

FACILITY USE AGREEMENT BETWEEN

District name: Glendale Elementary School District No. 40, a political subdivision of the State of Arizona

AND

Name of organization using facility: The City of Glendale, Arizona, a municipal corporation

1. PARTIES

The parties to this agreement (the "Agreement") are Glendale Elementary School District No. 40, a political subdivision of the State of Arizona, hereinafter referred to as "DISTRICT", and The City of Glendale, Arizona, a municipal corporation, hereinafter referred to as "OCCUPANT."

2. RECITALS

This Agreement is made based upon the following facts:

2.1 OCCUPANT has requested that DISTRICT make available Building E (the "PREMISES") as shown on Exhibit A of the System of Care Center ("FACILITY") to be used by OCCUPANT to deliver services for the citizens of Glendale on a permanent, full-time basis. Services include but are not limited to crisis rent and utility assistance, case management, emergency home repair, homeowner rehabilitation, community and volunteer engagement, housing programs, and any other programs delivered by the Community Services Department for the benefit of Glendale residents. Other amenities at FACILITY may be accessible by OCCUPANT for the performance of official OCCUPANT business and in accordance with scheduling and reservation policies as set forth in Section 4 below.

2.2 OCCUPANT represents that the PREMISES and the FACILITY will only be used for the purpose so stated.

3. USE

3.1 When using FACILITY or any portion thereof, OCCUPANT agrees to comply with all applicable federal, state, and municipal laws and regulations, and with the policies and regulations of the DISTRICT pertaining to the use and occupancy of FACILITY. OCCUPANT shall not use or allow any portion of FACILITY to be used for any unlawful purpose. OCCUPANT shall not commit or allow to be committed any waste or nuisance in or about FACILITY, or subject FACILITY to any use that would damage any portion of FACILITY or raise or violate any insurance coverage maintained by DISTRICT. OCCUPANT shall not allow a number of persons in any portion of FACILITY at any time in excess of the legal or normal capacity of such portion of FACILITY.

3.2 OCCUPANT agrees to take good care of FACILITY and any equipment and furniture located therein, and to leave FACILITY at all times in as good order and condition as existed prior to OCCUPANT's use thereof.

3.3 OCCUPANT shall not permit smoking in any portion of FACILITY.

3.4 OCCUPANT agrees that DISTRICT has not agreed and will not agree to warrant the suitability or safety of FACILITY or any of FACILITY's contents for the uses intended by OCCUPANT, such that OCCUPANT accepts full responsibility therefor.

3.5 If a key is issued to the OCCUPANT for access to the FACILITY, and the key is lost by the OCCUPANT or any person given the key by the OCCUPANT, the OCCUPANT is responsible for, and will pay in full, the cost of rekeying all locks that could be opened by that key, and the cost of replacing all keys required to be replaced as a result of the loss of the key. If the FACILITY (or PREMISES) will be used for an athletic activity, OCCUPANT shall comply with the requirements of A.R.S. Section 15-341(A)(24) regarding concussions and head injuries.

4. SCHEDULING

For use of any other areas of the FACILITY, OCCUPANT shall schedule by written notice to the DISTRICT to:

Name:	Dr. Louis Laffitte, Jr.
Address:	7301 North 58 th Avenue
City, State Zip:	Glendale, AZ 85301

Said written notice will state the exact times during the term hereof that OCCUPANT desires to use any portion of FACILITY other than the PREMISES. OCCUPANT shall confirm the date, time, and function of usage of FACILITY by follow-up telephone call with authorized OCCUPANT employee/s. Said confirmation shall occur at least fourteen (14) days prior to such intended use. If OCCUPANT has not so scheduled and confirmed for its use any portion of FACILITY prior to such time, then DISTRICT shall be free to use or allow others to use such unscheduled portion of FACILITY at its discretion.

5. TERM

5.1 The term of this Agreement shall commence on March 18, 2024, and continue for one (1) five-year term with the option to extend for up to three (3) additional five-year terms, less one day, at which time OCCUPANT's rights to use the FACILITY under this Agreement shall automatically expire unless otherwise extended by DISTRICT in its sole and absolute discretion. In no event shall the term of this Agreement, as extended, exceed 20 years, less one day.

5.2 DISTRICT and OCCUPANT shall mutually provide a minimum of twelve (12) months' notice of its intent to non-renew the Facility Use Agreement.

6. COMPENSATION

OCCUPANT will compensate DISTRICT for use of FACILITY by paying a proportionate share of the annual expense for the following: 1) one Unit Operations Manager position 2) one Cleaner II position, and 3) utilities (electricity and water) and maintenance (described in Section 10 below) for the PREMISES.

OCCUPANT'S proportionate share for the use of the PREMISES is 14% of the total FACILITY. It is anticipated that the first-year costs will be \$11,000 for staff and \$18,000 for utilities. These costs will vary from year to year. DISTRICT will calculate the actual costs and will notify OCCUPANT in writing of amounts owed on an annual basis, said invoice shall document the

period covered by the billing. At the end of each calendar year, If OCCUPANT has overpaid in the past calendar year, such amount will be credited to the following year's costs. If OCCUPANT has underpaid in the past calendar year, OCCUPANT will pay such amount to DISTRICT within 30 days after receipt of an invoice.

7. INSURANCE

Pursuant to A.R.S. Section 15-1105 *et seq.*, OCCUPANT agrees to procure, at its expense, and maintain during the term hereof, a policy of general liability insurance, against claims for bodily injury, death, and property damage occurring in connection with OCCUPANT's use of any portion of FACILITY and/or FACILITY's contents, which insurance shall name DISTRICT as an additional insured and be primary and non-contributing to any coverage maintained by or on behalf of DISTRICT. Such insurance shall have minimum limits of \$1,500,000.00 per occurrence, and OCCUPANT shall provide DISTRICT with a certificate evidencing that such insurance coverage is in effect.

8. LIABILITY AND INDEMNITY

OCCUPANT agrees to conduct its activities in the FACILITY in a careful and safe manner. The DISTRICT and OCCUPANT ("Parties" or individually "Party") agree to defend, indemnify and hold harmless each other and their elected or appointed officials, agents, boards, commissions and employees ("Indemnified Parties") from all loss, damages, claims or suits of whatever nature, including attorney's fees, expert witness fees and the costs and expenses of litigation (collectively, "Damages"), that arise out of any act or omission of a Party or its Indemnified Parties in connection with OCCUPANT'S operations in the FACILITY and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that is caused by the failure of a Party to comply with any provision of this Agreement except to the extent that the Damages are caused by the Party's or its Indemnified Parties' gross negligence or willful misconduct. Neither Party is liable for any lost revenue, lost profits, loss of technology, rights or services, or incidental, punitive, indirect, special or consequential Damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such Damages, whether under theory of contract, tort (including negligence), strict liability or otherwise in connection with OCCUPANT'S operations in the FACILITY. Each Party shall give the other prompt notice of any claim made or suit instituted that may subject the other Party to liability under this Section, and either Party shall have the right to compromise and defend the same to the extent of its own interest. Either Party may exercise the right to, but does not have the duty, to participate in the defense of any claim or litigation with attorneys of its own selection and at its sole cost without relieving the other Party of any obligations under this Agreement. The Parties' obligations under this Section survive any termination of this Agreement or the OCCUPANT'S activities in the FACILITY.

Unless agreed to in writing prior to use of the FACILITY, OCCUPANT understands that the DISTRICT will not provide security services for OCCUPANT's personnel, volunteers, and invitees during the use of the FACILITY. Accordingly, absent a written agreement to the contrary, OCCUPANT agrees and acknowledges that the DISTRICT is not responsible for protecting OCCUPANT's personnel, volunteers, and invitees from threats, assaults, criminal acts, intrusion,

terrorist or other attacks, acts of violence, and other similar incidents or risks of harm or injury. Moreover, OCCUPANT agrees and acknowledges that the DISTRICT is not responsible for the loss, damage, or theft of property belonging to or brought to the FACILITY by OCCUPANT or OCCUPANT's personnel, volunteers, and invitees. Accordingly, OCCUPANT agrees to defend, indemnify, and hold the DISTRICT and its representatives harmless in connection with any and all claims asserted by or on behalf of OCCUPANT and/or any personnel, volunteers, and invitees of OCCUPANT relating to injury to person or property occurring because of, during, or in connection with the use, occupancy, and/or presence of anyone or anything in or upon the FACILITY, whether or not such injury is alleged to be the fault of the DISTRICT, in whole or in part.

9. CHANGES AND ALTERATIONS.

DISTRICT agrees to allow pre-occupancy Tenant Improvements as noted below. OCCUPANT shall have the right from time to time during the Term to make additional changes and alterations to the FACILITY as OCCUPANT shall deem necessary or desirable in connection with the requirements of its use of the Premises. All Tenant Improvements shall require DISTRICT'S prior written consent, which shall not be unreasonably withheld, conditioned or delayed. All such changes and alterations shall be made in all cases subject to the following conditions:

9.1 Pre-Occupancy Tenant Improvements. OCCUPANT intends to undertake pre-occupancy Tenant Improvements to the PREMISES to accommodate its use. Conceptual Design is included as referenced in Exhibit B but may be subject to change. OCCUPANT shall bear the cost of all Tenant Improvements exclusively. No Tenant Improvements nor any changes to the plans referenced in Exhibit B may be undertaken without the prior written consent of DISTRICT, which consent shall not be unreasonably withheld.

9.2 Permits. To the extent approved by DISTRICT, no change or alteration shall be undertaken until OCCUPANT shall have procured and paid for, so far as the same may be required from time to time, all municipal, state and federal permits and authorizations of the various governmental bodies and departments having jurisdiction thereof, and DISTRICT agrees to join in the application for such permits or authorizations whenever such action is necessary, all at OCCUPANT'S sole cost and expense, provided such applications do not cause DISTRICT to become liable for any cost, fees or expenses.

9.3 Compliance with Laws. All work done in connection with any change or alteration shall be done promptly and in a good and workmanlike manner and in compliance with all applicable laws.

9.4 Ownership at End of Term. All improvements installed by OCCUPANT to the FACILITY shall become the property of DISTRICT at the end of the Term. OCCUPANT will not be required to return the PREMISES to its pre-occupancy state, unless- required by DISTRICT at the time it approved the improvements. Except as set forth in the proceeding sentence, all Furniture, Fixtures, and Equipment will be the property of the OCCUPANT to be removed upon termination of this agreement.

10. REPAIRS AND MAINTENANCE.

DISTRICT shall maintain the PREMISES and the FACILITIES during the term hereof. Notwithstanding the foregoing, in the event OCCUPANT extends this agreement for more than 10 years, in every subsequent year (i.e., years 11 through 20), OCCUPANT shall be solely responsible for maintaining, repairing and replacing HVAC system for the PREMISES (see EXHIBIT C).

11. ENTIRE CONTRACT

This Agreement embodies the entire contract between OCCUPANT and DISTRICT. The parties shall not be bound by or be liable for any statement or representation of any nature not set forth in this Agreement. Changes to any of the provisions of this Contract shall not be valid unless reduced to writing and signed by both parties.

12. TERMINATION

DISTRICT may terminate this Agreement for convenience, without cause, by delivering a written notice stating the effective termination date, which may not be less than twelve (12) months following the date of delivery. If Termination occurs prior to the expiration of the first five-year term which shall expire on March 17, 2029, DISTRICT shall reimburse OCCUPANT for the balance of the useful life of Tenant Improvements (less Furniture, Fixture, and Equipment) that cannot be removed. To be eligible for reimbursement, OCCUPANT shall provide written documentation to the DISTRICT detailing all Tenant Improvements and expenditures. The calculation for reimbursement shall be determined based a monthly pro-rata rate amount of the Tenant Improvement expenditures and extrapolated over the remaining months of the initial term. All other payments for use as defined in Section 6 already completed or in process at the time the notice of suspension or termination is received shall be adjusted between DISTRICT and OCCUPANT in a fair and equitable manner but shall exclude any allowance for the value of any unperformed use or anticipated profits thereon. DISTRICT may terminate this Agreement for cause in accordance with Section 15 below.

13. WAIVER

The failure of DISTRICT to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies provided by this Agreement or DISTRICT's delay in the exercise of any such rights or remedies available under this Agreement shall not release OCCUPANT from any of its responsibilities or obligations imposed by this Agreement and shall not be deemed a waiver of any right of DISTRICT to insist upon strict performance of this Agreement.

14. ASSIGNMENTS AND SUBLETTING

OCCUPANT shall not have the right to assign this Agreement or allow any other person or entity to use or occupy any or all of FACILITY without the prior written consent of DISTRICT, which consent may be granted or withheld at DISTRICT's sole and absolute discretion.

15. DEFAULT

In the event that OCCUPANT fails to pay any fee or other sum required to be paid by OCCUPANT hereunder when due, or otherwise fails to comply with or observe any other provisions of this Agreement, in addition to any other remedy that may be available to DISTRICT by reason of such failure, whether at law or in equity, DISTRICT may immediately and unilaterally terminate this Agreement, and all rights of OCCUPANT hereunder, including any right of adjustment of amounts paid hereunder.

16. ARBITRATION

In the event of a dispute hereunder, the parties agree to use arbitration insofar as required by Sections 12-1518 and 12-133, Arizona Revised Statutes, and rules promulgated thereunder. To the extent arbitration is not required under the above referenced laws, then the parties shall submit any dispute hereunder for adjudication by Arizona's state courts.

17. CONFLICT OF INTEREST

The parties understand that this Agreement is subject to cancellation pursuant to Section 38-511 of Arizona Revised Statutes, without penalty or further obligation on the part of DISTRICT, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of DISTRICT is, at any time while this Agreement or any extension hereof is in effect, an employee or agent of OCCUPANT, in any capacity, or a consultant to OCCUPANT, with respect to the subject matter of this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Arizona, the courts of which state shall have jurisdiction of the subject matter hereof.

19. RELATIONSHIP

The parties agree that neither OCCUPANT nor any employees or other personnel of OCCUPANT will for any purpose be considered employees of DISTRICT, and with respect to OCCUPANT and any employees or other personnel of OCCUPANT, DISTRICT shall not be responsible in any manner for the supervision, direction, and control of OCCUPANT and/or any of its employees or other personnel, the payment of salary (including the withholding of income taxes and social security) of any such employees or other personnel, and/or the provision of workers' compensation and disability benefits for any such employees or other personnel.

20. AUTHORITY

The individual signing below on behalf of OCCUPANT hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of OCCUPANT and that this Agreement is binding upon OCCUPANT in accordance with its express terms.

21. EXECUTION DATE

The parties have caused this Agreement to be executed by their duly authorized representatives, on this ____ day of _____, 2024.

DISTRICT

OCCUPANT

GLENDALE ELEMENTARY SCHOOL
DISTRICT NO. 40

THE CITY OF GLENDALE, AZ

By _____
Name _____
Title _____

By _____
Name Kevin R. Phelps
Title City Manger

EXHIBIT A

(Depiction of the FACILITY, showing Building E (the "PREMISES"))

EXHIBIT B

(Conceptual Site Plan for PREMISES describing Pre-Occupancy Tenant Improvements)

EXHIBIT C

Building E HVAC Age and Specifications as of the date of this Agreement

Unit Service Area	Manufacturer Date	Size
E100	2001	7.5 ton
E101	2001	7.5 ton
E102	2001	7.5 ton
E103	2001	7.5 ton
E104	2023	7.5 ton
E105	2023	7.5 ton
E106	2001	7.5 ton
E107	2001	7.5 ton
E108 + hallway	2021	10 ton
Bathrooms Unit	2023	5 ton