

SECOND AMENDMENT TO FACILITY SHARED USE AGREEMENT

This SECOND AMENDMENT TO FACILITY SHARED USE AGREEMENT (the “**Second Amendment**”) is made by and between the CITY OF LAS VEGAS, a Nevada municipal corporation (“**City**”), and ACELERO LEARNING CLARK COUNTY, a Nevada for profit corporation (“**Acelero**”). City and Acelero are sometimes collectively referred to herein as the “**Parties**”.

This Second Amendment is effective on the date of approval by the City or Acelero, whichever date is later, as long as approval by one is within thirty (30) calendar days of approval by the other (“**Effective Date**”).

RECITALS

WHEREAS, the Parties previously entered into that certain Facility Shared Use Agreement dated August 1, 2018 and the First Amendment dated August 8, 2020 (“**Agreement**”) to occupy a portion of the Stupak Community Center; and

WHEREAS, Acelero is a Head Start provider that provides services to foster the education and socialization of children in the Las Vegas Valley; and

WHEREAS, Acelero has exercised all option terms from the Agreement, and

WHEREAS, Acelero has requested additional extensions to the Agreement, and

NOW, THEREFORE, in consideration of the mutual terms, conditions, and covenants set forth below, the Parties agree to amend the Agreement as follows:

AGREEMENT

1. Incorporation of Recitals and Exhibits. The above Recitals and all Exhibits attached hereto, if any, are incorporated by this reference and expressly made part of this Second Amendment.

2. Specified Amendments to Agreement.

A. Amend Section 2.2 of the Agreement, by adding the following language to Section 2.2:

ADDITIONAL OPTION TERMS. Acelero has exercised the two available Option Terms available to it under the terms of the Agreement, and Acelero is not in default of the Agreement, so Acelero may request to extend the Agreement for four (4) additional terms of one (1) year each (each, an “Additional Option Term”), the first approved Additional Option Term being the current term from 8/1/23 through 7/31/24. Each of the three remaining Additional Option Terms may be requested by giving a written request addressed to the attention of the City’s Real Estate Manager no less than one-hundred eighty (180) days and no more than two hundred and forty (240) days prior to the expiration of any Additional Option Term. Upon receiving this request, Landlord shall provide written notification of approval or denial of the Additional Option Term within thirty (30) days of the receipt of the request. Landlord’s approval of any Additional Option Term shall not be unreasonably withheld, delayed or conditioned.

B. Amend Section 2.2 of the Agreement, by adding the underlined language:

Any reference to “**Agreement Term**” in this Agreement shall include the Primary Term and any Option Term or any Additional Option Term.

- C. Amend Section 4.1 of the Agreement by adding the underlined language to Section 4.1:

4.1 Option Term Facility Use Fee. Commencing on the Commencement Date for any Option Term, Acelero agrees to pay ONE DOLLAR (\$1.00) per month as a facility use fee to the City ("**Option Term Facility Use Fee**"). The Option Term Facility Use Fee shall be due and payable twelve (12) months in advance and shall be due after the Commencement Date. For convenience, the Lessee may prepay the Option Term Facility Use Fee for the Initial Term at its sole discretion.

- D. Amend Section 4 by adding the following language to Section 4:

4.2. Additional Option Term Facility Use Fee. If Acelero exercises any Additional Option Term as permitted by this Second Amendment, this new Section 4.2 controls the amount, and the annual adjustment of what shall be referred to as the "**Additional Option Term Facility Use Fee.**"

Acelero shall pay to City as a monthly Additional Option Term Facility Use Fee, without deduction, setoff, prior notice, or demand, the sum of FIVE HUNDRED DOLLARS (\$500.00) per month in advance on the first day of each month, commencing on the Commencement Date of the Additional Option Term and continuing during the Term. This fee, for any partial month, shall be prorated at the rate of 1/30th of the monthly rent per day. If the Additional Option Term Facility Use Fee is not paid by the fifth (5th) day of the month, or on the first business day if the fifth (5th) day is a Friday, Saturday, or Sunday, Acelero shall pay a late fee of FIFTY DOLLARS (\$50.00). Any full or partial payments shall be first applied towards any late fees, and then to Additional Option Term Facility Use Fees owed. The Additional Option Term Facility Use Fee may be paid in advance for any portion of the Term for remaining months prior to CPI (as defined below) adjustment.

The Additional Option Term Facility Use Fee shall be adjusted annually on August 1 of each calendar year by a percentage, rounded to the nearest hundredth of a percent, of increase in the annual average of the Consumer Price Index (CPI)—All Urban Consumers (U.S. City Average, All Items, Base Period 1982-84=100, Not Seasonally Adjusted, Series ID: CUUR0000SA0, as published by the U.S. Department of Labor, Bureau of Labor Statistics) between the most recent twelve-month period ending on December 31 as compared to the prior twelve-month period ending on December 31; or the nearest comparable data on changes in the cost of living, if such index is no longer published. The initial CPI adjustment shall occur on the first August 1st after the Commencement Date of the Additional Option Term.

3. Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Agreement.
4. The Parties represent and acknowledge that as of the date of this Second Amendment, neither party (i) is in default under the terms of the Agreement; (ii) has any defense, set off or counterclaim to the enforcement by either Party of the terms of the Agreement; and (iii) is aware of any action or inaction by either party that would constitute an Event of Default by either party under the Agreement.
5. In the event of a conflict between any provision(s) of the Agreement, the First Amendment this Second Amendment shall control.
6. In all other respects, the Agreement is hereby ratified and confirmed, in full.

7. This Second Amendment may be executed in counterparts, and all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail, pursuant to NRS 719.240, and upon receipt will be deemed originals and binding upon the Parties, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the Effective Date as defined herein.

CITY OF LAS VEGAS

“City”

By: _____
Carolyn G. Goodman, Mayor

ATTEST:

By: _____
LuAnn D. Holmes, MMC, City Clerk Date

APPROVED AS TO FORM:

By: John S. Ridilla 12/26/23

Deputy City Attorney Date
John S. Ridilla
Chief Deputy City Attorney

ACELERO LEARNING CLARK COUNTY

“Acelero”

By: Michael Maxwell

Printed Name: Michael Maxwell

Title: VP, Acelero Learning Clark Co.

Date: 12/13/2023