted. It is understood that the Director will not, in any event, propose any changes in laws, rules, or regulations applicable to the Premises as a means to depart from the express terms of this Agreement; provided, however, this provision shall not restrict any authority of the City to adopt reasonable ordinances or rules and regulations which are of general application throughout the City, including the Park and the Premises.

(h) Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal

action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

(i) Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and ELK further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

(j) No Personal Liability. No official, officer, director, agent, board member, or employee of either party shall be charged personally or held contractually liable to the other party or its officials, officers, agents, board members, or employees under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

(k) Force Majeure. No party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of Force Majeure; provided that prompt notice of the occurrence and the end of such delay shall be provided by the party asserting Force Majeure to the other party. “**Force Majeure**” shall mean causes beyond the reasonable control of a Party such as, but not limited to, extreme weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities, including without limitation laws, rules, regulations, orders that require the closure of certain businesses or facilities. Written notice of any claim of inability to perform or comply due to Force Majeure must be promptly given. Notwithstanding the foregoing, if the Force Majeure continues for a period of 30 days or more, the performing party will have the right to terminate this Agreement by providing the claiming party 15 days prior written notice.

(l) No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the parties that any person or entity other than the parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

(m) Notices. All notices, demands or consents required or permitted under this Agreement shall be in writing, shall be sent by personal delivery, nationally recognized overnight courier service, or certified mail (postage prepaid, return receipt requested), and shall be deemed delivered upon receipt, if delivered personally, upon the third day following posting by certified mail, return receipt requested, or upon the next business day if deposited with a nationally recognized overnight courier service, to the following addresses:

If to Environmental Learning for Kids:

Environmental Learning for Kids
Attn: Executive Director
PO Box 21679

Denver, CO 80221

with a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432
Attn: Charlie Smith and Caitlin Quander

If to the City or the Director:

Executive Director of Parks and Recreation
City and County of Denver
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

With copies to:

Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

The address for any party set forth above may be changed at any time by written notice in the manner provided herein to all other parties.

(n) Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the parties. The parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

(o) Amendment. Except as expressly provided in this Agreement, this Agreement must be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties in the same manner as this Agreement.

(p) Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will legally achieve the original intent and purposes of the parties hereunder.

(q) Public Contracts for Services:

1) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "**Certification Ordinance**").

2) ELK certifies that:

(A) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

(B) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(C) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to ELK that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(D) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(E) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. ELK shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

(F) It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

(r) No Construction against Drafting Party. The parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

(s) Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

(t) Authority. Each party represents and warrants that it has taken all actions necessary or required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the party and to bind the party to its terms. The person(s) executing this

Agreement on behalf of each party warrants that he/she/they have full authorization to execute this Agreement.

(u) Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by ordinance and it has been fully executed by all signatories of the parties.

(v) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

(w) Electronic Signatures and Electronic Records. ELK and the City each consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City, in the manner specified by the City, and ELK. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

(x) Termination of Existing Agreement. Upon the Effective Date, the Lease Agreement and Assignment Agreement, executed November 17, 2014, by and between ELK and the City, Contract Control Number FINAN-201418361-00 (the “**Existing Lease**”) shall be deemed automatically terminated and of no force or effect, and ELK and the City shall thereupon be automatically and forever released and discharged from any and all liability and obligations arising out of or related to the Existing Lease.

26. TERMINATION OF PRIOR AGREEMENT. The Lease Agreement and Assignment Agreement by and between the City and ELK dated November 17, 2014, as amended, is hereby terminated as of the Effective Date of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.]**

Contract Control Number: PARKS-202263429-00
Contractor Name: ENVIRONMENTAL LEARNING FOR KIDS

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:

Attorney for the City and County of Denver

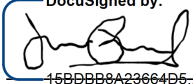
By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202263429-00
ENVIRONMENTAL LEARNING FOR KIDS

By:  _____
15BDBB8A23664D5...

Name: Juan Pérez Sáez
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A
Legal Description and ALTA/ACSM Survey

Montbello Open Space Legal Description

The land is described as follows:

A part of Lot 7, Block 1, Koll Peoria Center Filing No. 1, being a subdivision situated in the Northwest Quarter of Section 24, Township 3 South, Range 67 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, according to the plat thereof recorded in the City and County of Denver Clerk and Recorder's Office at Reception Number 9900000721, more particularly described as follows:

Commencing at a range point in Albrook Drive, being on a 20 foot range line, as monumented by a recovered 3-1/4" aluminum cap in a range box, stamped, "PLS 37993", whence a range point in said Albrook Drive, Being on a 20 foot range line and a point of curvature, as monumented by a recovered #8 rebar in a range box, bears S68°00'00"E, a distance of 414.81 feet, forming the basis of bearing used in this description with all bearings being relative thereto:

Thence departing and perpendicular to said 20 foot range line, S22°00'00"W, a distance of 50.00 feet to a point on the southerly right-of-way line of Albrook Drive, said point also being the most northerly boundary corner of said Lot 7;

Thence along said southerly right-of-way line, also being the northerly boundary of said Lot 7, being 50.00 feet southwesterly of and parallel with said 20 foot range line, the following two courses:

- 1) S68°00'00"E, a distance of 414.81 feet to a point of curvature;
- 2) Along a tangent curve to the right having a central angle of 00°31'43", a radius of 965.00 feet and an arc length of 8.90 feet to the Point of Beginning;

Thence continuing along the last described course being a tangent curve to the right having a central angle of 11°34'03", a radius of 965.00 feet and an arc length of 194.83 feet to the northeast boundary corner of said Lot 7;

Thence departing said southerly right-of-way line and along the exterior boundary of said Lot 7 the following eight courses:

- 1) S40°30'09"W, a distance of 150.00 feet;
- 2) S52°05'31"E, a distance of 133.14 feet;
- 3) S49°30'02"E, a distance of 125.00 feet;
- 4) S40°29'58"W, a distance of 60.00 feet;
- 5) S29°59'56"W, a distance of 98.77 feet;
- 6) S40°29'58"W, a distance of 9.00 feet to a point of curvature;
- 7) Along a tangent curve to the right having a central angle of 49°30'00", a radius of 245.00 feet and an arc length of 211.66 feet;
- 8) S90°00'00"W, a distance of 441.91 feet to the southwest boundary corner of said Lot 7;

Thence along a westerly boundary line of said Lot 7, N00°00'00"E, a distance of 275.67 feet;
Thence departing and perpendicular to the last described course, S90°00'00"E, a distance of 283.86 feet;

Thence N22°00'00"E, a distance of 124.39 feet;

Thence perpendicular to the last described course, S68°00'00"E, a distance of 33.70 feet;

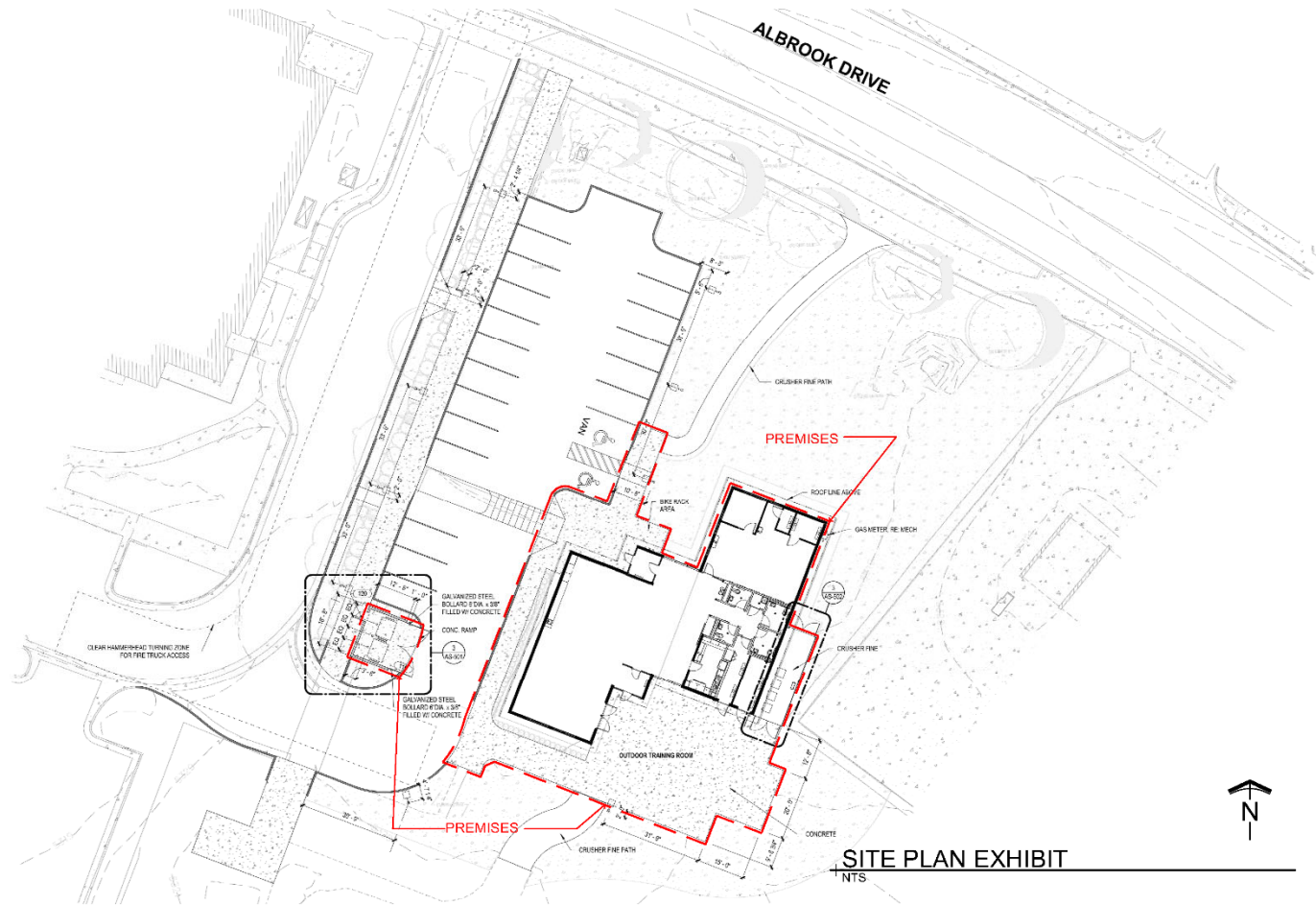
Thence perpendicular to the last described course, N22°00'00"E, a distance of 231.67 feet to the Point of Beginning,

City and County of Denver,
State of Colorado.

For informational purposes only: APN 0124202013000

EXHIBIT B

Premises



	Environmental Learning for Kids 12680 EAST ALBROOK, DENVER, COLORADO Denver Parks & Recreation	PREMISES EXHIBIT April 6, 2021
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Ex. B

Exhibit C.

FFE – items to be purchase by ELK.

Vendor and items	Amount	Description
OFFICE SCAPES – Office and Classrooms Furniture, delivery, and installation.	\$ 54,850.24	<ul style="list-style-type: none"> - Office furniture seating up to 9 people, plus individual file cabinets. - Meeting room layout circular table seating 5 people, plus couch. - Classroom one, layout, seating 22 people - Classroom two, circular couch plus teacher station
CONDIT – Educational Exhibits, construction, delivery, and installation.	\$113,770.00	<ul style="list-style-type: none"> - Design - Engineering and detail drawings - Estimating; Job Coordination - Graphic Design - 1 Community Cottonwood Tree - Community Cottonwood Tree: Canopy Elements - Community Cottonwood Tree: Color changing Lighting Effect - 2 Lobby Kiosks - 25 Graphic Images for Photo Wall side of Lobby Kiosk (listed above) - 2 Interactive Kiosks - 1 Touch Table - 1 birdwatching station
Ferguson – Appliances, including warranties and installation.	\$8, 380.94	<ul style="list-style-type: none"> - Dishwasher - Microwave - Washing machine - Dryer - Refrigerator - Oven
Total:	\$ 177, 001.18	

*Note: Quotes and specifications available upon request.

EXHIBIT D

PARKS-202263429



TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Ryland Feno, Classification and Compensation Analyst Staff
DATE: May 09, 2022
SUBJECT: Latest Change to Prevailing Wage Schedules

The effective date for this publication will be **Friday, May 06, 2022** and applies to the City and County of Denver for **BUILDING CONSTRUCTION PROJECTS** (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO20220020
Superseded General Decision No. CO20210020
Modification No. 4
Publication Date: 05/06/2022
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

***Career Service Board approved to adjust all Davis Bacon classifications under \$15.87 to comply with the city's minimum wage. The effective date is January 1, 2022. See page 7 for reference.**

Office of Human Resources
201 W. Colfax Ave. Dept. 412 | Denver, CO 80202
p: 720.913.5751 | f: 720.913.5720
www.denvergov.org/humanresources

protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	01/28/2022
2	02/18/2022
3	02/25/2022
4	05/06/2022

ASBE0028-002 07/01/2019

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 32.98	14.73

CARP0055-002 11/01/2019

	Rates	Fringes
CARPENTER (Drywall Hanging Only).....	\$ 29.95	10.99

CARP1607-001 06/01/2020

	Rates	Fringes
MILLWRIGHT.....	\$ 35.50	14.68

ELEC0068-012 06/01/2021

	Rates	Fringes
ELECTRICIAN (Includes Low Voltage Wiring).....	\$ 39.75	17.27

ELEV0025-001 01/01/2022

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 49.74	36.885

FOOTNOTE:

- a. Vacation: 6%/under 5 years based on regular hourly rate for all hours worked. 8%/over 5 years based on regular hourly rate for all hours worked.
- b. PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

ENGI0009-017 05/01/2021

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Crane)		
141 tons and over.....	\$ 35.17	12.35
50 tons and under.....	\$ 31.70	12.35
51 to 90 tons.....	\$ 31.97	12.35
91 to 140 tons.....	\$ 33.05	12.35

IRON0024-009 12/01/2021		
	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 31.00	14.25

IRON0024-010 12/01/2021		
	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 31.00	14.25

PAIN0079-006 08/01/2017		
	Rates	Fringes
PAINTER (Brush, Roller and Spray; Excludes Drywall Finishing/Taping).....	\$ 20.50	8.41

PAIN0079-007 08/01/2017		
	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 21.20	8.41

PAIN0419-001 07/01/2016		
	Rates	Fringes
SOFT FLOOR LAYER (Vinyl and Carpet).....	\$ 20.00	10.83

PAIN0930-002 07/01/2021		
	Rates	Fringes
GLAZIER.....	\$ 31.92	11.74

PLUM0003-009 06/01/2021		
	Rates	Fringes
PLUMBER (Excludes HVAC Duct, Pipe and Unit Installation).....	\$ 39.53	18.52

PLUM0208-008 01/01/2021		

	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe and Unit Installation; Excludes HVAC Duct Installation).....	\$ 37.55	17.88

* SFCO0669-002 04/01/2022

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 41.46	25.84

SHEE0009-004 07/01/2021

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation; Excludes HVAC Pipe and Unit Installation).....	\$ 36.45	20.15

* SUCO2013-006 07/31/2015

	Rates	Fringes
BRICKLAYER.....	\$ 21.96	0.00
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 22.40	4.85
CARPENTER (Metal Stud Installation Only).....	\$ 17.68	0.00
CARPENTER, Excludes Acoustical Ceiling Installation, Drywall Hanging, and Metal Stud Installation.....	\$ 21.09	6.31
CEMENT MASON/CONCRETE FINISHER...	\$ 20.09	7.03
LABORER: Common or General.....	\$ 14.49 **	5.22
LABORER: Mason Tender - Brick...	\$ 15.99	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 16.00	0.00
LABORER: Pipelayer.....	\$ 16.96	3.68
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.78	5.78
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 19.10	3.89

OPERATOR: Grader/Blade.....	\$ 21.50	0.00
ROOFER.....	\$ 16.56	0.00
TRUCK DRIVER: Dump Truck.....	\$ 17.34	0.00
WATERPROOFER.....	\$ 12.71 **	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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**Office of Human Resources
Supplemental Rates
(Specific to the Denver projects)
Revision Date: 01-01-2022**

Classification		Base	Fringe
Boilermaker		\$30.97	\$21.45
Iron Worker, Reinforcing		\$18.49	\$3.87
Laborer: Concrete Saw		\$15.87	-
Paper Hanger		\$20.15	\$6.91
Plasterer		\$24.60	\$12.11
Plaster Tender		\$15.87	-
Power Equipment Operator	Concrete Mixer - Less than 1 yd	\$23.67	\$10.67
	Concrete Mixer - 1 yd and over	\$23.82	\$10.68
	Drillers	\$23.97	\$10.70
	Loader - up to and incl 6 cu yd	\$23.67	\$10.67
	Loaders - over 6 cu yd	\$23.82	\$10.68
	Mechanic	\$18.48	-
	Motor Grader	\$23.97	\$10.70
	Oilers	\$22.97	\$10.70
	Roller	\$23.67	\$10.67
Tile Finisher		\$23.35	\$8.76
Tile Setter		\$29.30	\$8.76
Truck Driver	Flatbed	\$19.14	\$10.07
	Semi	\$19.48	\$10.11
Waterproofer		\$15.87	\$0.00

Go to www.denvergov.org/Auditor to view the Prevailing Wage Clarification Document for a list of complete classifications used.



TO: All Users of the City and County of Denver Prevailing Wage Schedules

FROM: Ryland Feno, OHR Compensation and Classification

DATE: May 19, 2022

SUBJECT: Latest Update to Prevailing Wage Schedules

Please find an attachment to this memorandum of all the current Office of Human Resources Prevailing Wage Schedules issued in accordance with the City and County of Denver's Revised Municipal Code, Section 20-76(c). This schedule does not include the Davis-Bacon rates. The Davis-Bacon wage rates will continue to be published separately as they are announced.

Modification No. 165
Publication Date: May 19, 2022
(12 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to, and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor. The employer and the individual apprentice must be registered in a program, which has received prior approval by the U.S. Department of Labor. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

APPLIANCE MECHANIC**Effective Date:** 05-19-22

Last Revision: 02-18-21

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Appliance Mechanic	\$24.44	\$7.42

Plus 10% shift differential for regularly scheduled hours worked between 6:00 p.m. and 6:00 a.m.

The Appliance Mechanic installs, services and repairs stoves, refrigerators, dishwashing machines, exercise equipment and other electrical household or commercial appliances, using hand tools, test equipment and following wiring diagrams and manufacturer's specifications. Responsibilities include: connects appliance to power source and test meters, such as wattmeter, ammeter, or voltmeter, observes readings on meters and graphic recorders, examines appliance during operating cycle to detect excess vibration, overheating, fluid leaks and loose parts, and disassembles appliances and examines mechanical and electrical parts. Additional duties include: traces electrical circuits, following diagram and locates shorts and grounds, using ohmmeter, calibrates timers, thermostats and adjusts contact points, and cleans and washes parts, using wire brush, buffer, and solvent to remove carbon, grease and dust. Replaces worn or defective parts, such as switches, pumps, bearings, transmissions, belts, gears, blowers and defective wiring, repairs and adjusts appliance motors, reassembles appliance, adjusts pulleys and lubricates moving parts, using hand tools and lubricating equipment.

Note: This position does not perform installations done at new construction.

BUILDING ENGINEER**Effective Date:** 09-17-20

Last Revision: 08-15-19

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Building Engineer	\$32.50	\$8.29

This classification of work is responsible for operating, monitoring, maintaining/repairing the facilities mechanical systems to ensure peak performance of the systems. This includes performing P.M. and repair work of the building mechanical systems, inspecting, adjusting, and monitoring the building automation and life safety systems, contacting vendors and place order replacement parts, responding to customer service requests and performing maintenance/repairs I tenant or public spaces, performing routine P.M. i.e. light plumbing and electrical repairs, ballast lamp and tube replacement, operating mechanical systems both on site and via a remote laptop computer, maintaining inventory of spare parts and tools, painting and cleaning mechanical equipment and machine rooms, etc.

CONVEYANCE SYSTEM MAINTENANCE SERIES

Effective Date: 11-18-21
Last Revision: 11-19-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Entry-Support Mechanic	\$25.40	\$7.53
Machinery Maintenance Mechanic	\$27.66	\$7.73
Controls System Technician	\$34.32	\$8.56

*OHR pulled the wages in October of 2021 and data has remained the same for the Machinery Maintenance Mechanic so there is no recommendation to change the base wage or fringes.

Plus 10% shift differential for regularly scheduled hours worked between 6:00 p.m. and 6:00 a.m.

This classification was previously listed as Baggage Handling System Maintenance. The title of the series has been changed to be inclusive of other types of similar work.

Entry Support Mechanic

The Entry Support Mechanic (ESM) applies basic mechanical knowledge to perform maintenance and operational tasks on a conveyance system. Under supervision of a Machinery Maintenance Mechanic (MMM) or Control Systems Technician (CRO), the ESM performs cleaning, routine inspections, preventive, corrective and emergency maintenance based on an established maintenance program. The ESM clears jams and faults and may physically move items during failures.

Machinery Maintenance Mechanic

The Machinery Maintenance Mechanic (MMM) applies advanced mechanical knowledge to perform maintenance and operational tasks on a conveyance system. Performs cleaning of all parts of the system, routine inspections, preventive maintenance, corrective maintenance, and emergency maintenance within the system based on an established maintenance program. The MMM shall inspect all equipment for proper operation and performance including but not limited to conveyors, lifts, diverters and automatic tag readers. The MMM troubleshoots, repairs, replaces, and rebuilds conveyor components including but not limited to; motors, gearboxes, bearings, rollers, sheaves, hydraulic systems, conveyor belting, clutch brakes, tools, independent carrier systems, and other complex devices using basic hand tools, power tools, welders and specialized tools. The MMM may assist the Control Systems Technician (CST) with clearing electrical faults and electrical repairs. The MMM reads and interprets manufacturers' maintenance manuals, service bulletins, technical data, engineering data, and other specifications to determine feasibility and method of repairing or replacing malfunctioning or damaged components. The MMM clears jams and faults in the system and may physically move items during failures. The MMM will operate a Central Monitoring Facility/Control Room, these duties include; using multiple computer systems for monitoring the system and running reports, communicating faults in the system using a radio and telephone, and communicating with stakeholders. The MMM performs on-site training of ESM.

Controls System Technician

The Control Systems Technician (CST) applies advanced technical knowledge to perform maintenance and operational tasks on a conveyance system. Performs all duties assigned to an MMM in addition to the following routine inspections, preventive maintenance, corrective maintenance, and emergency maintenance of complex components within the system based on an established maintenance program. The CST is responsible for resolving difficult controls, electrical and mechanical problems. The CST troubleshoots, repairs, replaces, and rebuilds complex electro-mechanical systems and conveyor components including but not limited to; programmable logic controllers, input and output modules, electrical switches, variable frequency drives, 110V AC and 24V DC controls devices, automatic tag readers, electrical control panels, 110V - 480V AC components and motors, gearboxes, bearings, rollers, sheaves, hydraulic systems, conveyor belting, clutch brakes, tools, independent carrier systems, and other complex devices using basic hand tools, power tools, welders and specialized mechanical and electrical tools. The CST reads and interprets manufacturers' maintenance manuals, service bulletins, technical data, engineering data, and other specifications to determine feasibility and method of repairing or replacing malfunctioning or damaged components. The CST clears mechanical, electrical and controls faults, jams and may physically move items during failures. The CST performs on-site training and competency evaluations of MMM and ESM.

Note: Incumbents must possess an Electrician's license when work warrants.

CUSTODIANS**Effective Date: 02-24-22**

Last Revision: 12-17-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Custodian I	\$19.53	\$6.99 (Single) \$8.83 (EE + Spouse) \$10.97 (Family)
Custodian II	\$19.88	\$7.05 (Single) \$8.89 (EE + Spouse) \$11.03 (Family)

Benefits and Overtime

Parking	With valid receipt from approved parking lot, employees are reimbursed the actual monthly cost of parking.
RTD Bus Pass	Employer will provide employees with the Bus Pass or pay (\$0.23) per hour for travel differential.
Shift Differential	2nd shift (2:30 p.m.-10:30 p.m.): \$.50/hour 3rd shift (10:31 p.m.-6:30 a.m.): \$1.00/hour
Overtime	Time worked in excess of seven and one-half (7 ½) hours in one (1) day or in excess of thirty-seven and one-half (37 ½) hours in one week shall constitute overtime and shall be paid for at the rate of time and one-half (1 ½) at the employee's basic straight time hourly rate of pay.
Lunch	Any employee working seven and a half (7.5) hours in a day is entitled to a thirty (30) minute paid lunch.
Note	The Career Service Board in their public hearing on March 15, 2007 approved to amend prevailing wages paid to the Custodian as follows: "All contractors shall provide fringe benefits or cash equivalent at not less than the single rate amount. Contractors who offer health insurance shall provide an employer contribution to such insurance of not less than the 2-party or family rate for any employee who elects 2-party or family coverage. Contractors who offer such coverage will be reimbursed for their employer contributions at the above rates under any City contract incorporating this wage specification."

Custodian I

Any employee performing general clean-up duties using equipment that does not require special training: i.e., dust mopping, damp mopping, vacuuming, emptying trash, spray cleaning, washing toilets, sinks, walls, cleaning chairs, etc.

Custodian II

Any employee performing specialized cleaning duties requiring technical training and the use of heavy and technical equipment, i.e., heavy machine operators, floor strippers and waxers, carpet shampooers, spray buffing, re-lamping, mopping behind machines, high ladder work, chemical stripping and finishing of stainless steel.

DIA OIL & GAS**Effective Date:** 03-17-22

Last Revision: 03-18-21

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Derrick Hand/Roustabout	\$17.11	\$6.57
Electrician	\$26.44	\$7.65
Mechanic	\$28.24	\$7.86
Pipefitter	\$28.56	\$7.90
Rig/Drill Operator	\$24.71	\$7.45
Truck Driver	\$25.53	\$7.55

Heavy Equipment Mechanic (Mechanic)

The Heavy Equipment Mechanic analyzes malfunctions and repairs, rebuilds and maintains power equipment, such as cranes, power shovels, scrapers, paving machines, motor graders, trench-digging machines, conveyors, bulldozers, dredges, pumps, compressors and pneumatic tools. This worker operates and inspects machines or equipment to diagnose defects, dismantles and reassembles equipment, using hoists and hand tools, examines parts for damage or excessive wear, using micrometers and gauges, replaces defective engines and subassemblies, such as transmissions, and tests overhauled equipment to insure operating efficiency. The mechanic welds broken parts and structural members, may direct workers engaged in cleaning parts and assisting with assembly and disassembly of equipment, and may repair, adjust and maintain mining machinery, such as stripping and loading shovels, drilling and cutting machines, and continuous mining machines.

Pipefitter

The Pipefitter, Maintenance installs or repairs water, steam, gas or other types of pipe and pipefitting. Work involves most of the following: laying out work and measuring to locate position of pipe from drawings or other written specifications, cutting various sizes of pipe to correct lengths with chisel and hammer, oxyacetylene torch or pipe-cutting machines, threading pipe with stocks and dies. This person is responsible for bending pipe by hand-driven or power-driven machines, assembling pipe with couplings and fastening pipe to hangers, making standard shop computations relating to pressures, flow and size of pipe required; and making standard tests to determine whether finished pipes meet specifications. In general, the work of the Maintenance Pipefitter requires rounded training and experience usually acquired through a formal apprenticeship or equivalent training and experience.

Well Driller (Rig/Drill Operator)

This incumbent sets up and operates portable drilling rig (machine and related equipment) to drill wells, extends stabilizing jackscrews to support and level drilling rig, moves levers to control power-driven winch that raises and extends telescoping mast. This person bolts trusses and guy wires to raise mast and anchors them to machine frame and stakes, and assembles drilling tools, using hand tools or power tools. The Well Driller moves levers and pedals to raise tools into vertical drilling position and lowers well casing (pipe that shores up walls of well) into well bore, using winch, moves levers and pedals and turns hand wells to control reciprocating action of machine and to drive or extract well casing.

Laborer (Derrick Hand/Roustabout)

The Laborer performs tasks that require mainly physical abilities and effort involving little or no specialized skill or prior work experience. The following tasks are typical of this occupation: The Laborer loads and unloads trucks, and other conveyances, moves supplies and materials to proper location by wheelbarrow or hand truck; stacks materials for storage or binning, collects refuse and salvageable materials, and digs, fills, and tamps earth excavations, The Laborer levels ground using pick, shovel, tamper and rake, shovels concrete and snow; cleans culverts and ditches, cuts tree and brush; operates power lawnmowers, moves and arranges heavy pieces of office and household furniture, equipment, and appliance, moves heavy pieces of automotive, medical engineering, and other types of machinery and equipment, spreads sand and salt on icy roads and walkways, and picks up leaves and trash.

Truckdriver

Straight truck, over 4 tons, usually 10 wheels. The Truckdriver drives a truck to transport materials, merchandise, equipment, or workers between various types of establishments such as: manufacturing plants, freight depots, warehouses, wholesale and retail establishments, or between retail establishments and customers' houses or places of business. This driver may also load or unload truck with or without helpers, make minor mechanical repairs, and keep truck in good working order.

ELEVATOR MECHANIC

Effective 1-18-2018, the Elevator Mechanic classification will utilize the base pay and fringe benefits for the Elevator Mechanic classification under the Davis Bacon [Building Wage Determination](#).

FINISHER & JOURNEYMAN

TILE, MARBLE AND TERRAZZO

Effective Date: 05-19-22

Last Revision: 05-20-21

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Tile Finisher	\$24.13	\$8.91
Tile Setter	\$30.08	\$8.91

Effective May 1, 2008, Local Union 7 of Colorado combined three classes of Finishers, Floor Grinders, and Base Grinders into Finisher using one pay schedule.

Tile Setter: Applies to workers who apply tile to floors, walls, ceilings, stair treads, promenade roof decks, garden walks, swimming pools and all places where tiles may be used to form a finished surface for practical use, sanitary finish or decorative purpose.

FIRE EXTINGUISHER REPAIRER

Effective Date: 08-19-21

Last Revision: 07-16-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Fire Extinguisher Repairer	\$21.14	\$7.04

The Fire Extinguisher Repairer performs the following duties: repairs and tests fire extinguishers in repair shops and in establishments, such as factories, homes, garages, and office buildings, using hand tools and hydrostatic test equipment, this repairer dismantles extinguisher and examines tubing, horns, head gaskets, cutter disks, and other parts for defects, and replaces worn or damaged parts. Using hand tools, this repairer cleans extinguishers and recharges them with materials, (such as soda water and sulfuric acid, carbon tetrachloride, nitrogen or patented solutions); tests extinguishers for conformity with legal specifications using hydrostatic test equipment and may install cabinets and brackets to hold extinguishers.

FUEL HANDLER SERIES**Effective Date:** 10-21-21

Last Revision: 12-17-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Fuel Facility Operator	\$23.41	\$7.30
Lead Fuel Facility Operator	\$24.48	\$7.42
Fuel Distribution System Mechanic	\$30.74	\$8.15
Lead Fuel Distribution System Mechanic	\$32.14	\$8.31

Plus 10% shift differential for hours worked between 6:00 p.m. and 6:00 a.m.

Fuel Facility Operator

Receives, stores, transfers, and issues fuel. Performs various testing procedures and documentation on fuel samples. Gauges tanks for water, temperature and fuel levels. Performs temperature and gravity testing for correct weight of fuel. Checks pumping systems for correct operating pressure or unusual noises. Inspects fuel receiving, storage, and distribution facilities to detect leakage, corrosion, faulty fittings, and malfunction of mechanical units, meters, and gauges such as distribution lines, float gauges, piping valves, pumps, and roof sumps. Operates a 24-hour control center; operates various computer equipment to determine potential equipment failure, leak and cathodic protection systems, pump failure, and emergency fuel shutoff systems. Monitors quality of fuel and drains excess condensation from fuel sumps and underground fuel pits. Inspects fuel tank farm for such items as leaks, low pressure, and unauthorized personnel. Performs general housekeeping and grounds maintenance for terminal, pipeline and dock areas, including fuel pits and valve vault cleaning and pump out activities. May connect lines, grounding wires, and loading and off-loading arms of hoses to pipelines. May assist Fuel Distribution System Mechanics by preparing work areas. Maintains record of inspections, observations and test results

Lead Fuel Facility Operator

Under the supervision of Facility Manager, or Operations Manager, maintains the purity of the fuel to be dispensed for all airline customers. Assist the Operations Manager with daily schedules, delegation of work duties, special projects, training, and performance of Fuel Facility Operators.

Fuel Distribution System Mechanic

Maintains and repairs fuel storage and distribution systems, equipment and filtration systems, and differential pressure valves. Corrects leakage, corrosion, faulty fittings, and malfunction of mechanical units, meters, and gauges such as distribution lines, float gauges, piping valves, pumps, and roof sumps. Inspects electrical wiring, switches, and controls for safe-operating condition, grounding, and adjustment; may make minor repairs. Lubricates and repacks valves. Lubricates pumps, replaces gaskets, and corrects pumping equipment misalignment. May clean strainers and filters, service water separators, and check meters for correct delivery and calibration. Overhauls system components such as pressure regulating valves and excess valves. Disassembles, adjusts, aligns, and calibrates gauges and meters or replaces them. Removes and installs equipment such as filters and piping to modify system or repair and replace system component. Cleans fuel tanks and distribution lines. Removes corrosion and repaints surfaces. Overhauls vacuum and pressure vents, floating roof seals, hangers, and roof sumps. Some positions maintain fuel-servicing equipment such as hydrant and tanker trucks. Maintains record of inspections and repairs and other related paperwork as required.

Lead Fuel Distribution System Mechanic

Performs lead duties such as making and approving work assignments and conducting on-the-job training as well as performing the various tasks performed by the Mechanic classification.

FURNITURE MOVERS

Moving, Storage and Cartage Workers

Effective Date: 09-16-21

Last Revision: 11-19-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Laborer/Helper	\$17.36	\$6.60
Furniture Driver/Packer	\$19.12	\$6.81
Lead Furniture Mover	\$19.99	\$6.91

GLYCOL FACILITY**Effective Date:** 03-17-22

Last Revision: 05-20-21

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
De-icing Facility Operator	\$29.08	\$7.96
Maintenance Mechanic	\$28.57	\$7.90
Glycol Plant Specialist	\$17.36	\$6.60

De-icing Facility Operator

The De-icing Facility Operator is responsible for the safe and efficient daily operation of all aircraft de-icing fluid equipment to include: mechanical vapor recompression (concentrators), distillation, polishing, distribution, and collection systems as well as daily routine chores to include: operating and controlling all facility machines and equipment associates with the aircraft deicing fluid system (ADS). Operate electrical motors, pumps and valves to regulate flow, add specific amounts of chemicals such as hydrochloric acid or sodium hydroxide to fluid(s) for adjustment as required, turn valves, change filters/activated carbon, and clean tanks as needed to optimize productivity. Monitor panel boards/HMI/PLC's, adjust control flow rates, repairs, and lubricate machinery and equipment using hand powered tools. Test fluids to determine quality controlling methods. Record data as necessary and maintain good housekeeping of the facility.

Maintenance Mechanic

The position of the Machinery Maintenance Mechanic will be primarily responsible for the routine maintenance and repairs of all facility equipment. Responsible for repairs to machinery and mechanical equipment, examine machines and mechanic equipment to diagnose source of trouble, dismantling or partly dismantling machines and performing repairs that mainly involve the use of hand tools in scraping and fitting parts, replacing broken or defective parts with items obtained from stock, ordering replacement parts, sending parts to a machine shop or equivalent for major repairs, preparing specific written specifications for repairs, SOP's for minor repairs, reassembly of machines and mechanical equipment, and making any necessary adjustments to all equipment for operational optimization.

Glycol Plant Specialist/Material Handling Laborer

The Material Handling Laborer is responsible for the safe and efficient daily documentation/recording of all ADF processors, distillation and polishing systems, as well as the distribution and collection system. Performing physical tasks to transport and/or store materials or fluids. Duties involve one or more of the following: manually loading or unloading trucks, tankers, tanks, totes, drums, pallets, unpacking, placing items on storage bins or proper locations. Utilizing hand carts, forklift, or wheelbarrow. Completing daily fluid inventory, to include tank measuring and completing fluid accountability records. Responsible for the overall facility housekeeping and general cleanliness. Escort vehicles and tankers in and out of the facility, change out filters as required on all systems, take samples and test for quality control and document the findings.

PARKING ELECTRONICS TECHNICIAN**Effective Date: 09-16-21**

Last Revision: 09-17-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Parking Electronics Technician	\$26.84	\$7.70

Plus 10% shift differential for regularly scheduled hours worked between 6:00 p.m. and 6:00 a.m.

This classification of work installs, modifies, troubleshoots, repairs and maintains revenue control equipment at manned and unmanned parking entrance and exit gates. Replaces consumable items such as tickets, printer ribbons, and light bulbs. Replaces modules and related equipment as needed to repair existing equipment, modify applications, or resolve unusual problems. Troubleshoots, tests, diagnoses, calibrates, and performs field repairs. Performs preventive maintenance such as inspection, testing, cleaning, lubricating, adjusting and replacing of serviceable parts to prevent equipment failure for electromechanical control to minimize repair problems and meet manufacturers' specifications.

PEST CONTROLLER**Effective Date: 08-19-21**

Last Revision: 07-16-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Pest Controller	\$22.45	\$7.19

The Pest Controller sprays chemical solutions or toxic gases and sets mechanical traps to kill pests that infest buildings and surrounding areas, fumigates rooms and buildings using toxic gases, sprays chemical solutions or dusts powders in rooms and work areas, places poisonous paste or bait and mechanical traps where pests are present; may clean areas that harbor pests, using rakes, brooms, shovels, and mops preparatory to fumigating; and may be required to hold State license

QUALITY CONTROL & ASSURANCE TECHNICIAN**Effective Date: 03-18-21**

Last Revision: 04-16-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Quality Control & Assurance Technician	\$25.35	\$7.47

The Quality Control & Assurance Technician provides support to Inland Technologies operations by independently performing standard analysis on samples related to the manufacture of spent de-icing fluid to a 99% recycled glycol product and waste water discharge. The Quality Control and Assurance Technician will continually look at ways to improve products and processes to exceed customer quality demands and decrease operational costs.

SIGN ERECTOR**Effective Date: 01-21-21**

Last Revision: 03-15-18

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Sign Erector	\$21.09	\$6.31

This classification of work erects, assembles, and/or maintains signs, sign structures and/or billboards using various tools. Erects pre-assembled illuminated signs on buildings or other structures according to sketches, drawings, or blueprints. Digs and fills holes, places poles. Bolts, screws, or nails sign panels to sign post or frame. Replaces or repairs damaged or worn signs. May use welding equipment when installing sign. This classification is not a licensed electrician and therefore cannot make connections to power sources (i.e., provide exit lighting).

TREE TRIMMERS**Effective Date: 11-18-21**

Last Revision: 09-17-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Tree Trimmer	\$21.30	\$7.00

*OHR pulled the wages in October of 2021 and data has remained the same so there is no recommendation to change the base wage or fringes.

This classification of work trims, removes, and applies insecticides to trees and shrubbery including trimming dead, diseased, or broken limbs from trees utilizing rope and saddle, chain, handsaw and other related equipment common to the care of trees and shrubs. Removes limbs, branches and other litter from the work area, observes safety rules, inspects and identifies tree diseases and insects of the area distinguishing beneficial insects and environmental stress, takes samples from diseased or insect infested trees for lab analysis, operates a wide variety of heavy and power equipment in trimming and removing trees and shrubbery i.e. mobile aerial tower unit, tandem trucks, loaders, chipper, etc., maintains all equipment.

WINDOW CLEANER**Effective Date: 12-17-20**

Last Revision: 05-21-20

<u>Classification</u>	<u>Base Wage/Hour</u>	<u>Fringes/Hour</u>
Window Cleaner	\$27.64	\$9.53 (Employee) \$11.37 (Children) \$11.09 (2-party) \$13.50 (Family)

Benefits/Overtime

Parking	The Company shall reimburse the cost of parking (per month) to employees furnishing a monthly parking receipt from the approved parking lot. The Employer shall reimburse employees for parking expenses from other parking lots up to the amount reimbursed for DIA Employee Parking Lot upon the submission of a monthly parking receipt. Only (1) one receipt per month.
Shift Differential	Employees working on the night shift shall be awarded a shift differential of \$0.85 per hour worked. Note: All wage increases become effective on the first day of the first full pay period following the above dates.
Overtime	One and one-half (1½) times the basic rate of pay in excess of 7.5 hours worked per day or 37.5 hours worked per week.
Lunch	Any employee working seven and a half (7.5) hours in a day is entitled to a thirty (30) minute paid lunch.
Lead Work	\$1.75 per hour above highest paid employee under supervision

High Work \$1.85 per hour (21 feet or more from ground (base) to top of surface/structure being cleaned)

Training \$0.25 per hour

ECOPASS The Company will provide an Eco-Pass to all bargaining unit employees or pay \$.24 per hour for travel differential.

Note: The Career Service Board in their public hearing on April 3, 2008, approved to amend prevailing wages paid to the Window Cleaners as follows: "All contractors shall provide fringe benefits or cash equivalent at not less than the single rate amount. Contractors who offer health insurance shall provide an employer contribution to such insurance of not less than the 2-party or family rate for any employee who elects 2-party or family coverage. Contractors who offer such coverage will be reimbursed for their employer contributions at the above rates under any City contract incorporating this wage specification."