

FIRST AMENDMENT TO SUBLEASE AGREEMENT

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT (the “Amendment”) is made on November ____, 2015, between the **City of Duluth**, a municipal corporation created and existing under the laws of the state of Minnesota (“City”) and **NORTHEAST MINNESOTA OFFICE OF JOB TRAINING**, created and existing under the laws of the state of Minnesota, (“Subtenant”).

- A. WHEREAS, City leased the property known as the Duluth Athletic Club Building, “Leased Premises,” located at 402 West First Street in Duluth, Minnesota, from its owner, A&L Properties, LLP. Leased Premises was subsequently sold to DAC, LLC on April 23, 2015; and
- B. WHEREAS, Subtenant entered into a Sublease Agreement with the City for a portion of the Leased Premises on August 24, 2012 (city contract number 21782); and
- C. WHEREAS, Subtenant wishes to continue to utilize the Network Infrastructure service provided by the City; and
- E. WHEREAS, City may provide a Network Infrastructure service to Subtenant under the terms and conditions of this Amendment.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Subtenant agree as follows:

1. The following amendment is made to Article I of the Sublease Agreement (additional text is underlined and deleted text is struck through):

ARTICLE I DEFINITION

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Additional Rent: shall mean Subtenant’s allocated share of the costs of operating the Workforce Center on the Leased Premises as set forth in the approved CAP including but not limited to Subtenant’s share of the rental of Shared Space, Cleaning Charges, Reception Area and Related Expenses, Resource Area and Related Expenses, Shared Fixed Expenses, Shared Variable Expenses and Site Management and Administrative Support Expenses.
- B. Agencies: shall mean various other public and private entities in addition to City and Subtenant providing workforce services in the Workforce Center to persons in the Duluth Superior Area with which the City may enter into sublease agreements for use of the Subleased Premises.

- C. Base Rent: shall mean the monthly rate per square foot payable by Subtenant to City for the use of Dedicated Space as set forth in Paragraph A of Article ~~IV~~ III below. Provided however, that Base Rent shall not include Subtenant's Additional Rent.
- D. Building: shall mean the building located on the Property.
- E. Cleaning Charges: shall mean the amount paid to City by Subtenant for the provision of Cleaning Services determined as set forth in the CAP.
- F. Cleaning Services: shall mean the performing routine cleaning of the Subleased Premises including but not limited to vacuuming, sweeping, mopping, washing, polishing of flooring surfaces, window washing, cleaning of wall and ceiling surfaces, picking up of trash and debris and emptying of waste receptacles in and over the entirety of the Subleased Premises.
- G. Cost Allocation Plan or CAP: shall mean the plan, developed and approved as provided for in Article II below, for the allocation the Additional Rent between City, Subtenant and Agencies.
- H. Dedicated Space: shall mean the portion of the Leased Premises subleased to Subtenant for its exclusive use as shown on Exhibit B attached hereto and made a part hereof
- I. DEED CAP Policies: shall mean the "Multi-Program Administrative Requirements" promulgated by the State of Minnesota Department of Employment and Economic Development attached hereto and made a part hereof as Exhibit C.
- J. Director: shall mean Director of the Department of Business and Community Development or the person designated to act on behalf of him/her with regard to this Agreement.
- K. Lease: shall mean the Lease Agreement between City and A & L Partnership LLP dated _____ pursuant to which the City Leased the Leased Premises from A & L Partnership for the Workforce Center.
- L. Leased Premises: shall mean those portions of the Building leased to City pursuant to the Lease for the operation of the Workforce Center and as the same may be, from time to time, modified as provided for Lease, a portion of which is subleased to Subtenant.
- M. Network Infrastructure: shall mean the equipment and software enabling internet access and service, including cables, routers, switches, firewalls internet filters, intrusion detection and access points.
- ~~MN.~~ Property: shall mean that property located in St. Louis County. Minnesota legally described as: Lot 65, West Superior Street, DULUTH PROPER First Division.
- ~~NO.~~ Rent: shall mean the Base Rent and Additional Rent.
- ~~OP.~~ Subleased Premises: shall mean the Dedicated Space and the rights to use the common areas as described in Paragraph B. of Article III below and as depicted on Exhibit A attached hereto and made a part hereof.
- ~~OQ.~~ Sublessees: shall mean subtenants of Subtenant to which Subtenant subleases the Subleased Premises under such terms and conditions as Subtenant shall deem appropriate.
- ~~PR.~~ Tenant Committee: shall mean a committee created and operating as described in Paragraph A of Article II below.

- ~~Q-S.~~ Tenant Improvements: shall mean floor coverings, wall surface treatments within the Subleased electrical wiring, telephone wiring and cable systems to serve needs of the Subtenant and Sublessees, ceilings within the Subleased Premises and any other improvements within the Subleased Premises to meet the needs of Subtenant as a tenant and any subtenants of Subtenant.
- ~~R-T.~~ Term: shall mean the term as stated in Article V. below.
- ~~S-U.~~ Usable Area (the "UA"): shall mean that portion of each floor of Building included in the Leased Premise computed by measuring from the finished surface of the leased side of any corridor and other permanent walls, and the dominant portion and/or a major vertical penetration and the center of partitions that separate the Leased Premises from adjoining space; no deductions shall be made for columns and projections necessary to the Building.
- ~~T-V.~~ Workforce Center: shall mean a joint enterprise pursuant to which City, Subtenant and Agencies jointly offer various forms of workforce assistance to residents of the Duluth-Superior Area in a coordinated manner at a single location.

2. The following section is added to Article IV of the Sublease Agreement (additional text is underlined):

D. Charges for Network Infrastructure

1. The City agrees to provide Subtenant with the following service under the fee structure indicated below: network infrastructure for bandwidth up to OC-12:

<u>Service</u>	<u>Fee to Subtenant</u> <u>Effective September 1, 2015</u>
<u>Network Infrastructure</u>	<u>\$30.00/month</u>

2. All fees for the above service are subject to an annual change. City will provide Subtenant with written notice of any increases at least thirty (30) days prior to the effective date of the increase.

3. The following amendment is made to Article VI of the Sublease Agreement (deleted text struck through):

B. Utilities

Pay any and all charges for utilities furnished to the Building including but not limited to hook-up charges and assessments related to all utilities, including but not limited to electrical service, ~~fiber optic cable~~, steam, water, sewer and gas. Subtenant shall be responsible for paying for all costs associated with the provision of any other utilities not specified herein to the Subleased Premises and, if desired, the cost of cable TV service.

4. The following amendment is made to Article XI of the Sublease Agreement (additional text is underlined):

A. By Subtenant

Subtenant will to the fullest extent permitted by law but subject to the limitations contained in any applicable Minnesota Statute, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls City within the meaning of Security Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Subleased Premises, or growing out of or in connection with the use or non-use, condition or occupancy of the Subleased Premises, Network Infrastructure or any part thereof; provided that Subtenant's obligations hereunder with regard to the Common Areas as described in Paragraph B of Article III below shall be joint and several with those of other sublessees of City. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Subtenant, customers, suppliers or affiliated organizations under any Worker's Compensation Act, Disability Benefit Acts or any other Employee Benefits Act.

5. The following amendments are made to Article XIII of the Sublease Agreement (additional text is underlined and deleted text is struck out):

ARTICLE XIII DEFAULTS AND REMEDIES THEREFORE

A. City Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by City under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.

- a. City shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of City pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Subtenant has, pursuant to the provisions of this Agreement, given written notice to City of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- b. City shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Building.
- c. City makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to City or its business; or City files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or

similarly under any present or future bankruptcy or insolvency statute, law or regulation; or City files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within thirty (30) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of City's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of City of any trustee, receiver or liquidator of any material part of City's properties.

- d. A default by City in the Lease resulting in termination thereof.

2. General Remedies

Except as otherwise set forth in this Agreement, Subtenant shall have the following remedies in the event of a default by City:

- a. Terminate this Agreement, subject to rights conferred on City by applicable State Statute.
- b. Seek and be entitled to monetary damages, including consequential damages from City for any damages, including consequential damages incurred by Subtenant as a result of City's default.
- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent City's violation of the terms and conditions of this Agreement or to compel City's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Subtenant.

B. Subtenant Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Subtenant under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.

- a. Subtenant shall fail to pay any Rent or other payment due to City under Article ~~IV~~^{III} above within ten (10) days of the date said payment is due.
- b. Subtenant shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of Subtenant pursuant to this Agreement and such failure shall continue for a period of thirty(30) calendar days after City has, pursuant to the provisions of this Agreement , given written notice to Subtenant of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period , shall have failed to commence to cure said. default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- c. Subtenant shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Subleased Premises with the exception of assignments approved pursuant to the terms of this Agreement.

2. General Remedies

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Subtenant:

- a. Terminate this Agreement and, at its discretion, retake the Subleased Premises from Subtenant, subject to rights conferred on Subtenant by applicable State Statute.
- b. Seek and be entitled to monetary damages, including consequential damages from Subtenant for any damages incurred by City as a result of Subtenant's default.
- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Subtenant's violation of the terms and conditions of this Agreement or to compel Subtenant's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

C. Limitations of Liability and Damages Related to Network Infrastructure and Telecommunications Services.

1. To the maximum extent permitted by law and except as provided for herein, the City's liability arising under or in connection with this agreement, and/or any services delivered or failed to be delivered under this agreement, shall be limited to the actual direct damages suffered by subtenant, not to exceed the amount actually paid by subtenant for the service giving rise to the claim. Total aggregate liability for all claims shall be limited to an amount equal to the total fees actually paid by subtenant to City for the services during the six months immediately preceding the most recent claim.
2. Without limiting the generality of the foregoing, due to the nature of internet and wireless transmissions, Subtenant agrees that City shall not be liable for any loss, cost or damages of any kind arising out of or in connection with: any lack of privacy or security of wireless transmissions; wireless data services, interoperability, access or interconnections with the City system or the City services; wireless data service defects, service levels, delays or interruptions; lost or altered messages or transmissions; or unauthorized access to or theft, alteration, loss or destruction of Subtenant's content, data, programs, confidential information or systems.

D. Exclusion of Warranties

1. All services are provided "as is" without warranty or representation of any kind. Without limiting the generality of the foregoing, the City hereby disclaims all other representations, warranties and conditions, express or implied, whether arising under statute, from a course of dealing, usage, custom or the trade or otherwise, regarding the services provided or failed to be provided under this agreement, including, but not limited to, any implied warranty or condition of merchantable quality, merchantability,

durability, fitness for a particular purpose, non-infringement, accessibility, privacy of files or security.

2. City does not warrant that the services provided hereunder will be unaffected by bugs, viruses, errors or other program limitations, nor does City warrant that Subtenants use thereof will be uninterrupted, error free or will meet all of the Subtenants requirements. In addition, the wireless data services are not guaranteed against eavesdroppers, hackers, denial of service attacks or interceptors and City does not guarantee the privacy or security of wireless transmission.

EE. Non-Waiver

The waiver by the non-defaulting party of any default on the part of defaulting party or the failure of non-defaulting party to declare default on the part of defaulting party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of defaulting party of the same or of any other obligation of defaulting party hereunder. And, to be effective, any waiver of any default by a defaulting party hereunder shall be in writing by non-defaulting party.

DF. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

EG. Attorneys' Fees

In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

5. Except as provided in this Amendment, all terms and conditions of the Sublease shall remain in force and effect.

[Remainder of page intentionally left blank. Signature page follows.]

WHEREFORE, City and Subtenant have executed this Amendment as of the date first above written.

CITY OF DULUTH

By: _____
Mayor

Attest:

By: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

**NORTHEAST MINNESOTA OFFICE OF
JOB TRAINING**

By: _____

Its: _____
Title of Representative

Date: _____