

**WASHINGTON CENTER LEASE AGREEMENT
BETWEEN THE CITY OF DULUTH
AND
INDEPENDENT SCHOOL DISTRICT NO. 709**

THIS LEASE AGREEMENT (this “Agreement”) is entered into by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota (the “City”), and INDEPENDENT SCHOOL DISTRICT NO. 709, a Minnesota public corporation and political subdivision (“ISD 709” or “Tenant”).

WHEREAS, the City owns a portion of the Washington Center building, located at 310 North First Avenue West, Duluth, Minnesota 55806, and is the beneficiary of easements over and across certain portions of the Washington Center building and the land on which it is located (the “Washington Center”);

WHEREAS, Tenant is a public corporation and political subdivision duly organized and existing under the laws of the State of Minnesota;

WHEREAS, part of Tenant’s mission (its “Mission”) is to provide information and support for parents and their young children from birth through three (3) years of age through educational programs;

WHEREAS, Tenant desires to lease office space at Washington Center, to use for the advancement of its Mission and related services to the community at large (the “Services”); and

WHEREAS, the City desires to lease to Tenant portions of the Washington Center as described herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, both parties agree as follows:

I. LEASED PREMISES

A. The terms “Exclusive Space” (defined below) and “Non-Exclusive Space” (defined below) shall collectively be referred to in this Agreement as the “Leased Premises.” Subject to the terms and conditions set forth in this Agreement, the City demises and leases the Leased Premises to Tenant.

1. Tenant shall have exclusive use of the following rooms in Washington Center (the “Exclusive Space”):

Program	Room	Square Footage
Early Childhood Family Education (“ECFE”)	110	840
Duluth Head Start	112	830
ECFE	114	800
ECFE	116	810
Total		3,280

The “Exclusive Space” is depicted on the attached Exhibit A and includes the storage space within the locker room and showers adjacent to the former pool, as further identified in orange on Exhibit A (the “Storage Space”).

2. Tenant shall not be charged rent to use the Storage Space, but notwithstanding anything to the contrary within this Agreement, Tenant’s right to use the Storage Space shall be subject to termination by the Manager (defined below) at any time in the Manager’s sole discretion. The Manager shall also have the sole discretion to terminate Tenant’s right to use the Storage Space and identify an alternative space or spaces for Tenant to use for storage purposes. If the Manager identifies an alternative space or spaces for Tenant’s use, the alternative space(s) will become a part of the Exclusive Space under this Agreement and a new Exhibit A shall be attached to and become a part of this Agreement to reflect the change.

3. Tenant shall have non-exclusive use of (i) the following indoor areas located on the first floor of the Washington Center: kitchen, hallways, public bathrooms, gymnasium, and conference rooms; and (ii) the following outdoor areas of the Washington Center: the parking lot, sidewalks, entryways, green space and playground area (collectively, the “Non-Exclusive Space”).

B. Tenant is taking the Leased Premises and all other rights conveyed by this Agreement “as is” in its present physical condition. The City makes no warranty, either express or implied, that the Leased Premises or Washington Center, or any personal property on or inside Washington Center is suitable for any purpose.

C. Tenant may only use the Leased Premises in furtherance of providing the Services.

D. Tenant acknowledges and agrees that (i) Tenant will use the Leased Premises to provide the Services; (ii) Tenant shall not interfere with other parties’ right to use the Non-Exclusive Space, except when Tenant has reserved some portion of the Non-Exclusive Space for its exclusive use as permitted by this Agreement.

E. Tenant’s rights with respect to the Leased Premises are subject to the terms set forth in the Restated and Amended Easement Agreement dated April 21, 1995 between the City, Artspace Projects, Inc. and Washington Studios Limited Partnership, a copy of which has been provided to Tenant (the “Easement Agreement”).

II. TERM OF AGREEMENT.

Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on September 1, 2019, and shall expire on August 31, 2022, unless terminated early as provided for herein (the "Term").

III. RENT AND RESERVATION OF NON-EXCLUSIVE SPACE.

A. Rent. Partial consideration by Tenant to the City for this Agreement shall be the public benefit provided by the Services. Therefore, the City agrees to a reduced rent rate from current market rent rates, in the following amounts for the following time periods (plus additional charges for periodic use of Non-Exclusive Space as set forth below):

1. For the period September 1, 2019 through August 31, 2020, Tenant shall pay rent equal to \$4.38 per square foot, for base monthly rent in the amount of \$1,197.20 (\$4.38 x 3,280 sq. ft/12 months).

2. For the period September 1, 2020 through August 31, 2021, Tenant shall pay rent equal to \$4.51 per square foot, for base monthly rent in the amount of \$1,232.73 (\$4.51 x 3,280 sq. ft/12 months).

3. For the period September 1, 2021 through August 31, 2022, Tenant shall pay rent equal to \$4.64 per square foot, for base monthly rent in the amount of \$1,268.27 (\$4.64 x 3,280 sq. ft/12 months).

4. Full rent payments shall be due and payable, in advance, on or before the first day of each calendar month. Payments shall be mailed or delivered to the City Auditor, Room 120 City Hall, 411 W. First Street, Duluth, Minnesota 55802. Rent payments shall be deposited in Fund 110-121-1222-4622 (General Fund, Public Administration, Facilities Management, Rent of Buildings).

B. Conference Rooms. Use of the conference rooms located in the Non-Exclusive Space (the "Conference Rooms") must be scheduled and approved in advance by the City's Manager of Parks and Recreation or his or her designee ("Manager"). Use of the Conference Rooms is subject to availability, and Tenant is not guaranteed priority of its reservation requests. The Manager reserves the exclusive right to cancel and/or reschedule Tenant's use of the Conference Rooms should an unforeseen scheduling conflict arise. Use of the Conference Rooms shall be without additional charge if prior written approval is properly obtained in advance by Tenant. All meetings and events held in the Conference Rooms must meet the following criteria:

1. The meeting or event must be directly related to the Services.
2. At least one designated key holder of Tenant (a person who was directly assigned a key from the City's Property & Facilities Manager, or his/her designee (the "Property Manager") must be present for the entire duration of the event or meeting.

3. Tenant shall follow all security measures, criteria and protocol established by the Property Manager, who may unilaterally change security measures, criteria and protocol during the Term (defined below).

C. Gymnasium. Subject to availability, use of the gymnasium (the "Gymnasium") must be scheduled and approved by the Parks and Recreation staff member on duty at the Washington Center. The Manager reserves the exclusive right to cancel and/or reschedule Tenant's use of the Gymnasium should an unforeseen scheduling conflict arise. Use of the Gymnasium shall be at the rate of \$15.00 per hour. All rent for use of the gymnasium shall be deposited into Special League Fund 210-030-3190-4625-07.

D. Bathroom Near Room 110. Use of the bathroom across the hall from Room 110 shall be non-exclusive and without charge as long as ISD 709 provides, at its sole expense, all daily cleaning and routine maintenance necessary to properly operate and maintain said bathroom in a safe, clean, and reasonable state of repair. ISD 709 shall provide, at its sole expense, those items required for the daily operation, maintenance, and cleaning of said bathroom, which includes but is not limited to, cleaning supplies, interior light bulbs, garbage bags, and paper products. The bathroom across the hall from Room 110 shall be open to the tenants, users and invitees of the Washington Center at all times and shall not be used or operated as a private bathroom of ISD 709 and its participants. If ISD 709 fails to perform the cleaning and maintenance duties outlined above regarding the bathroom across from Room 110, then said bathroom shall be closed to all tenants, users and invitees of the Washington Center, including ISD 709.

IV. TENANT RESPONSIBILITIES.

A. Tenant shall maintain the Exclusive Space in a safe and reasonable state of repair, normal wear and tear excepted, including cleaning of interior windows located in the Exclusive Space. Tenant shall thoroughly clean the kitchen located in the Non-Exclusive Space following each use by Tenant, and shall clean up after its own use of all other Non-Exclusive Space. Tenant shall remove and properly dispose of all trash and other waste it produces into Washington Center trash and recycling containers designated and/or provided by the City. Tenant will comply with the City's recycling requirements established by the City's Energy Coordinator, which are subject to unilateral change by the City during the Term.

B. Tenant shall keep the Leased Premises free from rodents, insects, and other pests. From time to time, the City may require Tenant to contract with a pest exterminating contractor to exterminate as may be necessary and as may be directed by the City. The sole cost and expense of this service shall be the responsibility and obligation of Tenant, unless the City determines, in its sole discretion, that another party is responsible for the infestation. It is further agreed that the City may pay a pest exterminating contractor on behalf of Tenant and immediately collect the same from Tenant as additional rent, or reduce any amount owed to Tenant by City pursuant to this Agreement.

C. Tenant shall be responsible for maintaining its own personal property, including office related equipment in a safe, legal, and properly maintained manner at Tenant's sole

expense. Tenant shall prohibit the use of any unsafe, illegal, or deficient equipment on the Leased Premises.

D. Tenant shall be solely responsible for any losses or damages caused by Tenant, including its employees, agents, volunteers, or program participants, to Washington Center, or to any personal property owned by the City or other third parties.

E. Tenant is solely responsible for storage, theft, and/or vandalism of the Exclusive Space and personal property, equipment, tools, and machinery.

F. Tenant will follow all established policies and procedures regarding safe and supervised usage of the Leased Premises and security for the Leased Premises, and will immediately report any concerns to the City.

G. Tenant shall provide adult supervision of its program participants by a qualified representative of Tenant at all times. Further, Tenant shall be responsible for any injuries or damages occurring to its participants when such participants are at Washington Center.

H. Tenant shall be responsible for installation and removal (at the end of this Agreement) of its signage on the Leased Premises. The size, design, location, and wording of all signage shall be subject to the approval of the Property Manager.

V. CITY'S RESPONSIBILITIES.

A. The City shall, at its expense, provide the following utilities and services: electric, natural gas, water, sewer, and garbage/recycling pick-up.

B. The City shall include Tenant on interior building directories and/or signage, if any. The City shall be responsible to maintain its signage within the Leased Premises.

C. Subject to the requirements of the Easement Agreement, the City shall, at its sole expense, provide major repairs and Non-Routine Maintenance to the structural and mechanical components of the Leased Premises, including, but not limited to, plumbing, electrical, HVAC roofing, windows and flooring systems. "Non-Routine Maintenance" shall be defined as major system replacement and repair items or replacement of whole systems, major building and/or assembly or upgrade of any fixed asset, road repair, locks and key changes, and winterizing water systems.

D. Except as otherwise provided in Section IV above, the City (or other third parties, pursuant to the Easement Agreement) shall be responsible for maintenance of the Non-Exclusive Space.

E. Tenant shall provide and install light bulbs for the light fixtures attached to the Exclusive Space. The City will provide and install light bulbs for the light fixtures in the Non-Exclusive Space, except that Tenant shall provide and install light bulbs for the bathroom across the hall from Room 110.

VI. INTENTIONALLY OMITTED.

VII. INDEPENDENT RELATIONSHIP.

Nothing in this Agreement is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Tenant as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement. Tenant's employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota and any and all claims whatsoever arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors, or employees shall in no way be the responsibility of the City. Tenant and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay.

VIII. INSURANCE.

A. Tenant shall procure and maintain continuously in force a policy of insurance covering all of its activities on the Leased Premises. A Commercial General Liability Insurance policy shall be maintained in force by Tenant throughout the Term in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for bodily injuries and in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) for property damage or One Million Five Hundred Thousand Dollars (\$1,500,000.00) single limit coverage per occurrence. Such coverage shall include all Tenant activities occurring on or within the Leased Premises whether said activities are performed by employees or agents under contract to Tenant. Tenant shall provide satisfactory proof of Statutory Minnesota Workers' Compensation Insurance. The City does not represent or guarantee that these types or limits of coverage are adequate to protect Tenant's interests and liabilities.

B. Tenant shall provide the City with Certificates of Insurance evidencing required insurance coverages with 30-day notice of cancellation, non-renewal, or material change provisions included. Such policies of insurance shall be in a form acceptable to the City Attorney. The City shall be named as an additional insured on the policies of insurance required by this Agreement. When using the "Accord" Certificate form cancellation provisions, the words "endeavor to" on- Line 2 must be deleted. As an additional insured under the insurance contract, the City has contractual rights far exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: "This policy insures the named Insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage." The City is an additional insured not subject to the "other insurance" condition or other policy terms which conflict with the agreement between the named insured and the City. The 2004 edition of ISO Additional Insured Endorsement CG 20 10 is not acceptable. If the CG 20 10 is used, then it must be a pre-2004 edition.

C. The City reserves the right to require Tenant to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.

D. The City does not intend to waive any legal immunities, defenses, or liability limits that maybe available.

E. The City shall not be liable to Tenant for any injury or damage resulting from any defect in the construction or condition of the Leased Premises, nor for any damage that may result from the negligence of any other person whatsoever.

IX. HOLD HARMLESS AND INDEMNIFICATION.

City and Tenant shall each be responsible for their own acts and the results thereof and shall not be responsible for the acts of the other party. The City's and Tenant's liability shall be governed by the provisions of Minnesota Statutes Chapter 466 and other applicable law.

X. REPORTING, RECORDS RETENTION, AND GOVERNMENT DATA PRACTICES.

A. All data collected, created, received, maintained or disseminated for any purpose by the parties because of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. Tenant shall comply with the Minnesota Government Data Practices Act.

B. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data by Tenant. If Tenant receives a request to release data related to this tenancy and referred to in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, Tenant shall immediately notify the City and consult with the City as to how Tenant should respond to the request. Tenant agrees to hold the City, its officers, and employees harmless from any claims resulting from the Tenant's unlawful disclosure or use of data protected under state and federal laws.

C. Tenant agrees to maintain all books, records, documents, and other evidence pertaining to this Agreement and the Services for six (6) years following the termination or expiration of this Agreement.

D. Tenant acknowledges that, as provided in Minn. Stat. § 16C.05, Subd. 5, all Tenant books, records, documents, and accounting procedures and practices related to this Agreement are subject to examination by the City or the State Auditor for six (6) years from the date of termination or expiration of this Agreement. Upon twenty-four (24) hours advance written notice by the City, the Tenant shall provide all requested books, records, documents, and accounting procedures and practices related to this Agreement.

XI. INCIDENT REPORTS.

Tenant shall promptly notify the Manager in writing of any incident of injury or loss or damage to the property of the City or to any of Tenant's participants or invitees occurring on or within Washington Center during the Term. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of the City's current form of Incident Report is attached as Exhibit B.

XII. COMPLIANCE WITH LAWS.

A. Tenant shall make the Services available to all users and shall not discriminate on the basis of race, color, creed, national origin, sexual orientation, disability, sex, religion, or status with regard to public assistance, and shall not violate any federal, state or local civil rights law, rule or regulation in the use of the Washington Center.

B. Tenant shall comply with all Minnesota Workers' Compensation laws in the utilization of all employees employed on the Leased Premises.

C. Tenant shall procure at its sole expense all licenses and permits necessary for carrying out the provisions of this Agreement.

D. The Services provided at the Leased Premises shall be in compliance with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth.

XIII. COMMUNICATIONS.

The parties acknowledge that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to any services or other activities contemplated under this Agreement.

XIV. NOTICES.

Unless otherwise provided herein, notice to the City or Tenant shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, Minnesota 55806
(218) 730-4430

ISD 709
Attn: ECFE Director
215 North 1st Avenue East
Duluth, Minnesota 55802
(218) 336-8700, Ext. 1021

XV. CITY ACCESS.

A. After reasonable notice to Tenant by the City (except in the case of an emergency), Tenant shall permit the Manager, the Property Manager, and their designees, to access and inspect the Exclusive Space. Tenant shall permit the Manager, the Property Manager, and their designees, to access and inspect the Non-Exclusive Space at any time without prior notice. Tenant shall not change the locks or otherwise prohibit or inhibit the Manager's access to any portion of the Leased Premises.

B. The City's Properties and Facilities Management Department shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution for Washington Center. Tenant shall comply with the City's Key Control Policy, a copy of which shall be provided to Tenant, and is subject to unilateral change by the City during the Term.

C. Tenant shall not make copies of any keys for Washington Center or the Leased Premises. All keys shall be promptly returned to the Property Manager upon termination or expiration of this Agreement.

XVI. TAXES.

Tenant shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of Tenant's lease or use of the Leased Premises, including real property and sales taxes, if applicable. The City may pay the same on behalf of Tenant and immediately collect the same from Tenant, or reduce any amount owed to Tenant by the City under this Agreement. Tenant shall collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and file all required reports and forms in proper form related thereto on or before their due date.

XVII. SMOKING, TOBACCO, & ALCOHOL USE PROHIBITED.

No smoking, tobacco, or alcohol use is allowed on the Leased Premises.

XVIII. TERMINATION OR EXPIRATION OF AGREEMENT.

A. General Provisions. Upon termination or expiration of this Agreement, Tenant shall surrender possession of the Leased Premises to the City in as good condition and state of repair as the Leased Premises were in at the time Tenant took possession, normal wear and tear excepted. All personal property remaining on the Leased Premises upon termination or expiration of this Agreement shall become the exclusive property of the City.

B. Without Cause. This Agreement may be terminated without cause by either party by serving at least sixty (60) days' written notice upon the other.

C. For Cause.

1. The City may unilaterally terminate or suspend this Agreement immediately if the City believes in good faith that the health, welfare or safety of occupants or neighbors of the Leased Premises would be placed in immediate jeopardy by the continuation of this Agreement or the occupancy of the Leased Premises by Tenant.

2. The City may unilaterally terminate or suspend this Agreement immediately if the City determines Tenant has or is violating any term of this Agreement. The City shall provide Tenant with written notice of such violation and shall allow Tenant thirty (30) days within which to cure or remedy the violations set forth in the written notice. If all of the violations are not cured or remedied to the satisfaction of the City within thirty (30) days, then the City may terminate this Agreement immediately by serving written notice to Tenant. In the event of a violation of this Agreement by Tenant, the City, in addition to other rights or remedies it may have, shall have the immediate right of reentry in the Leased Premises, and after five (5) days prior written notice to Tenant, may remove all persons and property from the Leased Premises. The City may, in addition to any other remedy it may have, recover from Tenant all damages incurred by reason of any violation of this Agreement, including the cost of recovering the Leased Premises and for attorney's fees.

3. Tenant may terminate or suspend this Agreement if Tenant determines that the City has or is violating any term of this Agreement. Tenant shall provide the City with written notice of such violation and shall allow the City thirty (30) days within which to cure or remedy the violations set forth in the written notice. If all of the violations are not cured or remedied within thirty (30) days, then Tenant may terminate this Agreement immediately by serving written notice to the City.

XIX. ALTERATIONS AND IMPROVEMENTS.

A. Tenant may, at its sole cost and expense, make suitable improvements or alterations to the Leased Premises only with the advance written approval of the Property Manager. All such improvements and alterations shall become the property of the City. Prior to commencing any improvements or alterations, Tenant shall submit to the City a Project Proposal Request along with detailed plans. A copy of the current form of Project Proposal Request is attached to this Agreement as Exhibit C. The Project Proposal Request shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Duluth City Codes.

B. Tenant agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on the Leased Premises, Tenant will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of

insurance must be approved by the City Attorney before the commencement of any construction, alteration or improvement.

XX. GENERAL PROVISIONS.

A. The Leased Premises and Washington Center are a multi-use area requiring the cooperation of all users and all use is subject to the Easement Agreement. This cooperation includes ingress and egress, amenities, and related improvements. Tenant acknowledges that the Manager shall ultimately determine the appropriate use of the City-owned portion of Washington Center and shall prevail in any disputes between user groups.

B. The right of Tenant to occupy, use, and maintain the Leased Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with promptly.

C. The waiver by the City or Tenant of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

D. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. All previous lease agreements between the parties for any portion of the Washington Center are terminated.

E. Tenant agrees that it shall neither assign nor transfer any rights or obligations under this Agreement, nor sublet any portion of the Leased Premises.

F. The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under those courts located within St. Louis County, Minnesota.

G. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

H. Any amendments to this Agreement shall be in writing and shall be executed by the same officers who executed this Agreement or their successors in office.

I. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

J. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as indicated below.

CITY OF DULUTH

**INDEPENDENT SCHOOL DISTRICT
NO. 709**

By: _____
Mayor

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Date: _____

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney