

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL 117981

1
2
3
4 AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the
5 Superintendent to enter into a lease agreement with the Tiny Tots Development Center
6 for the purpose of providing day care services and community programs to the public at
the Hutchinson Community Center.

7 WHEREAS, the Hutchinson Community Center, located at 5801 South Pilgrim Street in Seattle,
8 has previously housed child care and school-aged programs, but has been vacant and
9 unused since 2010 due to budget reductions; and

10 WHEREAS, the Department of Parks and Recreation (Parks) conducted a Request for Proposals
11 process to secure an external partner that can manage and operate programs at the Center
12 and the Tiny Tots Development Center (TTDC) was selected by Parks as the most
responsive operator to provide day care and community programming services to the
public at the Center; and

13 WHEREAS, the attached Lease Agreement, if authorized by this Ordinance, will define and
14 provide for the delivery by TTDC of ongoing day care and community programming
15 services to the public; NOW, THEREFORE,

16 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

17 Section 1. The Superintendent of Parks and Recreation is authorized to execute, for and
18 on behalf of the City of Seattle, a Lease Agreement with Tiny Tots Development Center,
19 substantially in the form of the Lease Agreement between the City of Seattle Department of
20 Parks and Recreation and Tiny Tots Development Center which is attached to this ordinance as
21 Attachment 1 ("Agreement").

22 Section 2. This ordinance shall take effect and be in force 30 days after its approval by
23 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
24 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

1 Passed by the City Council the ____ day of _____, 2013, and
2 signed by me in open session in authentication of its passage this
3 ____ day of _____, 2013.

4
5 _____
6 President _____ of the City Council

7
8 Approved by me this ____ day of _____, 2013.

9
10 _____
11 Michael McGinn, Mayor

12
13 Filed by me this ____ day of _____, 2013.

14
15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)

18
19
20 Attachment:

21 Attachment 1: Lease Agreement between the City of Seattle Department of Parks and Tiny Tots
22 Development Center

Attachment 1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into this _____ day of _____, 20____, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and the Tiny Tots Development Center ("Lessee" or "TTDC"), a Washington non-profit Corporation, acting by and through its Board of Directors, organized under the laws of the State of Washington.

AGREEMENT

IN CONSIDERATION of the mutual covenants contained herein, City and Lessee covenant and agree as follows:

1. **Lease Data; Exhibits.** The following terms shall have the following meanings, except as otherwise specifically modified in this Lease:

1.1 **Premises.** The "Premises" are defined for purposes of this Agreement as all interior spaces including the halls, all rooms, and kitchen of the Hutchinson Community Center building ("Building") located at 5801 South Pilgrim Street, Seattle, Washington 98118.

1.2 **License.** Right to use parking areas, parking garage, and walkways in common areas adjacent to the Premises and accessible to the public.

1.3 **Commencement Date.** Upon execution of this Agreement by both parties.

1.4 **Expiration Date.** Five (5) years after execution of this Agreement. This Agreement includes one five (5) year extension at the discretion of the Superintendent.

1.5 **Rent, Additional Charges, and Reporting Requirements.**

1.5.1 Lessee shall pay an annual fee of \$36,000.00 to the City, in monthly installments of \$3,000.00 each, with the first payment due one month after occupancy. Each installment shall be due no later than 15 days after the 1st of each calendar month.

1.5.2 Unless proof of exemption is submitted to Parks, Lessee is responsible for payment of all taxes on the leasehold interest created by this Lease. The Leasehold Excise Tax is currently 12.84% (this rate is subject to change) of the monthly rental fee. The monthly Leasehold Excise Tax fee is \$385.20, and is due with each monthly rent installment.

Attachment 1

1.5.3 Each calendar quarter, TTDC shall submit, in a format approved or provided by Parks, a report summarizing the status of the activities, services, and programming outlined in Exhibit A to Appendix 1, and a quarterly budget report. The Quarterly Reports shall be due no later than April 30 (1st Quarter), July 31 (2nd Quarter), October 31 (3rd Quarter), and January 31 (4th Quarter/Year End) of each year.

1.5.4 Whether or not so designated, all other sums due from Lessee under this Lease shall constitute Additional Charges, payable when specified in this Lease.

1.6 Permitted Use. The City hereby grants to Lessee the right to manage and operate on behalf of the City, the Premises for use as a Community Center for public purposes, as a day care center, and/or as a meeting and recreational and community program facility open to and available for public use under the conditions described herein and in Exhibit A, Scope of Work. Lessee shall not use the Premises for any other purpose or make any other use of the Premises inconsistent with the foregoing described purpose without the consent of Parks.

1.7 Notice Addresses. All payments shall be delivered to:

Seattle Department of Parks and Recreation
Contracts Administration and Support Office
ATTN: Suzanne Simmons, Grants and Contracts Coordinator
800 Maynard Ave S, 3rd Floor
Seattle, Washington, 98134

Or to such other address as the Superintendent shall direct.

1.8 To Lessee:

Tiny Tots Development Center
Attn: Angelia Hicks-Maxie, Executive Director
8318 Renton Avenue South
Seattle, Washington 98118
Phone (206) 723-1590 x102 / FAX (206) 723-7239

1.9 Exhibits. The following exhibits are made a part of this Lease:

Exhibit A - Scope of Work
Exhibit B -Map of Premises and Legal Description of the Property

Attachment 1

2. **Premises.**

2.1 **Grant.** City hereby leases to Lessee and Lessee hereby leases from City those certain premises referenced in Section 1 (the "Premises").

2.2 **Condition.** City leases the Premises and Lessee accepts the Premises in their "as is" condition.

2.3 **Common Areas.** During the Term, Lessee and its licensees, invitees and customers shall have the non-exclusive right to use the outdoor walkways, park space and play areas adjacent to the Building. City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Lessee to compensation or a reduction or abatement of rent.

2.4 **Alterations.** City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 1.6, Permitted Use. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas. The Department reserves the right to close the Premises, or any portion thereof for making repairs or improvements. The Department will endeavor to give Lessee reasonable notice in advance of any such closure. The Department may close the Premises or any portion of the Premises without notice, in case of emergency.

3. **Lease Term.**

3.1 **Initial Term.** This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2.

3.2 **Extended Terms.** Parks shall have the option to extend this Lease for up to one (1) successive individual extended term of five (5) years. Parks may extend the Lease Term to include any Extended Term by giving Lessee written notice of its intention to do so at least ninety (90) days prior to the beginning of the Extended Term. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date specified in Subsection

Attachment 1

1.3 and ending on the Expiration Date specified in Subsection 1.4 and any and all Extended Terms established by Parks hereunder.

4. **Annual Rent.**

4.1 **Rent Commencement Date.** Commencing when the lease is signed, ("Rent Commencement Date") Lessee shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) the amount of monthly Rent specified in Subsection 1.5 on the first day of each month; and (b) Additional Charges as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand. Rent and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial month within the Lease Term, and for any partial initial month in the Lease Term shall be paid on the first day of the Lease Term.

5. **Late Charge; Interest.** If Lessee fails to pay the City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

5.1 **Returned Check, Insufficient Funds.** If any payment or check for payment is returned for insufficient funds, Lessee shall owe as an administrative charge an additional \$20.00, or such larger sum as may be established by ordinance.

6. **Lessee's Operations.**

6.1 **Use of Premises.** Lessee shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee's business, and the compatibility of such business with the use of the Premises, and Lessee providing the recreational activities and programming to the public outlined in Exhibit A, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Common Areas as City, from time to time, may promulgate. In adopting newly promulgated rules and regulations, the City shall make reasonable efforts to craft such new rules in a manner as will not materially interfere with Lessee's business for the Permitted Use. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard established for other similar Parks properties (provided that Lessee shall not be responsible for maintaining those portions of the Premises that are City's responsibility to maintain under terms of this Lease), permitting no objectionable odors to be emitted from the Premises and shall neither commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation

Attachment 1

of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in or near the Premises. The Lessee must also perform the following requirements:

6.1.1 The Lessee is authorized to charge fees for the use of the Premises, equipment and supplies consumed or used by the public as set forth on a published fee sheet which shall be prepared by Lessee and approved by the Superintendent. When the center is not open to the public, the Lessee may also allow the use of the Premises to outside organizations or individuals, provided Lessee has first obtained written authorization from the Superintendent.

6.1.2 The Lessee is authorized to use the Premises for the carrying out of its board meetings and may permit the use of the Premises for regular or special meetings of its committees and subcommittees, and may permit its use for fund raising activities supporting the overall mission of the Lessee without paying a rental fee.

6.1.3 The Lessee may permit use of the Premises on a short-term rental basis to organizations and individuals, or other clients (hereinafter called "Renters"). Lessee shall not use the Premises for any purpose whatsoever other than the uses specifically permitted herein (collectively, the "Permitted Use").

6.1.4 Renters shall be defined as any private or public individuals or firms that desire to rent space at the center for activities and events that are lawful and consistent with the public purposes stated above. The Lessee will market and process all facility rental requests from such Renters. This includes handling and responding to all calls and written requests, booking the dates, providing the staffing to set up and supervise these events as appropriate, and ensuring the facility is returned to an acceptable condition. These rentals shall be on a rental form approved by Parks. The income received from such rentals may be retained by the Lessee provided that the rental income is used by Lessee only in support of its operation and maintenance of the center, as well as any Parks approved improvements to the facility.

6.1.5 Short term rentals to Renters shall be no more than three consecutive days during rental hours noted in Section 36 and will apply to all space with the exception of the Lessee administrative office, the upstairs attic, and the kitchen area of the Premises.

6.1.6 The Lessee acknowledges that all City departments have the right to schedule use of the meeting room and/or facility at no charge for meetings and programs.

6.2 Staffing of Premises. The Lessee shall provide qualified personnel in sufficient numbers to meet the program staffing needs during all hours of operation. The Lessee shall review the conduct of any of its staff whose activities may be inconsistent with the proper administration of the Premises and take such action as is necessary to fully correct the situation.

Attachment 1

The Lessee shall engage a licensed agency or company to perform background checks of all staff, both employed and volunteer, before assigning them to work at the Premises. The Lessee shall provide Parks with a written listing of the names and addresses of its staff at the beginning of each calendar year, and notify Parks of changes throughout the year.

6.3 Board of Trustees. The Lessee shall furnish to Parks a list of names and addresses of each member of its Board of Trustees and its meeting schedule at the beginning of each calendar year, and notify Parks of changes throughout the year. Parks may attend meetings of the Lessee's Board of Trustees, including subcommittee meetings.

6.4 Other Fees. The Lessee is authorized to charge fees for the use of the Premises, equipment and supplies consumed or used by the public as set forth on a published fee sheet which shall be prepared by Lessee and approved by the Superintendent. When the center is not open to the public, the Lessee may also allow the use of the Premises to outside organizations or individuals, provided Lessee has first obtained written authorization from the Superintendent.

6.5 Compliance with Laws; Nondiscrimination.

6.5.1 Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises, provided that Lessee shall not be responsible for maintaining in compliance with laws those portions not within the Premises and as such are the City's responsibility to maintain under terms of this Lease.

6.5.2 Without limiting the generality of Subsection 6.5.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

6.6 Liens and Encumbrances. Lessee shall keep the Premises free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Lease or its use, improvement or occupancy of the Premises by Lessee or any of its principals, officers, employees, agents or subtenants. Lessee shall inform the City in writing of any lien filed against the Premises within ten (10) days of the filing date of the lien. If any lien is so filed against the Premises, Lessee shall

Attachment 1

either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefore or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

6.7 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 6.7, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 6.7 is discovered as a result of such inspection or monitoring.

6.8 Cleanup Costs. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

7. Utilities.

Attachment 1

7.1 General. Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

7.2 Refuse Collection; Recycling of Waste Materials. Lessee shall provide all necessary housekeeping and janitorial services for the Premises to a level consistent with other similar Parks facilities and operations and to the Superintendent's reasonable satisfaction. Lessee shall be responsible for proper storage and removal of trash, litter pickup and recycling, consistent with City standards.

7.3 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Lessee, or to relieve Lessee from any of Lessee's obligations hereunder, or to give Lessee a right of action against City for damages. Lessee acknowledges its understanding that there may be City-planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Lessee's use of the Premises. City shall endeavor to provide Lessee with not less than forty-eight (48) hours prior written notice of any City-planned electricity outage in the Premises. City has no obligation to provide emergency or backup power to Lessee. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Lessee. If utilities are interrupted at the Premises so as to render them unfit for their permitted uses, then the Rent for the year shall be abated for the duration of the disruption in the proportion that the number of days of the disruption bears to the number of days of the year.

8. Licenses and Taxes.

8.1 Without any deduction or offset whatsoever, Lessee shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (e.g., leasehold excise taxes).

8.2 Contests. Lessee shall have the right to contest the amount and validity of any taxes by appropriate legal proceedings, but this shall not be deemed or construed in any way as

Attachment 1

relieving Lessee of its covenant to pay any such taxes. City shall not be subjected to any liability or for the payment of any costs or expenses in connection with any such proceeding brought by Lessee, and Lessee hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

9. **Alterations by Lessee.**

9.1 Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to the City professionally prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or any of the Premises' systems; (e) does not disrupt the business or operations of any other occupant of the Premises; (f) is in conformity with all applicable city, state, and federal regulations, including those referenced in Sections 6.5.1 and 6.5.2 and (g) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 13 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 9.

9.2 **Alterations.** All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation: furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the

Attachment 1

completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee.

10. **Care of Premises.**

10.1 **General Obligation.** Lessee shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Lessee or any of Lessee's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass.

10.2 **Custodial Service for Premises.** Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto, including the paved exterior walkways and entry ways that surround the perimeter of the building in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving the building and the areas identified in the foregoing sentence clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease. Lessee shall be responsible for all services necessary to meet the Lessee's obligation to maintain the Premises and keep the paved exterior walkways and entry ways that surround the building free of litter and clean of spills resulting from Lessee's operations. Lessee may utilize its own staff to meet this obligation, but shall contract for a professional cleaning service, if in the opinion of the City, such service is necessary to adequately maintain such areas. The Lessee will seek the approval by the City of any such professional cleaning service prior to entering into such arrangement. The City's approval shall not be unreasonably withheld.

10.3 **Failure to Comply with Custodial Service Obligation.** If, Lessee fails to meet the obligations of Section 10.2, and after City has provided written notice of Lessee's failure to comply with that Section, the City may in its sole discretion, elect to perform said work, or may contract for an outside service. In the event that the City elects to perform the work or contract with an outside service, Lessee shall promptly reimburse the City for its actual and reasonable cost thereof as an Additional Charge.

10.4 **Major Repairs.** All major repairs necessary to maintain the Premises and excluded areas in a reasonably good operating condition, as determined by City, shall be performed by City at its expense. Major repairs include the structural aspects and exterior of the Premises, the Common Areas, graffiti clean up, and the heating, ventilation, utility, electric and plumbing and other systems and equipment serving the Premises. The foregoing sentence does not extend to maintenance occasioned by an act or omission of Lessee or its officers, agents, employees, or contractors. Except in the event of City's gross negligence or intentional

Attachment 1

misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

10.5 Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Lessee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without City's prior, express, written consent. City's consent to the installation of any such art work may be granted upon one or more conditions, or withheld at the City's discretion.

10.6 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.5 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

11. Signs and Advertising.

11.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Superintendent's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises, unless the City authorizes in writing to the Lessee that such signage may be left in place.

11.2 On-Premises Signs. Lessee may install approved permanent exterior signage. Temporary signs or banners not more than twenty-four (24) square feet in size may be displayed on or about the Premises to advertise a special event beginning two (2) weeks immediately before the event advertised, through the conclusion of such event. New exterior signage shall include the Premises' name, Lessee's name and the Parks logo and shall be constructed in a style

Attachment 1

and size consistent with the Parks sign policy. Preexisting internal and external signage that has been installed prior to the execution of this lease are exempt from this requirement.

11.3 Recognition. Lessee shall include a statement and the Parks logo in its printed materials stating, in effect, that: "We would like to thank Seattle Parks and Recreation for providing a location for Hutchinson Community Center."

12. Surrender of Premises.

12.1 General Matters. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date and agreed upon by both parties pursuant to Section 2.2 of this Lease (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 9), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings, unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 12 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

12.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises. Cables and wiring shall include all of the same located within the interior and exterior walls, through or above the ceiling, through or below the floor, vertical or horizontal risers, raceways, conduits, channels, or connection openings of such portion of the Premises to be vacated and surrendered to City as of the Expiration Date or earlier termination date. Lessee shall leave the mud rings, face plates and floor boxes in place.

13. Waiver; Indemnification.

13.1 Lessee's Indemnification. Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's

Attachment 1

officers, agents, employees and contractors, and other occupants of the Premises harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any subtenant, licensee, assignee or concessionaire of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises.

Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 13.**

13.2 Lessee's Release of Claims. Lessee hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by Lessee or any person claiming through Lessee resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of Building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Premises.

13.3 Limitation of Lessee's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which City or Lessee (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the

Attachment 1

Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or Lessee be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

14. **Insurance.**

14.1 Lessee's Insurance Coverages and Limits. Lessee shall, at its sole cost and expense, maintain, and cause its Subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance throughout the entire Lease Term:

14.1.1 **Commercial General Liability (CGL)** written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal/Advertising Injury Liability
\$ 1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop
\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

Attachment 1

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Lessee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Lessee as respects this Agreement, nor (2) construed as limiting the liability of any of Lessee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

14.1.2 **Automobile Liability insurance** at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.

14.1.3 **Workers' Compensation** insurance securing Lessee's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

14.1.4 **Property Insurance** under which the Lessee's furniture, trade fixtures, equipment and inventory ("Business Personal Property") and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (excluding earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of Rent and Additional Charge and other fixed costs during any interruption of Lessee's business. City shall be named as a loss payee as respects property insurance covering the alterations, additions and improvements under such policy.

14.1.5 During such time as Lessee is engaged in the performance of tenant improvements or other renovation of the Premises, the Lessee shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than \$50,000 each loss. It shall be Lessee's responsibility to properly coordinate with the City's Risk Management Division for the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.

Attachment 1

14.1.6 In the event that the City deems insurance to be inadequate to protect Lessee and the City, Lessee shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.

14.2 City's Property Insurance Coverage and Limits.

14.2.1 City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Lessee's Business Personal Property and tenant improvements, are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City's Property Insurance currently is subject to a \$250,000 deductible for most claims. Lessee shall be responsible to pay the deductible to the proportional extent to which the loss or damage is attributable to Lessee's negligent acts.

14.2.2 The City may change the terms of its insurance in Sections 15.2 at any time based on market conditions, with no compensation due to the Lessee.

14.3 General Requirements for Lessee's Insurance.

14.3.1 The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Lessee's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

14.3.2 Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Lessee mutually agree that for the purpose of RCW 48.18.290 (1) (e), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

Attachment 1

14.3.3 Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A-: VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

14.3.4 Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by, the City. Lessee shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Lessee to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Lessee. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Lessee or a contracted third party claims administrator, Lessee agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

14.4 Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Lessee waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises.

14.5 Evidence of Insurance. On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Lessee:

14.5.1 Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

14.5.2 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

14.5.3 A copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and

Attachment 1

printed name of the representative of the insurance company authorized to sign such endorsement;

14.5.4 Pending receipt of the documentation specified in this Section 14, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Original certification of insurance shall be issued to:

Seattle Department of Parks and Recreation
Contracts Administration and Support Office
ATTN: Suzanne Simmons, Grants and Contracts Coordinator
800 Maynard Ave S, 3rd Floor
Seattle, Washington, 98134

14.5.5 Assumption of Property Risk. The placement and storage of Lessee's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Lessee.

14.5.6 Adjustments of Claims: The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement.

14.5.7 Lessee's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Lessee's liability under the Lease.

15. **Assignment or Sublease.**

15.1 Lessee shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of City, whose consent shall be given or withheld in its sole discretion. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease, without City's prior written consent, at City's option, shall be void. No assignment or sublease shall release Lessee from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to City. If Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment for the purposes of this Lease. If Lessee is a partnership, then a change in general partners in, or voting or decision-making control of, the

Attachment 1

partnership shall also constitute an assignment. This provision does not preclude Lessee from subcontracting out for routine maintenance and programming services.

16. **Assignment by City.** If City sells or otherwise transfers the Premises, or if City assigns its interest in this Lease, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's obligations under this Lease arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Lease arising thereafter, but this Lease shall otherwise remain in full force and effect. Lessee shall attorn to City's successor, which assumes and agrees to perform all of City's obligations under this Lease.

17. **Destruction.** If the Premises are rendered partially or totally untenable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises with due diligence; otherwise City may elect to terminate this Lease. Rent and Additional Charges shall be abated in the proportion that the untenable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or Lessee may terminate this Lease upon sixty (60) days' written notice to the other. If thirty percent (30%) or more of the Building is destroyed or damaged, then regardless of whether the Premises are damaged or not, Lessee may elect to terminate this Lease upon written notice to City. City shall advise Lessee of City's election to terminate by giving notice to Lessee thereof within thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Premises.

18. **Eminent Domain.**

18.1 **Taking.** If all of the Premises are taken by Eminent Domain, this Lease shall terminate as of the date Lessee is required to vacate the Premises and all Rent and Additional Charges shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for the business of Lessee, in the reasonable judgment of City, the Lease may, at the option of either party, be terminated by written notice given to the other party not more than

Attachment 1

thirty (30) days after City gives Lessee written notice of the taking, and such termination shall be effective as of the date when Lessee is required to vacate the portion of the Premises so taken.

If this Lease is so terminated, all Rent and Additional Charges shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Lease is not terminated, City, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and Lessee, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking, to the extent award is available therefor. The Rent and Additional Charges payable hereunder shall be reduced from the date Lessee is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.

18.2 Award. Except as otherwise provided below, City reserves all right to the entire damage award or payment for any taking by Eminent Domain, and Lessee waives all claim whatsoever against City for damages for termination of its leasehold interest in the Premises or for interference with its business. Lessee hereby grants and assigns to City any right Lessee may now have or hereafter acquire to such damages and agrees to execute and deliver such further instruments of assignment as City, from time to time, may request. Lessee, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by Lessee on account of any loss incurred by Lessee in moving Lessee's merchandise, furniture, trade fixtures and equipment and the cost of restoring its personal property and improvements made by it to the Premises.

19. Default by Lessee.

19.1 Definition. If Lessee violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Lease; or if Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Lessee shall be deemed in default ("Default").

19.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within thirty (30) days after written notice thereof has been provided to Lessee, then City shall have the following nonexclusive rights and remedies at its option: (1) to cure such default on Lessee's behalf and at

Attachment 1

Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease; provided, however, that if the nature of Lessee's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

19.3 Reentry by City Upon Termination. Upon the termination of this Lease, City may reenter the Premises, take possession thereof, and remove all persons therefrom, for which actions Lessee shall have no claim thereon or hereunder. Lessee shall be liable and shall reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Lessee. City shall have the right to sell such stored property, after reasonable prior notice to Lessee or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Lessee to City; the balance, if any, shall be paid to Lessee.

19.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.8 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

19.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be

Attachment 1

permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 19.5 shall survive the expiration or earlier termination of this Lease.

20. **City's Remedies Cumulative; Waiver.** City's rights and remedies hereunder are not exclusive, but cumulative, and City's exercise of any right or remedy due to a default or breach by Lessee shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that City may have under this Lease or by law or in equity. Neither the acceptance of rent nor any other act or omission of City at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive City of its right to cancel or forfeit this Lease, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease.

21. **Default by City.** City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Lessee; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion. Upon City's default, Lessee may pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington.

22. **Termination for Convenience.** Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon thirty (30) days' written notice to Lessee if the City determines that the Premises are required for a different public purpose.

23. **Attorneys' Fees.** If either party retains the services of an attorney in connection with enforcing the terms of this Lease, each party agrees to bear its own attorneys' fees and costs.

24. **Access by City.** City and its agents shall have the right to enter the Premises at any reasonable time to examine the same, and to show them to prospective purchasers, lenders or tenants, and to make such repairs, alterations, improvements, additions or improvements to the Premises as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall

Attachment 1

change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

25. **Holding Over.** Unless otherwise agreed in writing by the parties hereto, any holding over by Lessee after the expiration of the Lease Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein. Either party may terminate any holdover tenancy by written notice delivered to the other party not later than twenty (20) days prior to the end of the final month. If Lessee fails to surrender the Premises upon the expiration or termination of this Lease without City's written consent, Lessee shall indemnify, defend and hold harmless City from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

26. **Notices.** Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsections 1.6 and 1.7 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.

27. **Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 14 and 16, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

28. **Authority and Liability.** Lessee warrants that this Lease has been duly authorized, executed and delivered by Lessee, and that Lessee has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Lessee covenants to provide City with evidence of its authority and the authorization of this Lease upon request. All persons and

Attachment 1

entities named as Lessee herein shall be jointly and severally liable for Lessee's liabilities, covenants and agreements under this Lease.

29. **Partial Invalidity.** If any court determines that any provision of this Lease or the application hereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

30. **Force Majeure.** Neither City nor Lessee shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war; provided, however, that the foregoing shall not excuse Lessee from the timely payment of Rent and Additional Charges due hereunder, when due.

31. **Counterparts.** This parties may execute this Lease in counterparts, which, taken together, constitute the entire Lease.

32. **Headings.** The section headings used in this Lease are used for purposes of convenience and do not alter in any manner the content of the sections.

33. **Context.** Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular.

34. **Execution by City and Lessee; Effective Date.** Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Lessee until all parties hereto have executed this Lease and the appropriate legislative authority approves it. This Lease shall become effective on the date (the "Effective Date") on which this Lease is executed by City and Lessee and approved by the Seattle City Council. City shall have no liability to Lessee and shall have the right to terminate this Lease upon written notice to Lessee if this Lease is legislatively disapproved.

35. **Time of Essence; Time Calculation Method.** Time is of the essence with respect to this Lease. Except as otherwise specifically provided, any reference in this Lease to the word "day" means a "calendar day"; provided, however, that if the final day for any action required

Attachment 1

hereunder is a Saturday, Sunday or City holiday, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or City holiday. Any reference in this Lease to the word "month" means "calendar month."

36. **Continuous Operation.** Lessee shall keep the Premises open and use them to transact business with the public daily during hours as designated below or as otherwise may be designated by the Superintendent. Subject to the Superintendent's prior reasonable approval, Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Lessee shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the Superintendent; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee's Rent and Additional Charges shall be prorated for the duration of the closure in the proportion that the number of days of the closure bears to the number of days of the month. Lessee shall furnish an approved sign at the Premises entrance advising the public of any approved closure, unless closed at the direction of City.

Approved hours of operation of the business conducted on the Premises are as follows:

Monday through Friday—regular program hours	6:00AM	6:00PM
Saturday and Sundays	By appointment	By appointment

37. **Standards.** Lessee recognizes that, although it is operating its facilities as an independent operator, Parks is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. Lessee, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility. Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee's employees, which would be detrimental to City's operations.

38. **City's Control of Premises and Vicinity.** All common and other facilities provided by City in or about the Premises are subject to the City's exclusive control and management by City.

Attachment 1

Accordingly, City may do any and all of the following (among other activities in support of Parks or other municipal objectives), all without incurring any liability whatsoever to Lessee:

38.1 Change of Vicinity. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, landscaping, exhibit, service area, and parking areas in the vicinity of the Premises;

38.2 Traffic Regulation. City may regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of Lessee and its invitees, employees, and patrons.

38.3 Display of Promotional Materials. City may erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to and nearby the Premises.

38.4 Promulgation of Rules. City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any Department property including, but not limited to, the Premises.

38.5 Change of Businesses. City may change the size, number, type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises.

39. Lessee's Records. Lessee shall maintain books, records, documents, and other evidence of accounting procedures and practices, including a statement of income and expenses for the recent calendar year, which reflect all direct and indirect income and fees collected by the Lessee as well as any costs incurred by the Lessee in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent and Additional Charges for a period of six (6) years after expiration or termination of this lease, and Lessee shall make them available for the inspection at Lessee's office within ten (10) days of City's prior written demand therefore. Each quarter of each year during the Term, Lessee shall provide the City with a written report of income and expenses, on a form provided by the Department.

40. Miscellaneous.

40.1 Entire Lease; Applicable Law. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of City and Lessee

Attachment 1

concerning the Premises, and there are no other agreements or understanding, oral or written, between City and Lessee concerning the Premises. Any subsequent modification or amendment of this Lease shall be binding upon City and Lessee only if reduced to writing and signed by them. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington.

40.2 Negotiated Lease. The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

40.3 Periodic Lease and Operations Evaluation. A periodic evaluation of the lease and operations of the premises may be conducted. A mid-term evaluation shall be conducted on or around July 2015. The evaluation will review and assess the suitability of this lease agreement and the Lessee's implementation of the terms of the lease. This will be a collaborative review between Parks and the Lessee. The result of the evaluation will be an assessment of the status of programs and operations, accomplishments to date, an exchange of feedback between the two parties, and recommendations for changes/improvements. The results of this evaluation may serve as the basis for renegotiation of part, or all of this lease agreement.

Charles Ng/Suzanne Simmons
DPR Hutchinson CC Lease ORD ATT 1
October 9, 2013
Version #3

Attachment 1

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below.

CITY:

LESSEE:

THE CITY OF SEATTLE

TINY TOTS DEVELOPMENT CENTER

A Washington nonprofit corporation

Date: _____

Date: _____

By: _____

By: _____

Print Name: Christopher Williams

Print Name: _____

Title: Acting Superintendent

Title: _____

Department of Parks and Recreation

Tiny Tots Development Center

STATE OF WASHINGTON)

) ss. (Acknowledgement for City)

COUNTY OF KING)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Department of Parks and Recreation of **THE CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

[Signature]

[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.

STATE OF WASHINGTON)

) ss. (Acknowledgement for Tiny Tots Development Center)

COUNTY OF KING)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____, the entity that executed the foregoing instrument as _____; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

WITNESS my hand and official seal the day and year in this certificate above written.

Charles Ng/Suzanne Simmons
DPR Hutchinson CC Lease ORD ATT 1
October 9, 2013
Version #3

Attachment 1

[Signature]

[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at _____.
My commission expires _____.

EXHIBIT A to Attachment 1

Scope of Work

Tiny Tots Development Center (TTDC), a 501(c)3 non-profit organization and fully licensed and insured Day Care Center, will operate an out-of-school program at the Hutchinson Community Center for Grades K-5 children in need. TTDC will operate year round, from 6:00 a.m. – 6:00 p.m., excluding holidays. The Center will be managed by an on-site Director. Three to four staff will supervise and instruct the children daily at a 1:15 staff/children ratio. TTDC will be responsible for the daily maintenance of the facility.

The City of Seattle, Department of Parks and Recreation and the Tiny Tots Development Center will explore opportunities with other community-based organizations and agencies to provide a wide range of recreational activities and programming to the community.

Programs and Services to be Provided Include, but are Not Limited to:

- Literacy education integrated with health/nutrition/social skill development programs and services;
- Organized recreational/fine arts/cultural awareness programs;
- Technology exploration in the area of telecommunications, and other computer-based exploration connected to the regular school curriculum;
- Provide culturally relevant programs and enrichment activities for students and families.
- Provide outreach and public access to community programs and services being offered at the Hutchinson Community Center.

EXHIBIT B to Attachment 1
Hutchinson Community Center & Playfield
5801 South Pilgrim Street
Seattle, Washington 98118

 Park Boundary



EXHIBIT B to Attachment 1

Legal Description

Fred Hutchinson Playground Property Description

A portion of the E1/2NE1/4NW1/4 of Section 2, Township 23 North, Range 4 East W.M. described as follows:

Beginning at a point on the south line and 334.00 feet easterly from the west line of the E1/2NE1/4NW1/4 of Section 2, Township 23 North, Range 4 East, hereafter referred to as "the tract"; thence south 89°57'45" east, a distance of 325.18 feet to the southeast corner of "the tract"; thence north 0°18'34" east a distance of 647.33 feet; thence north 89°37'33" west a distance of 325.64 feet; thence south 0°16'06" west on a line parallel to the west line of "the tract" a distance of 649.25 feet to the place of beginning.

Including the following portion vacated under Ordinance 78512: 59th Avenue South, lying between the south line of Pilgrim Street and the production west of the north line of Lot 19, Block 40, Rainier Beach Addition.

Less the following described portion under Ordinance 88429:

The east 17 feet of that portion of the tract lying south of the production west of the north line of Lot 19, Block 40, Rainier Beach Addition

Less also that portion under Ordinance 91306 described as follows:

Beginning at the intersection of the south line of the tract with the west line of 59th Avenue South as established by Ordinance No. 88429, thence north along said west line a distance of 50.00 feet; thence north 89°57'01" west, a distance of 156.54 feet; to a point of curvature; thence westerly along the arc of a curve to the left having a radius of 150.00 feet a distance of 46.65 feet to a point of tangency; thence south 72°13'51" west a distance of 110.47 feet; thence south 0°16'16" west a distance of 9.00 feet to the south line of "the tract"; thence south 89°57'01" east along the south line of "the" tract to the point of beginning.

Tax Parcel Number: 022304 9015

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation (DPR)	Suzanne Simmons, 684-8003	Jeff Muhm, 684-8049

Legislation Title:

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a lease agreement with the Tiny Tots Development Center for the purpose of providing day care services and community programs to the public at the Hutchinson Community Center.

Summary of the Legislation: The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into a five year lease agreement with Tiny Tots Development Center (TTDC). Under the terms of the lease agreement, TTDC will operate the Hutchinson Community Center (Center) as a day care and community program facility open to, and available for public use. In addition to children's day care services, community programs to be offered include culturally relevant programs and enrichment activities such as nutrition, arts, gardening, literacy education and technology exploration. The proposed agreement includes an option to extend the lease for another five years at the mutual consent of both parties.

Background: DPR owns the Hutchinson Community Center, which previously housed childcare and school-aged programs that were operated by the Associated Recreation Council (ARC). ARC moved its childcare/school-aged programs to the Hutchinson Community Center after the Rainier Beach Community Center was closed for demolition. Program enrollment declined after the move and the programs were canceled. The building currently sits vacant and has been unused for 3 years due to budget reductions. The Center is a field house, located south of the Rainier Beach Community Center at 5801 South Pilgrim Street, next door to Emerson Elementary School. The building consists of one level with two program spaces, two restrooms, a kitchen, and one storage area. It is approximately 2,000 square feet and generally in satisfactory condition. In February 2013, Parks conducted an RFP process for operation of the Hutchinson Community Center. The Tiny Tots Development Center was selected as the winning proposer. Parks is proposing this legislation to execute a long-term agreement with TTDC that will ensure that the facility will be operated, activated, and programmed for the next five years.

X This legislation has financial implications.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Parks and Recreation Fund (10200)	Parks and Recreation	Income from Concession Fee Payments	\$0	\$36,000
TOTAL			\$0	\$36,000

Revenue/Reimbursement Notes: This lease requires TTDC to pay \$36,000 annually for the term of the lease. In 2013, the expected payment is \$0 in anticipation that the lease agreement will not be fully executed in time for the organization to begin operations at the Center and start bringing in revenue before the end of 2013. In 2014 the payment to Parks will be \$36,000 for the full year. In addition, TTDC must demonstrate the level of benefits provided to the public on an annual basis. TTDC will provide in-kind maintenance services and some capital investments to the facility.

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
 No short term or long term financial commitment from the City is required as a result of this legislation.

- b) **What is the financial cost of not implementing the legislation?**
 Parks would forego \$180,000 in revenue during the first five year term of the lease. There would also be the loss of the program services that will be provided to the public. It would be costly for Parks to begin operating and maintaining the facility. There are currently no funds available in the Parks budget to do so.

- c) **Does this legislation affect any departments besides the originating department?**
 No.

- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
 Another organization could be sought to operate the facility. However, as a result of the RFP process, at this time there are none known that have the qualifications to provide the same programs and services as provided in this lease with TTDC.

- e) **Is a public hearing required for this legislation?** No.

- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.

- g) **Does this legislation affect a piece of property?** Yes. See Attachment B, Map.

- h) **Other Issues:** None.

List attachments to the fiscal note below:

Suzanne Simmons
DPR Hutchinson CC Lease 2013 FISC
June 25, 2013
Version #2

Attachment A: Contract Summary – Tiny Tots Development Center
Attachment B: Map – Hutchinson Community Center

Charles Ng/Suzanne Simmons
DPR Hutchinson CC Lease FISC ATT A
October 9, 2013
Version #3

Attachment A to FISC
Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: Tiny Tots Development Center

Contract Title and Contract Type: Lease Agreement

Non-Profit **or For Profit**

New **or Renewal (or extension of existing Lease)**

Premises: Hutchinson Community Center

Term of Lease: 5 years + 5 year renewal option

Purpose of Lease (description of license): Tiny Tots Development Center is authorized to lease the building from Parks in order to provide day care and community programs and services.

Rent: \$36,000 annually for the term of agreement.

Adjustments to Rent (if any): Not applicable.

Public Benefit (e.g., description of permitted use): Tiny Tots Development Center will provide on-site building management and deliver day care and community programs and services to the public.

Maintenance: Seattle Parks and Recreation is responsible for major maintenance, including exterior walls and roof, surrounding park and parking lots. The Tiny Tots Development Center is responsible for routine interior maintenance.

Other Pertinent Information: Tiny Tots Development Center was selected in February 2013 as the winning proposer for an RFP issued by Parks for the operation, programming and maintenance of the Hutchinson Community Center.

EXHIBIT B to Attachment 1
Hutchinson Community Center & Playfield
5801 South Pilgrim Street
Seattle, Washington 98118

 Park Boundary





City of Seattle
Office of the Mayor

October 29, 2013

Honorable Sally Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes a five-year lease agreement between the City of Seattle and the Tiny Tots Development Center (TTDC), with an option for an additional five year term. Under the terms of the lease, TTDC will manage Seattle's Hutchinson Community Center and provide child daycare services and programs for families and for community engagement at the facility.

In February 2013, the Department of Parks and Recreation (DPR) completed a Request for Proposal (RFP) process to select an operator for the Hutchinson Community Center and TTDC was determined to be the most responsive proposer to the RFP and was selected as the top candidate to manage the Center.

TTDC is a respected and successful non-profit organization supported by the Rainier Beach community. Approval of this lease will ensure that TTDC has the opportunity to develop and provide day care services and programs at the Center for the next five years. In exchange for the right to manage the Hutchinson Community Center, TTDC will provide routine maintenance, necessary insurance, programming services, and a financial payment to the City of at least \$180,000 over the term of the lease.

Thank you for your consideration of this legislation. Should you have questions, please contact Suzanne Simmons, Grants and Contracts Coordinator at 684-8003 or suzanne.simmons@seattle.gov.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council