

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is between the City of Concord, a New Hampshire municipal corporation with a principal place of business at 41 Green Street, Concord, New Hampshire 03301 (“Lessor”) and Second Start, a New Hampshire nonprofit corporation with a principal place of business at 17 Knight Street, Concord, New Hampshire (“Lessee”). The Lessor and Lessee are individually referred to as “Party” and may collectively be referred to as the “Parties.”

WHEREAS: This MOU is an addendum to the May 29, 2018 Former West Concord Fire Station Lease Agreement (“2018 Lease”) between the Lessor and the Lessee, this MOU authorizes the Lessee to use a program room at the City-Wide Community Center, located at 14 Canterbury Road, Concord, NH 03301, in accordance with the terms and condition of this MOU;

WHEREAS: The Lessee’s use of a program room at the City-Wide Community Center shall be for the Lessee to provide English as a second language and adult tutoring classes to City of Concord adult residents at no charge.

I. TERMS AND CONDITIONS

A. Term

The term of this MOU shall be from ____, 2023 to ____ 2024, and may be extended at the City Manager’s sole discretion for an additional one-year term. The effective date of this MOU shall be __.

B. Termination of MOU

The Lessor may terminate this MOU at any time and for any reason.

C. Use of the City-Wide Community Center

1. Subject to availability, and at the sole discretion of the City’s Parks and Recreation Director, the Lessee may have use of a program room, selected by the Parks and Recreation Director at the City-Wide Community Center, for up to twelve (12) hours each week.
2. The use of the program room is restricted to the Lessee providing English as a Second language classes and Adult Tutoring Services to City of Concord adult residents at no charge.
3. Lessee’s use of the program room shall be in accordance with all City Ordinances, Rules and Regulations.
4. Prior to using a room at the City-Wide Community Center, Lessee shall conduct yearly State of NH Police background checks for Lessee’s employee or volunteers providing the English as a Second language or Tutoring classes at the City-Wide Community Center, and or otherwise working on behalf of the Lessee at the City-Wide Community Center.

5. The Lessee shall at no time store any object or item within the room authorized for their use. Any object or item that the Lessee brings into the room authorized for their use, shall be removed at the conclusion of said use.
6. Lessee shall keep the room authorized for their use in the clean and orderly condition that it was provided. Lessee shall not leave any trash or debris in the room authorized for their use.

II. NONDISCRIMINATION

A. Lessee hereby agrees that:

1. Lessee shall use the room authorized for their use in accordance with RSA chapter 354-A, and as said statute may be amended.
2. Lessee shall use the room authorized for their use in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

B. In the event of breach of any of the above nondiscrimination clauses, the Lessor shall have the right to terminate this MOU and to re-enter and repossess the premises and hold the same as if the MOU had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 have been followed and completed, including expiration of appeal rights.

III. DISCLAIMER OF LIABILITY

The Lessor disclaims, and Lessee releases the Lessor from any and all liability, whether in contract or tort (including strict liability and negligence), for any loss, damage or injury to other property of Lessee or any other parties, unless such loss, damage or injury is directly caused by the negligent acts of the Lessor.

IV. INDEMNIFICATION

Lessee shall defend, indemnify and hold harmless the City and its officials, agents and employees (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from this MOU and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of Lessee (or its contractors, agents or employees) in connection with this MOU provided, however, that nothing herein shall require Lessee to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of the Lessor. Additionally, to the fullest extent permitted by law,

no official, employee, agent or representative of the City shall be individually or personally liable for any obligation or liability of Lessee.

V. INSURANCE

It is agreed that during the term of this MOU, Lessee, at its sole cost and expense, shall carry and maintain the following types of insurance which shall name the City as “Additionally Insured”. The Insurance shall be as follows:

Certificate of Liability Insurance:

- General Liability Insurance in the Aggregate of One (1) Million Dollars.
- Each Occurrence of Injury One (1) Million Dollars.
- Medical Expense (any one person) Five (5) Thousand Dollars.

General Requirements. The following conditions shall apply to the insurance policies required herein:

- A. Lessee shall submit certificates of insurance for all coverage required hereunder on the Effective Date and on each anniversary thereof, or at the Lessor’s reasonable request, together with such other relevant insurance documentation as the Lessor may reasonably request. All the insurance required under this MOU shall name the Lessor as additionally insured and all insurance policies and certificates shall include a provision requiring thirty (30) business days’ written notice to the City by certified mail of any cancellation, material change, or reduction in coverage.
- B. All insurance of Lessee shall be primary with respect to any insurance maintained by the Lessor and shall not call on the Lessor’s insurance for contributions.
- C. All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire and having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).
- D. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.
- E. Lessee’s failure to obtain, procure or maintain the required insurance shall constitute a material breach of this MOU.
- F. Lessee’s obligation to hold harmless and indemnify the Lessor shall not be limited by the requirement for, or existence of, insurance coverage.
- G. The Lessor shall have the right to require Lessee to increase such limits when, during the Term of this MOU, minimum limits of liability insurance commonly and customarily carried on properties comparable to the authorized room for use here, by responsible

owners or Lessees are more or less generally increased, it being the intention of this sentence to require Lessee to take account of inflation in establishing minimum limits of liability insurance maintained from time to time, but not without sixty (60) days advanced written notice to Lessee.

VI. PAYMENTS

Rent and Fees - In consideration of the rights and privileges granted in the 2018 Lease between the Parties, and this MOU, all payments and fees are waived.

VII. MISCELLANEOUS PROVISIONS

- A. Entire Agreement – This MOU is an addendum to the 2018 Lease, and constitutes the entire understanding between the Parties relative to the subject matter herein, and as of the effective date, supersedes all prior or independent agreements between the Parties covering the subject matter of this MOU. Any change or modification of this MOU must be in writing signed by both Parties.
- B. Severability- If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire MOU shall not be void, but the remaining provision shall continue in effect as nearly as possible in accordance with the original intent of the Parties.
- C. Notice - Any notice given by one Party to the other in connection with this MOU shall be in writing and shall be sent by registered mail, return receipt requested, with postage and registration fees prepaid.

- 1. If to City, addressed to:

City Manager’s Office
41 Green Street
Concord, New Hampshire 03301

- 2. If to Lessee, addressed to:

Executive Director Second Start
17 Knight Street
Concord, New Hampshire 03301

Notice shall be deemed to have been received on the date of receipt as shown on the return receipt.

- D. Assignment - Neither this MOU, nor any part hereof, may be assigned, transferred or subleased by Lessee, by process or operation of law or in any other manner whatsoever, without the prior written consent of the Lessor.

- E. Heading- The headings used in this MOU are intended for convenience of reference only and do not define or limit the scope of meaning of any provisions of this MOU.
- F. Governing Law - This MOU shall be construed in accordance with the laws of the State of New Hampshire notwithstanding any laws regarding conflicts of laws, and any claims or disputes relating to this shall be brought in courts within the State of New Hampshire, the Parties hereby assent to the jurisdiction of such courts.
- G. Amendment - This MOU may be amended only by an instrument in writing signed by the Parties hereto.
- H. Waiver - The provisions of this MOU may be waived or modified only by instruments in writing executed by each of the Parties hereto. No waiver by any Party at any time, express or implied, of any breach of any provision of this MOU shall be deemed a waiver of a breach of any other provision of this MOU or consent to any subsequent breach of the same or any other provision.

VIII. EXECUTION

IN WITNESS WHEREOF, the Parties hereby agree to the terms and conditions of this MOU.

CITY OF CONCORD

By: _____ Date: _____

 Thomas J. Aspell, Jr., City Manager

Second Start

By: _____ Date: _____

 Executive Director