

LEASE AGREEMENT

THIS LEASE AGREEMENT entered into this ____ day of _____, 2015, by and between the city of Duluth, a municipal corporation in St. Louis County, state of Minnesota ("City") and Community Action Duluth, a non-profit corporation ("Tenant").

WHEREAS, Tenant desires to lease certain City-owned property in the Lincoln Park neighborhood for the purpose of storing supplies and tools used by Tenant for tree planting, stream restoration and other projects throughout the city, including projects on city owned property; and

WHEREAS, the City desires to assist the Tenant by allowing use of City property for such purposes.

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

1. Leased Premises

Leased Premises refers to the garage located in the Lincoln Park neighborhood at the corner of 25th Avenue West and West 5th Street, Duluth, Minnesota, and as shown on Exhibit A attached hereto. Tenant is hereby granted the exclusive use of the Leased Premises.

2. Use of Premises

The Leased Premises shall be used solely for purposes of storing tools and supplies for the Seeds of Success and Stream Corps programs and for no other purpose.

3. Term

The term of this agreement shall commence on August 1, 2015, and continue through July 31, 2016, subject to the right of either party to terminate this Agreement without cause upon twenty (20) days' written notice to the other party, as provided for in Section 12 below. This Agreement may be extended for two additional one-year periods. On or before June 15, 2016, Tenant shall provide written notice to the City requesting renewal of the Agreement for the first option period. Tenant's failure to provide such notice to the City shall cause such renewal option and all subsequent option periods to be null and void. Upon written notice from the City to the Tenant, the City may, at its sole discretion, extend the term of this Agreement for a period of one

year, from August 1, 2016 through July 31, 2017. Additionally, on or before June 15, 2017, Tenant shall provide written notice to the City requesting renewal of the Agreement for the second option period. Tenant's failure to provide such notice to the City shall cause such renewal option to be null and void. Upon written notice from the City to the Tenant, the City may, at its sole discretion, extend the term of this Agreement for a period of one year, from August 1, 2017 through July 31, 2018. If the City extends the term of this Agreement in accordance with the foregoing, all of the terms and conditions of this Agreement shall continue, unmodified, in full force and effect.

4. Rent

In consideration of the rental of Leased Premises as provided for in this Agreement, Tenant agrees to pay City a monthly payment of Twenty-five and No/100 dollar (\$25) per month beginning August 1, 2015, and monthly thereafter.

5. Maintenance

Tenant agrees to exercise reasonable care in the maintenance of the Leased Premises during the term of this Agreement. Tenant shall not make any alterations or improvements to the Premises without the prior written approval of the Director of the City's Parks and Recreation department. Tenant shall surrender the Leased Premises at the termination of this Agreement in the condition found prior to the commencement of this Agreement at no expense to City and shall promptly remove all its equipment and supplies. Tenant agrees to pay upon demand any damage done to the Leased Premises during the term of this Agreement.

6. No Warranty

City makes no representation, either express or implied, as to merchantability or fitness for any particular uses or other representations or warranties with respect to the condition of the Leased Premises. Tenant accepts the Leased Premises in an "as is" condition. The City shall not be responsible to Tenant for any injury or damage resulting from any default in the construction or condition of the Leased Premises. Tenant understands that the Leased Premises is unheated.

7. Refuse and Garbage

Tenant assumes all responsibility for the disposal of refuse and garbage at the Leased Premises and agrees to pay all costs related thereto.

8. Smoking and Alcohol

Tenant shall not permit smoking or alcohol on the Leased Premises.

9. City Access

The City expressly reserves the right to the unlimited access to the Leased Premises for authorized personnel during the time that this Agreement is in force for the purpose of inspection, display or showing, and ensuring that the provisions of this Agreement are complied with by Tenant.

10. Indemnification

The City shall in no way be liable or responsible for any accident or damage that may occur in the use of the Lease Premises during the term of this Agreement. The Tenant agrees that it shall defend, indemnify and save harmless the City, its officers, agents, servants and employees from and against any and all claims of any type including claims for contribution or indemnity, all demands, suits, judgments, costs and expenses asserted by any person or persons including agents or employees of the City, the Tenant, the Tenant's contractor, invitees, or any other person or entity whether or not they are there by invitation or with consent of Tenant by reason of the death of or injury to person or persons or the loss of or damage to property or any cause of action arising out of the use of the Leased Premises. On ten (10) days' written notice from the City, the Tenant will appear and defend all lawsuits against the City growing out of such injuries or damages.

11. Insurance

Tenant shall provide for purchase and maintenance of such insurance as will protect Tenant and the City against risk of loss or damage to the Leased Premises and any other property permanently located or exclusively used at the Leased Premises and against claims which may arise or result from the maintenance and use of the Leased Premises during the term of the Agreement. Tenant shall procure and continuously maintain insurance covering all risks of injury to or death of any person(s) or entity(ies) or damage to property arising in any way out of or as a result of Tenant's occupancy of or use of the Leased Premises, carried in the name of Tenant. During the term of this Agreement, Tenant shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death, and limits of \$1,500,000 for property damage liability and twice the limits provided when a claim arises out of the release or threatened release of a

hazardous substance whether on or off the Leased Premises. If person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. The City shall be named as an additional insured thereon. All insurance shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in the State of Minnesota. Certificates showing that Tenant is carrying such insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement. Insurance shall cover:

- a. Public liability, including premises and operations coverage;
- b. Independent contractors--protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles, where applicable;
- e. Contractual liability covering the indemnity obligations set forth herein;
- f. Products—completed operations.

Additionally, Tenant shall maintain Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law.

Tenant shall require its contractors to maintain the coverages set forth above and the City shall be named as additional insureds thereon.

The City does not represent or guarantee that these types or limits of coverage are adequate to protect Tenant's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal, or modification of the policy or coverages evidenced by such certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverages ineffective as against the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms: (1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and (2) Notice of Cancellation Endorsement (IL-7002) - or equivalent, as approved by City's Attorney.

12. Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Tenant or any of its officers, agents, servants and

employees as an officer, agent, servant, representative or employee of the City for any purpose or in any manner whatsoever. The Tenant's officers, agents, servants, contractors and employees shall not be considered employees of the City, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said officers, agents, servants, contractors and employees while engaged in performing any work under this Agreement, and any and all claims whatsoever on behalf of said officers, agents, servants, contractors and employees arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of the City. The Tenant's officers, agents, servants, contractors and employees shall not be entitled to any compensation or right or benefits of any kind whatsoever for leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay.

13. Assignment

Tenant shall not assign its interest under this Lease Agreement or any part hereof.

14. Notices

Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage prepaid, addressed to the City as follows: City of Duluth Parks & Recreation, Attn: Chuck Campbell, City Hall, Ground Floor, 411 West First Street, Duluth, Minnesota 55802; and to Tenant as follows: Community Action Duluth, Attn: Angie Miller, 2424 W. Fifth Street, Suite 102, Duluth, Minnesota 55806.

15. Compliance with Laws, Rules and Regulations

Tenant agrees to observe, comply and abide with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City and their respective agencies which are applicable to its activities under this Agreement. Tenant shall procure at its own expense all licenses, permits or other rights required for the activity contemplated by this License Agreement.

16. Choice of Law/Venue

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in the State of Minnesota.

17. Civil Rights Assurances

Tenant, for itself and its officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree to comply with all laws relating to unlawful discrimination.

18. Obey All Laws

Tenant shall conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the City of Duluth, the County of St. Louis, State of Minnesota and the United States of America and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the lease of the Leased Premises.

19. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

20. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

21. Amendments

Any amendments to this Lease Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

22. Authority to Execute Agreement

Tenant represents to the City that the execution of this Lease Agreement has been duly and fully authorized by its governing body or board, that the officers of Tenant who executed this Lease Agreement on its behalf are fully authorized to do so, and that this Lease Agreement when thus executed by said officers of Tenant on its behalf will constitute and be the binding obligation and agreement of Tenant in accordance with the terms and conditions hereof.

23. Entire Agreement

This Lease Agreement, including Exhibit A, constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

IN WITNESS WHEREOF, the parties have set their hands the day and date first above shown.

THE CITY OF DULUTH, MINNESOTA

COMMUNITY ACTION DULUTH

By: _____
Mayor

By: _____
Executive Director

ATTEST: _____
City Clerk

Date: _____

Date: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

Leased Premises
(Shown in Red)

