# CITY COUNCIL WORK SESSION
***Monday, September 15, 2025 - 10:00 AM***
***City Council Chambers, Elks Civic Building - 107 S. Cascade Ave.***

Public participation for this meeting will be in person in the City Council Chambers. The meeting can be viewed online via livestream and video recordings of the meetings can be viewed on our YouTube page.

Hearing assistance devices are available for public use. Please let us know if you need accommodation. The City also offers interpretation for Spanish speakers. Schedule time to book this resource, by emailing the City at least 3 days before the meeting.

1) INTRODUCTION OF NEW CITY EMPLOYEES
Joe Wittenberg - Golf Course General Manager
Braeden Martin - Police Officer
Roberto Contreras - Police Officer
Joseph Knob - Utilities Division Worker

2) DISCUSSION ITEMS

A) Sole Source Purchase Request for Pavilion Auditorium Lighting (10 minutes)
*Staff: Pavilion Operations Coordinator Dan Kinimaka, Pavilion Manager Kathryn Riley, Facilities Manager Mark Armstrong*

B) Childcare Facility Renovation Design Presentation (15 minutes)
*Staff: Public Works Director Jim Scheid and Facilities Manager Mark Armstrong*

C) Childcare Operator Agreement for Childcare Operations at 703 S. 9th Street (15 minutes)
*Staff: Community Development Director Jace Hochwalt*

3) GENERAL CITY COUNCIL DISCUSSION

4) STAFF COMMENTS



**Please note that the times listed are estimates only. Actual times may vary depending upon discussion and public comment received.*

# SOLE SOURCE WAIVER RECOMMENDATION

| | |
|---|---|
| **PROJECT:** | Pavilion Auditorium Lighting Upgrade |
| **TO:** | City Council |
| **Cc:** | Shani Wittenberg, Finance Director |
| | Lisa DelPiccolo, City Clerk |
| **FROM:** | Danny Kinimaka |
| **DATE:** | September 10, 2025 |

**Action**

Approve a Sole Source Waiver allowing the lighting upgrade project to go forward. This would allow the purchase of materials and manufacturer's submittal work to proceed at a cost of $181, 850. We would purchase the equipment and manufacturer's work this year and schedule the installation for the following summer with a local Electrical contractor providing the high voltage wiring and work. The Electrical work will have a separate RFP and is estimated to be in the range of $30,000.

**Background**

The Pavilion lighting system for the Auditorium controls three main areas, the performance stage lighting, The auditorium house lighting, and the entire front lobby lighting. This allows control from the lighting booth control position to provide professional shows without running to different light switches. The equipment at the pavilion is original to the building and the manufacturer for the dimmer system went out of business in 2008. A main driver for upgrading the dimmer system is to be able to integrate LED lighting in the Auditorium stage and house lighting. Old dimmer systems do not work well with LEDs. We would not be able to go to a full dark house setting with our current dimmer system without a costly upgrade via a third party system, and we would still be relying on the 35 year old dimming system.

The replacement system includes new LED lighting units which would install into the existing pendants and sconces in the auditorium house. The lobby is already running LED bulbs as it is not critical that the lobby go to blackout conditions. The stage lighting fixtures would remain as is, with a mixture of high intensity and LED fixtures, and be better controlled. The new dimming system utilizes equipment which is industry standard, made by a company with a long history of providing top notch gear and service. The dimmers themselves are individually replaceable and upgradeable. The company providing the equipment has been a representative of the manufacturer for many years and has done work in Montrose pavilion before, providing a lighting upgrade to our stage fixtures, and controller in the early 2000s and our current lighting controller in 2017. Their work has always been exceptional. The new system is by the same manufacturer as our current controller and will integrate seamlessly. The new system will also give us better control of our house and lobby lighting from the existing wall control locations.

Staff recommends the purchase of the auditorium lighting upgrade package as listed in quotation #R230501-DDH1-R4 as attached.

**APPROVAL**

_________________________________ ____________ ☐ Approved ☐ Not Approved

Date

MONTROSE

# SOLE SOURCE WAIVER REQUEST

**REQUESTING DEPARTMENT: ___Pavilion_______** **DATE: _9/10/2025__**

**REQUESTED BY: _____Danny Kinimaka____________** **BID NO. R230501-DDH1-R4**

**VENDOR NAME**: **_____Barbizon Lighting Company__** **COST:** ____$181,850.00______

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## JUSTIFICATION

**(INITIAL ALL ENTRIES THAT APPLY TO REQUEST)**

**PRODUCT OR SERVICE DESCRIPTION:** **Auditorium Lighting Upgrade**

**1.** ____________ Vendor is the original equipment manufacturer and there are no regional distributors.

2. _____**X**______ The product, equipment or service requested is clearly superior functionally to all other similar products, equipment or service from another manufacturer or vendor.

**3.** _____**X**______ The over-riding consideration for purchase is compatibility or conformity with City-owned equipment in which non-conformance would require the expenditure of additional funds.

**4.** ____________ No other equipment is available that shall meet the specialized needs of the department or perform the intended function. Pumps must align with existing equipment.

**5.** ____________ Detailed justification is available which establishes beyond doubt that the vendor is the only source available to provide the item or service required.

**6.** ____________ Detailed justification is available which proves it is economically advantageous to use the product, equipment or service.

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*I recommend that competitive procurement procedures be waived and the product or service described herein be purchased as a sole source.*

**DEPARTMENT AUTHORIZATION**: ______________________________ __________________ _______

Authorized Signature Title Date

**PURCHASING APPROVAL:** ______________________________ __________________ _______

Authorized Signature Title Date

| | | | | |
|---|---|---|---|---|
| **FINAL AUTHORIZATION:** | City Council Approval Required | ($50,000 +) | YES | NO |
| | City Manager Approval Required | ($10-$50,000) | YES | NO |

**MANAGER/COUNCIL AUTHORIZATION**: __________________________ __________________ _______

Authorized Signature Title Date

***Attach detailed justification documentation and forward to Purchasing Agent***

BARBIZON LIGHTING COMPANY

www.barbizon.com

**Barbizon Light**
**8269 E. 23rd Ave. - Suite 111**
**Denver, CO 80238**
**Ph: (303) 394-9875**
**Fax: (303) 355-5996**

# Quotation

**Project Name:** **Montrose Pavilion Lighting Upgrades**

| | |
|---|---|
| Systems Integrator: | Derry D Hirsch |
| Estimated By: | Derry D Hirsch |
| Quotation Number: | R230501-DDH1-R4 |
| Date: | 8/27/2025 |

| | |
|---|---|
| ***Quoted To:*** | City of Montrose |
| ***Attn:*** | Danny Kinimaka |
| ***Telephone:*** | (970)249-7015 |
| ***Email:*** | dkinimaka@ci.montrose.co.us |
| ***Location:*** | Montrose, CO 81401 |
| ***Terms:*** | Net 30, WAC<br>Quote good for 30 days |
| ***Delivery:*** | TBD |
| ***FOB:*** | Origin - See Freight Estimate Below |

***Ship to:***

Montrose Pavilion
1800 Pavilion Drive
Montrose, CO 81401

**This is a proposal for various upgrades to the lighting system at the Montrose Pavilion. There are two areas of concern. The first is retrofitting the auditorium house light pendants and wall sconces with long lasting, low maintenance LEDs. For the pendants, we are recommending the Canto Retro Fusion LED units. These energy efficient units simply screw into the existing sockets, thus eliminating the cost and labor of replacing the fixtures. We have been advised that the existing 300 watt lamps do not provide adequate illumination. The Canto units we are recommending have the equivalent output of a conventional 700 watt lamp but only draw 72 watts of power. They have a selection of reflectors to choose from. We would arrange for a few demo units for you to try out to determine which reflector would be the best fit for your facility.**

**For the wall sconces, we recommend using the Ushio Uphoria Pro Gold PAR 38 LED WW30 lamps. We have had very good experience with using these lamps with standard SCR dimmers.**

**The second area is the dimming and ontrol system. We are recommending replacing the aging dimming system with an ETC Sensor3 dimmer / relay system, with a Paradigm processor, two 7" touch screens and four Heritage fader stations.**

## I. LED RETROFIT AND ETC SENSOR RACKS: **Sub Total: $181,850.00**

| | | |
|---|---|---|
| 29 | FUSION_700_3K | Fusion 700 3K |
| 29 | TOP000014 | Top 3571 Fusion with Edison Base |
| 29 | EXTN00004 | 1.25 inch E26 to E26 Extender |
| 29 | REF460005 | W 46 / 47 Degree Reflector Tall - RPL-003 (TBD) |
| 24 | USHIO | Uphoria Pro Gold PAR 38 WW30 (Quantity is minimum order) |

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|---|---|
| Systems Integrator: | Derry D Hirsch |
| Estimated By: | Derry D Hirsch |
| Quotation Number: | R230501-DDH1-R4 |
| Date: | 8/27/2025 |

**I. Power Control Devices to consist of:**

**A. Sensor Dimming Rack to consist of:**

| | | |
|---|---|---|
| 2 | 7141A1005-4 | **SR3-48** - Black Sensor3 48-Module Dimmer Rack - Designed for 3 phase 4 wire and ground operation at a maximum of 800A, 120/208V, 60Hz AC |
| 2 | 7141A2006-4 | **SR3-48 DOOR** - Black SR3-48 Locking Door with Filter |
| 2 | 7140A1003 | **CEM3** - CEM3 Control Module for use in Sensor3 Dimmer Racks. Includes front network connector, front USB reader, backlit number keypad, selector wheel, and backlit display. Supports 2- DMX IN, 1-additional Network, Panic Input, and RTO or BP connection |
| 2 | 7140K1001 | **SR3-RTO** - Sensor3 Ride Thru Kit - supplies power to CEM3 Control Module for a minimum of 6 seconds during brief power outages |
| 77 | 7050A1003 | **D20** - Dual 20A Dimmer Module, 350µs rise time (154 Dimmers) |
| 6 | 7083A1185 | **R20** - Dual 20A Relay module |
| 4 | 7050A1293 | **ELV10-S** - Dual 10A Electronic Reverse Phase Module (8 Dimmers) for Sensor dimming only |
| 9 | 7050A1014 | **AFM** - Air Flow Module |

**II. Equipment Racks to consist of:**

**A. Control Equipment Rack to consist of:**

| | | |
|---|---|---|
| 1 | QUOTE-10031 | **RACK** - Black 19" rack sized as job requires and to include: quad power box, and blank panels to fill |
| 1 | QUOTE-10273 | **REAR** - Mounting or securing system for rack above with quad power box |
| 1 | QUOTE-10032 | **DOOR** - Door for Rack |
| 1 | QUOTE-10274 | **RACK HW KIT** - Hardware Kit for Equipment racks with blank panels and required hardware |

**B. Unison Paradigm External Processing Rack to contain:**

| | | |
|---|---|---|
| 1 | 7180A1013 | **ERN2-RM-120** - ERn2 Enclosure Rack-mount 100-120V |
| 1 | 7180A1029 | **P-ACP3** - Paradigm Architectural Control Processor for use in DRd Racks and ERn Units. Includes front network connector, front USB, and front SD card reader, backlit number keypad, selector wheel, and backlit display. Supports 1,024 channels of DMX and a max of 128 stations. |
| 1 | 7182A1701 | **P-SPM-E** - Paradigm Station Power Module - supports 63 stations and (1) 500m wire segment |

**C. Network Control Equipment to consist of:**

| | | |
|---|---|---|
| 1 | 2100A2004 | **PATCH PANEL 16** - 1U 19" rack-mount patch panel with 16 open slots |
| 8 | N2027 | Cat5e Modular Jack for above Patch Panel |
| 1 | PJE1021 | Snap-in blank for above Patch Panel |
| 1 | SGE1061 | **MAP BR1** - 1U Brush Grommet Panel |
| 8 | N4035 | 2' CAT5 Patch cable, black |
| 1 | SGN-CBS10P-M | **CBS350-8P-E-2G-NA** - Cisco Business 350 Switch with:<br>8 10/100/1000 PoE+ ports with 67W power budget<br>2 Gigabit copper/SFP combo ports<br>Fanless operation<br>standard ETC configuration preloaded |
| 2 | 2204A3014 | **RK EAR 10/16P** - Single flush rack ears for 10 port or 16 port network switch (NEED 2 PER SWITCH) |

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**III. Architectural Control Devices to consist of:**

**A. Unison Heritage Control Station to consist of:**

| | | |
|---|---|---|
| 4 | QUOTE-20039 | **UH30407-_Z** - Standard Color (color TBD) 3-gang faceplate assembly to include the following:<br>4 - Slider Assemblies<br>7 - Select Switches<br>Custom nomenclature to be determined |
| 4 | 7181B2013 | **UH30407** - 3-gang, 4-fader, 7-button electronics assembly w/IR Port |

**B. Unison Paradigm Control Station to consist of:**

| | | |
|---|---|---|
| 2 | 7184A1541-4 | **P-TS7-E-4** - Paradigm 7" Touchscreen Station to include:<br>- 7" Black Touchscreen Assembly<br>- Mounting Collar<br>- Ethernet termination kit |
| 2 | 7184A1503 | **P-LCD-SBB** - Paradigm surface mount touchscreen back box |

**IV. Manufacturer's Services:**

A. Drawings for approval submitted within 6-8 weeks of receipt of order are included.
B. Two (2) year limited warranty as detailed in ETC's Terms and Conditions http://www.etcconnect.com/support/warranty.aspx is inc
C. Production typically requires 1-6 weeks for delivery of equipment after receipt of written approval and release. (see note A below)
D. Operation Manuals as required are included.

| | | |
|---|---|---|
| 1 | FREIGHT | Estimated Freight |

**<u>Services Provided By Barbizon</u>**

* Provide coordination between owner, architect, and other trades.
* Terminate all low voltage control wiring.
* Commission dimming system & test to ensure accuracy of installation.
* Program new entry stations and train on ther usage.

**<u>Services Provided By the Montrose Pavilion</u>**

* The Pavilion will install and test Canto demo units to determine the correct reflector configurations.
* The Pavilion will install all new Canto units in the existing pendants.
* The Pavilion will install new Ushio lamps in the existing wall sconces.
* The Pavilion will install both 7" ETC touch screens.
* The Pavilion will provide and install all ethernet wiring required for the above system.
* The Pavilion will dispose of the existing dimmer racks and entry stations once removed by the electrical contractor.

**<u>Services Provided By Electrical Contractor</u>**

* Demolition of existing dimmer racks and entry stationa.
* Installation of dimmer racks.
* Installation of wall mounted processor and equipment racks.
* Installation of new entry stations including any necessary finishing work.
* Electrical distribution, including mounting and termination of line voltage wiring.
* All conduit systems including materials, installation in walls and wiring pulls.
* Line voltage wiring, including materials, pulls through conduit and terminations.

# Quotation

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**Project Name:** **Montrose Pavilion Lighting Upgrades**

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313.0 * Main and Branch circuit breakers and feeder cable including materials, installation and terminations.
314.0 * Low Voltage control wiring, including materials and pulls through conduit.

## II. OPTIONAL EXTENDED WARRANTIES FOR ETC SENSOR3 SYSTEM:

| | | |
|---|---|---|
| 401.0 | Extended System Warranty - 1 Year: | $3,986.00 |
| 402.0 | Extended System Warranty - 2 Year: | $5,979.00 |
| 403.0 | Extended System Warranty - 3 Year: | $6,975.00 |

***Please Note:***

* *Freight charges are ESTIMATED, pre-pay and add.*
* *All prices are subject to change without prior notice due to market fluctuations, including, but not limited to, changes in raw material costs, tariffs, or currency exchange rates. Prices at the time of shipment shall apply. In addition to the quoted prices, the buyer shall be responsible for all applicable federal, state, and local taxes, duties, tariffs, and other governmental charges imposed on the goods.*
* *No Bonding, job permits, or fees have been included in this quotation.*
* *Barbizon's standard insurance applies, certificates available upon request.*
* *Sales tax is not included in this quotation.*
* *See www.barbizon.com for terms and conditions.*
* *This quotation is not a contract.*
* ***Thank You for the Opportunity to Quote!***

| | | | |
|---|---|---|---|
| **I.** | **LED RETROFIT AND ETC SENSOR RACKS:** | **Subtotal** | **$181,850.00** |
| | **BONDING** | | **Not included** |
| | **SALES TAX** | % | **Not included** |
| | **TOTAL:** | | **$181,850.00** |

# CHILDCARE FACILITY RENOVATION PROJECT

CITY OF MONTROSE

September 15th, 2025

703 S. 9th Street Montrose, CO 81401

Mark Armstrong

*Facilities Manager*

## Timeline to Date

**January 2025 -** The Facilities Division had a complete environmental assessment performed on the facility including asbestos, radon and indoor air quality testing.

**Spring of 2025 -** City Staff from the Facilities Division and Community Development Department began working with a design team and childcare industry experts to assess the renovation scope of work for the facility.

**Summer of 2025 -** Renovation construction drawings were completed and a formal request for proposal process was utilized to acquire proposals from general contractors for the renovation project.

## Scope Of Work Development

The renovation scope of work was based on four defining principles.

1. Confirm the facility meets building code and safety requirements for a childcare facility.
2. Utilize industry expert recommendations to ensure operational efficiency within the facility.
3. Replace aged mechanical systems as part of the renovation rather than risk facility operation interruptions if postponed to a later date.
4. Refresh the facility's interior and exterior appearance with a thoughtful and conservative approach.

**Mark Armstrong**
*Facilities Manager*

Mark Armstrong

*Facilities Manager*

# Scope of work overview

## Replacement of aged lighting and mechanical systems

- Installation of LED lighting throughout the facility
- Replace the existing 50 Gallon Electric Water heater
- Replacement of Two HVAC split systems including ductwork

## Changes needed or required for childcare operations (building and health code compliance)

- Grease interceptor installation
- ADA Compliance (sidewalk re-design)
- Construction of additional restroom within the facility
- Infill of walls for improved operational functionality
- Addition of hand wash sinks in classrooms
- Addition of a three compartment kitchen sink
- Kitchen appliances and fixtures

## General improvements or replacement of aged and worn interior and exterior finishes

- Flooring replacement (existing carpet and VCT to Commercial Vinyl Plank)
- New ceiling tiles (cleanliness and sound transfer)
- Parapet fascia replacement (due to deterioration)
- Interior and exterior painting
- Exterior site improvements (fencing, play equipment, sidewalk, drainage)

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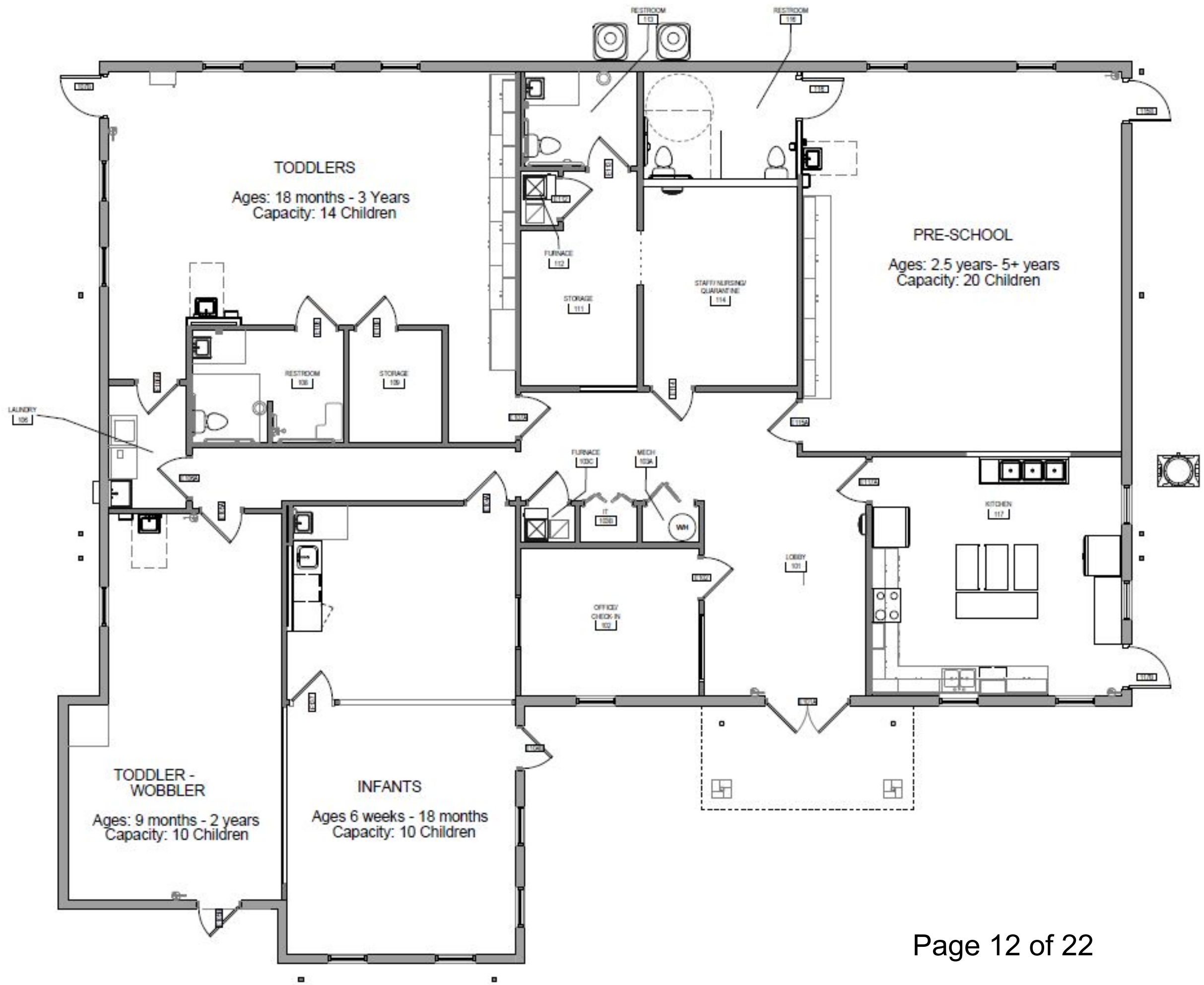


**Mark Armstrong**

*Facilities Manager*

# WEST SIDE

**Mark Armstrong**
*Facilities Manager*

NORTH SIDE

Mark Armstrong

*Facilities Manager*

# SOUTH SIDE

**Mark Armstrong**
*Facilities Manager*

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# EAST SIDE

**Mark Armstrong**

*Facilities Manager*

## OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** is entered into as of this _____ day of _______________, 2025, by and between the **CITY OF MONTROSE**, State of Colorado, a Colorado home rule municipal corporation, whose address is 400 E. Main St., P.O. Box 790, Montrose, Colorado 81402-0790, hereinafter referred to as "City" and **ACCESS EARLY EDUCATION FOUNDATION**, a Colorado nonprofit corporation, whose address is 354 Echo Canyon Ct., Grand Junction, CO 81507, hereinafter referred to as "Operator"; the aforementioned entities may sometimes be collectively referred to as the "Parties".

WHEREAS, in consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties hereto as follows:

### I. PREMISES AND PURPOSE

The City owns the property located at 703 S. 9th St., Montrose, CO 81401 ("Premises") and shall lease the Premises to Operator, such lease shall be executed contemporaneously with this Operating Agreement. The Premises shall be used for the sole and exclusive use of operating a childcare facility and other related and necessary incidental activities. No other uses, business or personal, are permitted without prior express written consent of the City.

### II. TERM AND RENEWAL

a. The initial term of this Agreement shall commence on the _____ day of ____________, 2025, and shall continue for five (5) years thereafter, subject to Section V of this Agreement.

b. Except as expressly set forth in this Agreement, Operator has the right to renew this Agreement past the expiration of the Initial Term for an additional five (5) year period on the same terms and conditions by providing notice to the City at lease one hundred twenty (120) days prior to the expiration of the Initial Term.

### III. RESPONSIBILITIES OF THE PARTIES

a. CITY RESPONSIBILITIES.

  i. Lease the Premises to the Operator at a nominal rate.

  ii. The City shall pay a one-time subsidy in the amount of fifty thousand dollars and 00/100 ($50,000.00) for any start up costs of the childcare facility.

  iii. The City shall pay a monthly subsidy to Operator for actual costs of the following:

    1. The discounted amount given to any City employee as required by this Agreement;

    2. The premium paid to Operator employees as required by this Agreement; and

    3. One hundred dollars and 00/100 ($100.00) per employee for healthcare, as required by this Agreement.

  iv. Pay all utilities associated with the Premises, excluding telephone and internet.

b. OPERATOR RESPONSIBILITIES.

   i. Operate the Facility from 6:30 AM – 6:30 PM, Monday – Friday.
   ii. Operate and maintain four (4) classrooms based upon age/advancement of children.
   iii. Procure and maintain all needed licenses and certifications in order to operate a childcare facility, including recordkeeping, enrollment capacity, and classroom ratios.
   iv. Apply and participate in programs like Colorado Shines, Universal PreSchool, and CCAP, contingent upon program funding and availability. Any grants received will be to offset operating costs and shall be
   v. Have a tiered prioritization of enrollment as follows:
      1. Tier 1 – City Employees
      2. Tier 2 – Partner Public and Nonprofit Employees (This list shall be provided to Operator by the City.)
      3. Tier 3 – General Public.

Each Tier shall be offered a vacancy for ten (10) days before opening the next Tier, beginning with Tier 1. Upon initial opening of the childcare facility, Tier 1 shall have a minimum of twenty (20) days before any vacancies are offered to Tier 2.

   vi. Offer City employees a minimum twenty percent (20%) discount on rates. Should a City employee's employment terminate, they shall then lose this discount. Such employee will be able to maintain their child's spot in the childcare facility until the end of the school year.
   vii. In efforts to have a low turnover of employees, Operator shall offer employees of the childcare facility a rate of pay of ten percent (10%) higher than the market rate in Montrose. The market rate is to be determined through the Colorado Department of Labor and Employment. Additionally, Operator shall offer healthcare benefits.
   viii. Any required teacher service days shall be scheduled for Friday.
      1. Shall provide monthly report to an Advisory Committee inclusive of enrollment numbers and revenues.

c. JOINT RESPONSIBILITIES

   i. Collaborate to name and brand the childcare facility.
   ii. Form and participate in an Advisory Committee ("Committee"). The Committee shall provide guidance and direction concerning the overall operation and use of the facility, assist with administration of the allocation of the designated spaces, and the appropriate rates for the facility, the allocation of any grants that are received by the Operator. The Committee shall meet, at a minimum, monthly for the first six (6) months of the opening of the childcare facility, then quarterly unless agreed to by the Committee. Members of the Committee shall consist of:
      1. three (3) seats representing the City to be determined by the City Manager, or designee;

2. one (1) seat representing the Operator of the Operator's choosing, and;
3. one (1) at large representing the Tier 2 entities agreed upon by the City and the Operator.

## IV. INSURANCE

a. The Operator agrees to procure and maintain, at its own cost, the following policies of insurance. The Operator shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
b. Operator shall cause each subcontractor of the Operator to procure and maintain or insure the activity of the Operator's subcontractors in Operator's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder through the term of this contract. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
c. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of services under this Agreement, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - each employee.
d. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The coverage shall be provided on an "occurrence" basis as opposed to a "claims-made" basis. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.
e. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate with respect to each of Operator's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.
f. The Comprehensive Automobile Liability insurance required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Operator. The additional insured endorsement for the Commercial General Liability Insurance required above shall

not contain any exclusion for bodily injury or property damage arising from completed operations. The Operator shall be responsible for any deductible losses under any policy required above.

g. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of ONE MILLION DOLLARS ($1,000,000) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all services under this contract.

h. Prior to the commencement of services, certificates of insurance shall be completed by the Operator's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall name the project or services as indicated in this Agreement, in form acceptable to the City. Every policy of insurance shall provide that the City will receive no less than thirty (30) days prior to any cancellation, termination, or material change in such policy. In addition, the Operator shall immediately provide to the City upon Operator's receipt any notice of cancellation, terminations, or material change received by Operator concerning the required insurances. If the words "endeavor to" appear in the portion of the certificate addressing the cancellation, those words shall be stricken from the certificate by the agents completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. The City may, at its election, withhold payment for services until the requested insurance policies are received and found to be in accordance with this Agreement.

i. Failure on the part of the Operator to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Operator to the City upon demand, or the City may offset the cost of the premiums against any monies due to Operator from the City.

j. The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, (C.R.S. § 24-10-101 *et seq*.,) as from time to time amended, or otherwise available to the City.

## V. INDEMNIFICATION

To the fullest extent permitted by law, the Operator agrees to indemnify and hold harmless the City, its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the performance of the services under this contract, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Operator or any subcontractor of the Operator, or any officer, employee, or agent of the Operator or any subcontractor, or any other person for whom Operator is responsible. The Operator shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Operator's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

## VI. TERMINATION

It is the Parties intention that this Agreement be concurrent with the Lease. The expiration or earlier termination of the Lease will automatically terminate this Operating Agreement. Should Operator lose any certification or license required to operate a childcare facility, this Agreement shall terminate immediately.

## VII. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Colorado.

## VIII. NOTICE

Any notice required or permitted by this Agreement may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

City: City of Montrose<br>
Attn: Community Development Director<br>
P.O. Box 790<br>
Montrose, CO 81401

Operator: Access Early Education Foundation<br>
Attn: Jennifer Knott<br>
354 Echo Canyon Ct.<br>
Grand Junction, CO 81507

## IX. INTEGRATION & SEVERABILITY

a. This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.
b. This Agreement may not be modified except in writing.
c. If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect

of the invalid, illegal or unenforceable provision and the intent of the Parties in entering into this Agreement. The provisions of this Agreement shall be deemed to be severable, and if any term, phrase or portion of the Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties.

## X. MISCELLANEOUS

a. Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance or enforcement of this Agreement.

b. The Parties agree that the City's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The Parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

c. Any work product or document given to the City in an electronic format must be produced, designed, and created in accordance with Web Content Accessibility Guidelines ("WCAG") 2.1 AA. This includes technology accessibility standards for people using adaptive technology who are low vision, blind, hearing impaired or deaf, and people with cognitive disabilities, seizures or other physical challenges that create limitations. Operator assumes all liability for any monetary damages assessed by any entity for noncompliance with WCAG 2.1 AA after July 1, 2024.