

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

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 (“City”), and INDEPENDENT SCHOOL DISTRICT NO. 709, a Minnesota public corporation (“ISD 709”).

WHEREAS, the City owns the Washington Recreation Washington Center, together with the adjoining real estate, various fixtures, and personal property contained therein, located at 310 North First Avenue West, Duluth, Minnesota 55805 (“Washington Center”); and

WHEREAS, ISD 709 is a public corporation duly organized and existing under the laws of the State of Minnesota; and

WHEREAS, ISD 709’s Mission (“Mission”) is to provide information and support for parents and their young children from birth through three (3) years of age through educational programs; and

WHEREAS, ISD 709 desires to lease office space at Washington Center for the advancement of its Mission and related services to the community at-large (“Services”).

WHEREAS, the City desires to lease to ISD 709 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 SPACE

A. The terms “Exclusive Space” and “Non-Exclusive Space” (defined hereinafter) shall collectively be referred to as the “Leased Premises.”

1. ISD 709 shall have exclusive use of the following rooms of the 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 incorporated herein.

2. ISD may also have non-exclusive use of the common areas of the Washington Center, defined as the hallways, restrooms, gymnasium, and conference rooms (the “Non-Exclusive Space”).

B. ISD is taking the Leased Premises, Washington Center, adjoining real estate, and equipment on and inside Washington Center and Leased Premises “as is” in its present physical condition. The City makes no warranty, either express or implied, that the Leased Premises, Washington Center, adjoining real estate, and equipment on and inside Washington Center and Leased Premises are suitable for any purpose.

C. ISD 709 may only use Leased Premises for its Services.

D. ISD 709 must obtain prior written approval from the City’s Manager of Parks and Recreation (“Manager”), or his/her designee, for each use of Leased Premises conference rooms. Use of the conference rooms must be scheduled and approved by the Parks and Recreation staff member on duty at the Washington Center. Such use may not exceed fifty (75) hours per calendar year. Any use exceeding this limit must be approved in writing by the Manager

Use of the conference rooms is subject to availability, and ISD 709 is not guaranteed priority of its requests. Manager reserves the exclusive right to cancel and/or reschedule ISD 709’s use of Leased Premises conference rooms should an unforeseen scheduling conflict arise. All meetings and events held in the Leased Premises conference rooms must follow this criteria:

1. The meeting or event must be directly related to the ISD 709’s Services
2. At least one designated keyholder of ISD 709 (person who was directly assigned a key from the City’s Property & Facilities Manager, or his/her designee) must be present for the entire duration of the event or meeting occurring at Leased Premises.
3. ISD 709 shall follow all security measures, criteria, and protocol established by Manager, who may unilaterally change said security measures, criteria, and protocol during this Agreement.

E. ISD 709 acknowledges and agrees that except for the Exclusive Space, Washington Center is a public facility and ISD 709 will limit its program activities to its Exclusive Space and shall allow the public the use of the Non-Exclusive Space except when ISD 709 as reserved the Non-Exclusive Space for its exclusive use.

II. TERM OF AGREEMENT.

The term of this Agreement shall be three years. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on September 1, 2016, and expire on August 31, 2019, unless terminated early as provided for herein.

III. RENT.

A. Exclusive Space.

Partial consideration by ISD 709 to City for this Agreement shall be the public benefit provided by ISD 709's Services. Therefore, the City agrees to a reduced lease fee from the City's current calculated lease market price of \$10.00 per square foot. ISD 709 shall pay One Thousand Ninety-three and 33/100ths Dollars (1,093.33) per month (3,280 sq. ft. at \$4.00/sq. ft., \$13,120.00 per year) for the first year of this agreement. Thereafter, rent shall increase three percent (3%) during each year of this Agreement. The reduced rental rate is specifically conditioned upon ISD 709's continuation of the Services throughout the term of this Agreement.

Full lease payments shall be due and payable on or before the first day of each calendar month. Payments shall be mailed or delivered to the City Treasurer, Room 105 City Hall, 411 West 1st Street, Duluth, Minnesota 55802. Lease proceeds shall be deposited in Fund 110-121-1222-4622 (General Fund, Public Administration, Facilities Management, Rent of Buildings).

B. Conference Rooms.

Use of conference rooms shall be without charge if requested in writing and in advance by ISD 709. ISD 709 shall complete the form supplied by the City and submit it to the Recreation staff member assigned to Washington Center. Use of a conference room is subject to availability. City reserves the exclusive right to reschedule ISD 709's use of the conference room should an unforeseen scheduling conflict arise. If ISD 709's conference room use becomes displaced by such scheduling conflict, then it shall be rescheduled by City.

C. Gymnasium.

For the use of the gymnasium, which is a portion of the Non-Exclusive Space, the rental fee will be \$15.00 per hour. Use of the gymnasium must be scheduled and approved by the Parks and Recreation staff member on duty at the Washington Center, which use is subject to availability. All rent for gymnasium use shall be deposited in Special League Fund 210-030-3190-4625-07.

IV. ISD 709'S DUTIES.

A. ISD 709 shall maintain the Leased Premises in a safe and clean manner at all times, including cleaning of interior windows of the Exclusive Space. ISD 709 shall remove and properly dispose of all litter and other waste into Washington Center trash and recycling containers designated and/or provided by Manager and/or City. ISD 709 agrees to comply with the City's recycling requirements established by the City's Energy Coordinator, which are subject to unilateral change by City during this Agreement.

B. ISD 709 shall keep and maintain the Leased Premises in good order, condition, and state of repair, normal wear and tear excepted.

C. ISD 709 shall be responsible for maintaining its own equipment in a safe, legal, and properly maintained manner at ISD 709's sole expense. ISD 709 shall prohibit the use of any unsafe, illegal, or deficient equipment on Leased Premises.

D. ISD 709 shall solely be responsible for any losses or damages caused by ISD 709, including its employees, agents, volunteers, or program participants, to the Leased Premises, Washington Center, or to any City equipment.

E. ISD 709 shall not make structural changes to the Leased Premises or Washington Center without written authorization from Manager and/or City with the exception of the installation of necessary telephone and internet service.

F. ISD 709 agrees and understands that the Leased Premises and Washington Center are a public facility and, accordingly, will limit its activities within the area to allow the general public the use of the Non-Exclusive Space, except when ISD 709 has reserved the conference room or gymnasium for its exclusive use per Sections I and III above.

G. ISD 709 is solely responsible for storage, theft, and/or vandalism of Exclusive Space and personal property, equipment, tools, and machinery.

H. ISD 709 will follow all established policies and procedures regarding safe and supervised Leased Premises usage and security, and will immediately report any concerns to the City.

I. ISD 709 shall maintain a current schedule of user or program fees and activities and provide a current copy of such items to the Parks and Recreation staff member on duty at the Washington Center.

J. ISD 709 agrees that during its programming and/or activities occurring in or on the Leased Premises, it shall provide adult supervision by a qualified representative of ISD 709 of its program participants.

V. CITY'S RESPONSIBILITIES.

A. The City shall post one outside building sign identifying ISD 709 as a building tenant. The design, wording, and payment for this panel shall be subject to the approval of the City's Property and Facilities Manager. The City shall also add ISD 709 to interior directories. ISD 709 shall be responsible for the installation and removal of any signage of the Exclusive Premises. The size, design, and wording of such interior signage shall be subject to City approval.

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

C. The City will provide the following light bulbs: 4'-0" and 8'-0" fluorescent tubes and all exterior light bulbs and will install (upon advance written request by ISD 709 to the Property and Facilities Manager) any bulbs that are not accessible by Lessee due to height location, including all exterior lighting.

VI. LIMITS OF USE.

ISD 709 shall only use Leased Premises for its Services.

VII. INDEPENDENT RELATIONSHIP.

It is agreed that nothing herein contained 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 ISD 709 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. ISD 709 shall not be considered an employee of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of ISD 709 while so engaged and any and all claims whatsoever on behalf of ISD 709 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. ISD 709 and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay.

VIII. RECORDS RETENTION.

ISD 709 agrees to maintain all Leased Premises and Services records during this Agreement and for six (6) years after its termination or expiration.

IX. INSURANCE.

A. ISD 709 shall procure and maintain continuously in force a policy of insurance covering all of its activities on the Leased Premises. A Comprehensive General Liability Insurance policy shall be maintained in force by ISD 709 throughout the life of this agreement 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 Five Hundred Thousand Dollars (\$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 ISD 709 activities occurring on or within the Leased Premises whether said activities are performed by employees or agents under contract to ISD 709. Such policy of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days' written notice to the City. The City shall be named as an additional insured on said policy of insurance required by this paragraph.

B. ISD 709 shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

C. ISD 709 shall provide to City Certificates of Insurance evidencing such coverage with 30-day notice of cancellation, non-renewal, or material change provisions included. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the ISD 709's interests and liabilities.

D. The City reserves the right to require ISD 709 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. When using the "Accord" Certificate form cancellation provisions, the words "endeavor to" on- Line 2 must be deleted. As an additional insured under the 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 of Duluth 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 of Duluth.

F. 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.

G. The City shall not be liable to ISD 709 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.

X. HOLD HARMLESS AND INDEMNIFICATION.

A. ISD 709 hereby agrees to indemnify, save harmless, and defend the City and its officers, agents, servants, and employees from and against any and all claims, suits, loss, judgments, costs, damage, and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of the City or ISD 709, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of ISD 709 arising out of, related to or associated with the use, management, maintenance or operation of the Leased Premises by ISD 709 or performance of its obligations under this Agreement.

B. ISD 709 will indemnify the City for any damage to any City property on the Leased Premises and Washington Center caused by ISD 709, its agents, volunteers, employees, and invitees.

XI. GOVERNMENT DATA PRACTICES.

ISD 709 shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by ISD 709 under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by ISD 709. If ISD 709 receives a request to release the data referred to in this clause, ISD 709 must immediately notify the City and consult with the City as to how ISD 709 should respond to the request. ISD 709 agrees to hold the City, its officers, and employees harmless from any claims resulting from the ISD 709's unlawful disclosure or use of data protected under state and federal laws.

XII. INCIDENT REPORTS.

ISD 709 shall promptly notify the Manager in writing of any incident of injury or loss or damage to the property of City or any ISD 709's participants or invitees occurring on or within Washington Center and Leased Premises during this Agreement. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of the City's form of Incident Report is attached hereto and incorporated by reference into this Agreement as Exhibit B.

XIII. COMPLIANCE WITH LAWS.

A. ISD 709 shall make its 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 and/or Leased Premises.

B. ISD 709 shall comply with all Minnesota Workers' Compensation laws in the utilization of all employees employed on the Leased Premises.

C. ISD 709 shall procure at its sole expense all licenses and permits necessary for carrying out the provisions of this Agreement.

D. ISD 709's Services conducted on 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.

XIV. COMMUNICATIONS.

The parties agree 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.

XV. NOTICES.

Unless otherwise provided herein, notice to the City or ISD 709 shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth 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: Manager of Parks and Recreation
411 W. First Street, Ground Floor
Duluth, Minnesota 55806
(218) 730-4300

ISD 709
Attn: ECFE Director
215 North 1st Avenue East
Duluth, Minnesota 55802
(218) 336-8700 X1021

XVI. CITY ACCESS.

1. ISD 709 shall permit the City and Manager, and their designees, to access and inspect the Leased Premises at any time. ISD 709 shall not change the locks or otherwise prohibit or inhibit City or Manager access to any portion of the Leased Premises.

2. City Properties and Facilities Management shall be exclusively responsible for the design and designation of keying systems, lock changes, key fabrication and key distribution.

ISD 709 shall comply with City's Key Control Policy, a copy of which shall be provided to ISD 709, and is subject to unilateral change by City during this Agreement.

3. ISD 709 shall not make copies of Leased Premises keys. All keys shall be promptly returned to the City's Property & Facilities Manager upon termination or expiration of this Agreement.

XVII. TAXES.

ISD 709 hereby agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of ISD 709's lease or operations of the Leased Premises, including real property and sales taxes, if applicable. It is further agreed that City may pay the same on behalf of ISD 709 and immediately collect the same from ISD 709, or reduce any amount owed to ISD 709 by City under this Agreement. ISD 709 shall further be obligated to 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 to file all required reports and forms in proper form related thereto on or before their due date.

XVIII. SMOKING, TOBACCO, & ALCOHOL USE PROHIBITED.

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

XIX. TERMINATION OR EXPIRATION OF AGREEMENT.

A. General Provisions. Upon termination or expiration of this Agreement, ISD 709 agrees to surrender possession of Leased Premises to City in as good condition and state of repair as said Leased Premises were in at the time ISD 709 took possession, acts of God excepted. All personal property remaining on Leased Premises upon termination or expiration of Agreement shall become exclusive property of City.

B. Without Cause. This Agreement may be terminated without cause by either party by serving at least thirty (30) days' written notice upon the other.

C. For Cause.

1. City may unilaterally terminate or suspend this Agreement immediately if City believes in good faith that the health, welfare or safety of Leased Premises occupants or neighbors would be placed in immediate jeopardy by the continuation ISD 709's operations.

2. City may terminate this Agreement immediately by serving written notice to ISD 709 if City determines ISD 709 has or is violating any term of this Agreement. City shall provide to ISD 709 written notice of such violation or default and shall allow ISD 709 thirty (30) days within which to cure or remedy any violations or defaults set forth therein. If such violation or default is not cured or remedied within thirty (30) days, then the City may terminate this

Agreement immediately by serving notice to ISD 709. In the event of default by ISD 709, 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 ISD 709, may remove all persons and property from the Leased Premises. All personal property remaining on Leased Premises shall become exclusive property of City.

3. Should City elect to reenter, this Agreement shall be deemed terminated; provided, however, that City shall be entitled as against ISD 709 to the measure of damages provided by law, namely the difference between the rent for the balance of the term of this Agreement following the day of reentry and the lease fee(s) City receives during that period from any subsequent tenant of the Leased Premises. City shall in such event have no obligation to relet the Leased Premises.

4. City may, in addition to any other remedy it may have, recover from ISD 709 all damages incurred by reason of the breach, including the cost of recovering the Leased Premises.

XX. ALTERATIONS AND IMPROVEMENTS.

A. ISD 709 may, at its sole cost and expense, make suitable improvements or alterations to the Leased Premises upon advance written approval from the City's Property and Facilities Manager. All such improvements (excluding appliances and equipment plugged into an electricity source) shall become the property of the City. Prior to commencing any improvements or alterations, ISD 709 shall submit to the City a Project Proposal Request along with detailed plans. A copy of the Project Proposal Request is attached to and incorporated by reference into this Agreement as Exhibit C. These documents 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. ISD 709 agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Leased Premises, ISD 709 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 hereunder.

XXI. GENERAL PROVISIONS.

A. Prior to execution of this Agreement by the City, ISD 709 shall provide evidence that it is an entity legally capable of entering into obligations of a contract and it is a non-profit organization currently in good standing with the Minnesota Secretary of State.

B. The Leased Premises and Washington Center are a multi-use area requiring the cooperation of all users. This cooperation includes ingress and egress, amenities, and related improvements. ISD 709 acknowledges that Manager shall ultimately determine the appropriate use of the site and/or improvements and shall prevail in any disputes between user groups.

C. The rights of ISD 709 to occupy, use, and maintain said 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.

D. The waiver by the City or ISD 709 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.

E. 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.

F. ISD 709 agrees that it shall neither assign nor transfer any rights or obligations under this Agreement.

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. 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.

[Remainder of this page intentionally left blank.]

CITY OF DULUTH

**INDEPENDENT SCHOOL DISTRICT
NO. 709**

By: _____
Mayor

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney