

LEASE AGREEMENT

This *LEASE AGREEMENT*, entered into this 1st day of February, 2010, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, LESSOR, and the NORTHERN ARIZONA COUNCIL OF GOVERNMENTS, a non-profit organization, LESSEE;

WITNESSETH:

WHEREAS, the LESSOR owns a building at 3045 Tani Road which formerly housed the Community Development Department (Premises); and

WHEREAS, LESSOR previously entered into a lease agreement with the Prescott Valley Economic Development Foundation (PVEDF) to provide a business incubator program for economic development activities on the Premises; and

WHEREAS, Said lease agreement provided for improvements to the building by PVEDF as part of the consideration paid for the lease; and

WHEREAS, PVEDF discontinued its use of the Premises in early 2008; and

WHEREAS, LESSEE operates the Head Start program which, in turn, includes early childhood education services for families; and

WHEREAS, LESSEE desires to use the Premises to provide early childhood education services in the Prescott Valley area; and

WHEREAS, Arizona cities and towns may lease any of their property at their discretion so long as the terms are in the best interests of the community and don't constitute an improper subsidy. [See, Hertz Drive-Ur-Self Sys. v. Tucson Airport Auth., 81 Ariz. 80 (1956); City of Tempe v. Pilot Properties, Inc., 22 Ariz. App. 356 (App. 1974)]; and

WHEREAS, LESSEE has proposed to make additional improvements to the Premises in return for the expenditures be credited against the market rent which would be charged by LESSOR; and

WHEREAS, LESSOR's Town Council has determined that it is in the best interests of the community that the Premises, not now needed for public purposes, be leased on the terms described herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. DEMISED PREMISES

LESSOR does by these presents lease and demise to LESSEE, under the terms and conditions set forth herein, the former Community Development Building as shown in Exhibit "A" attached hereto and expressly made a part hereof (hereinafter the "Premises").

In accepting this lease of the Premises, LESSEE acknowledges that it has had ample opportunity to inspect the same and consents and agrees to enter, lease, occupy and use the same in its current conditions, "as-is" on the date first-above written.

2. TERM

The Term of this *LEASE AGREEMENT* shall be three (3) years from and after February 1, 2010, renewable at LESSEE's sole option for one (1) year periods up to a total of 5 additional years. LESSEE must exercise each of said options in writing no earlier than January 1 and no later than April 1 of each calendar year of the Lease Term, beginning with January 1, 2012. LESSEE's options hereunder shall continue only so long as LESSEE is in substantial compliance with the terms and conditions of this *LEASE AGREEMENT*.

3. RENT

Rent paid to LESSOR by LESSEE for the Premises shall be \$1.00 per year payable to the Office of Management Services, 7501 East Civic Circle, Prescott Valley, Arizona, 86314.

4. SALE OF PREMISES

LESSOR shall not sell or otherwise convey any portion of the Premises during the Term of this *LEASE AGREEMENT* without the express written consent of LESSEE, so long as LESSEE is in substantial compliance with the terms and conditions of this *LEASE AGREEMENT*.

In the event of a sale or other conveyance of the Premises during the Term of this *LEASE AGREEMENT*, the depreciated value of any LESSEE Improvements to the Leased Premises (including the mutually-agreed-to value of donated labor and materials that resulted in LESSEE Improvements) shall either be (a) applied to the purchase price paid by LESSEE, or (b) reimbursed to LESSEE by the ultimate purchaser to the extent allowed by law. In the event of a sale or other conveyance of the Premises (or any part thereof) during the Term of this *LEASE AGREEMENT*, the rent payments made by LESSEE hereunder for said Premises shall be applied on a pro-rata basis towards any purchase price paid by LESSEE as the successful bidder.

5. USE OF PREMISES

The Premises are hereby leased and demised to LESSEE for the broad purpose of conducting thereon early childhood education programs for families. LESSEE agrees that no part of the Premises will be used for any other purpose unless LESSOR gives prior written consent, which consent shall not be unreasonably withheld.

LESSEE further agrees to use the Premises in a manner which does not materially damage the same, and to surrender possession of the same at the expiration of this *LEASE AGREEMENT* in as good condition as normal wear and tear and reasonable and careful use will permit. LESSEE specifically agrees, in this regard, not to release or to allow to be released hazardous materials in, on, or upon any part of the Former Community Development Building in violation of Federal, State, or local law.

6. LESSEE'S COMPLIANCE WITH LAWS

LESSEE shall comply fully with all applicable laws, statutes, ordinances or regulations regarding operation of its programs and other use of the Premises, including (but expressly not limited to) all sanitary and health regulations.

7. INSURANCE

LESSEE at its expense shall, at all times during the term of this *LEASE AGREEMENT* and any extension thereof, maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Arizona. Each policy shall be written on an occurrence basis and shall insure both LESSEE and LESSOR against liability for injury to persons and property and the death of any person or persons occurring in, on or about the Former Community Development Building, or arising out of LESSEE's maintenance, use and occupancy thereof. The described insurance shall afford protection of not less than Two Million Dollars \$2,000,000.00 in combined single limits for bodily injury and property damage.

All public liability and personal property damage policies shall contain a provision that LESSOR, named as an additional insured, shall be entitled to recovery under the policies for any loss occasioned by it, its officers, employees, agents and successors, by reason of the negligence or wrongdoing of LESSEE, its employees, agents, assigns, and sublessees. Furthermore, the policies shall provide that their coverage is primary over any other insurance coverage available to the LESSOR, its officers, employees, agents and successors. All such policies of insurance shall also contain a provision that the company writing the policy will give to LESSOR thirty (30) days' written notice in advance of

any cancellation or lapse, or the effective date of any reduction in amounts of insurance.

If at any time LESSEE fails, neglects or refuses to cause such insurance to be provided and maintained, then LESSOR may, at its sole option, procure or renew such insurance, and any amounts paid therefor by LESSOR shall be an additional amount due from LESSEE at any next rent payment date. LESSEE's obligations to carry the insurance provided for herein may be satisfied through coverage of a so-called blanket policy or policies of insurance maintained by LESSEE, provided that the coverage afforded LESSOR will not be reduced by reason of the use of such blanket policy of insurance. Copies of certificates of the needed insurance shall be delivered to LESSOR prior to LESSEE's occupancy of the Former Community Development Building. At LESSOR's option, LESSEE shall also provide LESSOR complete copies of the required insurance policies.

8. INDEMNIFICATION

Irrespective of any insurance carried by LESSEE for the benefit of LESSOR, LESSEE hereby expressly agrees to indemnify and hold LESSOR, its officers, employees, agents and successors, harmless, or cause LESSOR, its officers, employees, agents and successors, to be indemnified and held harmless from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including attorney's fees and costs, which may be imposed upon or incurred by or asserted against LESSOR, its officers, employees, agents and successors, by reason of the following: (i) any accident, injury or damage to any person or property occurring on or about the Premises or any portion thereof; (ii) any use, nonuse or condition of the Premises or any portion thereof; or (iii) any failure on the part of LESSEE to perform or comply with any of the provisions of this *LEASE AGREEMENT*; except that none of the foregoing shall apply to LESSOR's intentional conduct or active negligence. In case any action or proceeding is brought against LESSOR, its officers, employees, agents and successors, by reason of any such occurrence, LESSEE, upon LESSOR's request and at LESSEE's expense, shall resist and defend such action or proceeding, or cause the same to be resisted and defended, either by counsel designated by LESSEE or, where such occurrence is covered by liability insurance, by counsel designated by the insurer.

LESSEE shall protect, defend, indemnify and hold harmless LESSOR, its officers, employees, agents and successors, from and against all liabilities, costs, charges and expenses, including attorneys' fees and court costs, arising out of or related to the presence of or existence of any substance regulated under any applicable federal, state or local environmental laws, regulations or ordinances (or amendments thereto) because of: (a) any substance that came to be located on the Premises because of any use or occupancy of the premises by LESSEE before or after the issuance of the *LEASE AGREEMENT*; or (b) any release, threatened release,

escape, substance in, on, under or from the Premises caused, in whole or in part, by any conduct, actions or negligence of LESSEE, regardless of when such substance came to be located on the Premises.

For the purposes of this Section 8, the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", "hazardous substances", "hazardous materials", "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act (42 USC §§6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §§9601 et seq.), the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the 1986 Superfund Amendments and Reauthorization Act, the Federal Underground Storage Tank provisions (40 CFR §§280.60 through 280.67), the Safe Drinking Water Act (42 U.S.C. §300[F], et seq.), the Occupational Health and Safety provisions (29 CFR §§651 et seq.), the Clean Air Act (NESHAP) (42 U.S.C. §§7412 et seq.), the Arizona Underground Storage Tank provisions (A.R.S. §§49-1001 et seq.), the Arizona Solid Waste Management provisions (A.R.S. §§49-701 et seq.), the Arizona Hazardous Waste Disposal provisions (A.R.S. §§49-901 et seq.), other relevant local environmental laws, and the regulations, rules and ordinances adopted and publications promulgated pursuant to these laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged strict liability on the part of LESSOR. This environmental indemnity shall survive the expiration or termination of this *LEASE AGREEMENT* and/or any transfer of all or any portion of the Premises, and shall be governed by the laws of the State of Arizona.

In the event any such action or claim is brought or asserted against LESSOR, LESSEE shall have the right (subject to the right of LESSOR to make all final decisions with respect to LESSOR's liability for claims or damages) to (i) participate with LESSOR in defense of the claim or action, (ii) participate with LESSOR in negotiating any agreement or settlement with respect to any such claim or cleanup, and (iii) participate with LESSOR in the conduct of any required cleanup, removal or other remedial action.

9. MAINTENANCE AND REPAIRS

In connection with its obligations in Section 5 hereinabove, LESSEE shall be solely responsible for maintaining and repairing the Premises during the Term of this *LEASE AGREEMENT* as it applies to said Premises (except as otherwise expressly set forth hereinafter).

LESSEE's responsibility hereunder for maintenance and repair includes (but is expressly not limited to) maintenance and repair of foundations, interior and exterior walls, ceilings and roofs, electrical, plumbing and sewage systems, heating, ventilating and air-conditioning systems, interior wall coverings, floor coverings, personal property, fixtures, signs, equipment, inventory, windows and window frames, gutters and downspouts, interior and exterior lighting facilities, sidewalks, landscaping, parking lots, entrances, drainage ditches, and surrounding fields. With regard to sidewalks, landscaping, parking lots, entrances, drainage ditches and surrounding fields, maintenance includes (but is not limited to) mowing, weeding, snow and ice removal, sweeping, and litter removal.

If LESSEE fails or chooses not to complete its maintenance and repair obligations hereunder, LESSOR may perform said obligations and shall have the right to be reimbursed for the amount LESSOR actually expends in performance of LESSEE'S obligations as additional rent or as a set-off against rent credits (at LESSOR's sole option). Said amounts shall be due and payable as additional rent during the first full month that is at least fifteen (15) calendar days after the date of an invoice for said amounts mailed to LESSEE as provided for in Section 26 hereinafter.

Notwithstanding the general requirements of this Section 9, in the event of damage to the Premises that is covered by any property insurance policy or policies carried by LESSOR, LESSOR shall apply any insurance payments thereunder to repair said damage. However, nothing herein shall require LESSOR to expend more money towards said repairs than LESSOR received as an insurance payment for the damage.

10. ADDITIONS AND ALTERATIONS

- (A) LESSEE may make additions to or alterations of the interior or exterior of the Premises at its own expense; provided, however, that prior to commencing any such work, LESSEE shall first obtain written consent from LESSOR. LESSEE shall comply fully with all applicable laws, regulations or ordinances controlling the construction of any additions or alterations, including (but expressly not limited to) the requirements of the Americans with Disabilities Act and the Arizonan's with Disabilities Act.
- (B) All additions and alterations which are permanent in nature shall become property of LESSOR upon termination of this *LEASE AGREEMENT*.
- (C) LESSEE shall repair any damage to the Premises caused by removal of any of LESSEE'S additions or alterations.

(D) Nothing herein shall preclude LESSOR from making such additions or alterations to the Premises as it deems necessary in its sole discretion and at its expense. Any such additions or alterations shall become the property of LESSOR upon termination of this *LEASE AGREEMENT*.

11. UTILITY FEES, TAXES AND ASSESSMENTS

LESSEE shall obtain any water, sewer, garbage, electrical, gas and telecommunication utility services required for the Premises at LESSEE'S sole expense, including any start-up or initiation expenses. LESSEE shall be solely responsible for any taxes and assessments applied to LESSEE'S interest in either the Premises or this *LEASE AGREEMENT*.

12. ASSIGNMENT/SUBLETTING

LESSEE agrees that it will not assign any interest in this *LEASE AGREEMENT* without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

13. ENTRY OF LESSOR

LESSOR reserves the right, upon ten (10) days' written notice to LESSEE of its intent to do so, to enter upon any portion of the Premises at reasonable times for the purpose of inspecting said Premises or showing the same to prospective tenants or purchasers.

14. REMEDIES UPON BREACH

All of the provisions of this *LEASE AGREEMENT* are conditions. Breach of any one of these conditions by LESSEE or any sublessee shall be sufficient grounds for cancellation of this *LEASE AGREEMENT* by LESSOR, subject to the other provisions of this *LEASE AGREEMENT*. In that event, LESSOR may declare LESSEE'S interest forfeited, and LESSOR shall be forever wholly absolved from liability for any damages which might result to LESSEE or any sublessee because of the *LEASE AGREEMENT* being canceled or forfeited prior to the expiration of the full Term.

In the event of a breach of this *LEASE AGREEMENT* which is either not curable or remains uncured after thirty (30) days' written notice by LESSOR to LESSEE of failure to pay rent, taxes or other assessments (or which remains uncured after forty-five (45) days' written notice by LESSOR to LESSEE of failure to satisfy the other conditions of this *LEASE AGREEMENT*), LESSOR may, in addition to all other remedies available to LESSOR in law or in equity, (i) enter and repossess the Premises or any part thereof, expelling and removing therefrom all persons and property and either storing property at LESSEE'S risk and expense or otherwise disposing

thereof (as to which LESSOR shall not be liable to LESSEE or any sublessee for any claim for damages or loss which may thereby occur), and (ii) either (a) terminate this *LEASE AGREEMENT* holding LESSEE liable for damages for its breach, or (b) treat the *LEASE AGREEMENT* as having been breached anticipatorily and the Premises abandoned by LESSEE, without thereby altering LESSEE's continuing obligations for payment of rent and performance of those provisions to be performed by LESSEE during the *LEASE AGREEMENT* Term.

In the event of such breach by LESSEE, LESSOR has the right to recover from LESSEE:

- (1) The worth, at the time of the award:
 - (i) of unpaid rent which had accrued before the date of termination of the *LEASE AGREEMENT*; or
 - (ii) of unpaid rent which would have been earned during the remainder of the original term of the *LEASE AGREEMENT* between the date of termination of the *LEASE AGREEMENT* and the date of the award; or
 - (iii) of unpaid rent which would have been earned during the remainder of the original term of the *LEASE AGREEMENT* after the date of the award;less any amounts which LESSEE proves could have been reasonably avoided if LESSOR had mitigated its damages.
- (2) Any other amount, including court costs, necessary to compensate LESSOR for all detriment proximately caused by LESSEE'S breach.

[NOTE: The "worth at the time of the award" referred to in this Section is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).]

LESSEE shall pay to LESSOR upon demand all costs, expenses and fees, including attorneys' fees, which LESSOR may reasonably incur in connection with the exercise of any remedies on account of or in connection with any breach by LESSEE, plus interest on all amounts due from LESSEE to LESSOR at the rate set by the Arizona State Treasurer according to law.

The remedies herein granted to LESSOR shall not be exclusive or mutually exclusive, and LESSOR shall have such other additional remedies against LESSEE as may be permitted in law or in equity at any time. Provided, however, that LESSOR shall not be relieved of any obligation imposed by law for mitigation of damages, nor shall LESSOR recover any duplicate damages. Any exercise of a right of termination by LESSOR shall not be construed to end or discharge any right of LESSOR to damages because of LESSEE'S breach.

Upon ninety (90) days' written notice to LESSOR, LESSEE may terminate this *LEASE AGREEMENT*. However, all rental payments due through the date of termination given in said notice shall first be paid in full to LESSOR.

15. SURRENDER OF PREMISES

LESSEE shall, upon termination of the *LEASE AGREEMENT*, quit and surrender the premises in good order and condition and repair, reasonable wear and tear and acts of God excepted.

16. SIGNAGE

Any exterior signage installed by LESSEE on the Premises shall comply in all respects with LESSOR's technical building codes and zoning codes, where applicable.

17. BANKRUPTCY

If (i) all or substantially all of LESSEE's assets are placed in the hands of a receiver, and such receivership continues for a period of thirty (30) days; or (ii) LESSEE makes an assignment for the benefit of creditors; or (iii) LESSEE institutes any proceedings under any present or future provisions of the Bankruptcy Code or under a similar law wherein LESSEE seeks to be adjudicated as bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization; or (iv) any involuntary proceedings are filed against LESSEE under such bankruptcy laws and are not dismissed or otherwise removed within ninety (90) days after their filing, then this *LEASE AGREEMENT* shall not become an asset in any of such proceedings or assignment. In addition to all other rights and remedies of LESSOR provided hereunder or by law, LESSOR shall then have the right to declare the term of this *LEASE AGREEMENT* at an end, to re-enter the Premises, to take possession, and to remove all persons; and LESSEE shall have no further claim on the Premises under this *LEASE AGREEMENT*.

18. INTERPRETATION

Whenever any word is used in this *LEASE AGREEMENT* in the masculine gender, it shall also be construed as being used in the feminine and neuter genders, and singular usage shall include the plural and vice versa, all as the context shall require.

19. PARTIAL INVALIDITY

If any provision of this *LEASE AGREEMENT* is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.

20. MARGINAL HEADINGS

The marginal and topical headings of the paragraphs of this *LEASE AGREEMENT* are for convenience only, and are not to be considered a part of this *AGREEMENT* or used in determining its content or context.

21. MODIFICATION

Any modification or amendment of this *LEASE AGREEMENT* shall be in writing and shall be executed by all parties.

22. SUCCESSION OF BENEFITS

The provisions of this *LEASE AGREEMENT* shall inure to the benefit of and be binding upon the parties thereto, their heirs, executors, successors, administrators, and permitted assigns.

23. TIME

Time is of the essence in this *LEASE AGREEMENT* for each and every term, condition, covenant and provision.

24. APPLICABLE LAW AND VENUE

This *LEASE AGREEMENT* shall be interpreted and enforced pursuant to the laws of the State of Arizona, and shall be considered made and entered into in Yavapai County.

25. CONFLICT-OF-INTEREST

Pursuant to A.R.S. §38-511, any contract to which subdivisions of the State are a party may be canceled without penalty within three (3) years after its execution, if any person significantly involved in .initiating, negotiating, securing, drafting or creating the contract on behalf of the subdivision is, at any time while the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party with respect to the subject matter.

26. NOTICES

Whenever under this *LEASE AGREEMENT* a provision is made for any demand, notice or declaration of any kind, it shall be in writing and served either personally or sent by certified United States mail, postage prepaid, addressed at the addresses as set forth below:

To LESSEE: Northern Arizona Council of Governments
Jesse Rodriguez
c/o Head Start Director
121 E. Aspen Avenue
Flagstaff, Arizona 86001

To LESSOR: Town of Prescott Valley
Attn: Town Manager
7501 East Civic Circle
Prescott Valley, Arizona 86314

Such notice shall be presumed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this paragraph.

27. ENTIRE AGREEMENT

The terms of this document constitute the entire agreement between the parties, and the parties represent that there are no collateral agreements or side agreements, written or oral, not otherwise provided for within the terms of this *LEASE AGREEMENT*.

28. IN-KIND CONTRIBUTION OF TOWN OF PRESCOTT VALLEY

LESSEE shall claim \$43,000.00 annually as in-kind space donation to be recorded as a non-federal share of the Head Start grant award. This amount shall be increased annually for inflation by three percent (3%) or the Federal rate of inflation, whichever is greater for each subsequent lease year. This amount shall be considered the Fair Market Value of the Premises as outlined in Title 45 CFR 92.94, Uniform Administrative Requirements-States and Local Governments

IN WITNESS WHEREOF, the parties hereto have caused this *LEASE AGREEMENT* to be executed the day and year first-above written.

TOWN OF PRESCOTT VALLEY,
a municipal corporation of Arizona,
LESSOR

By _____
Harvey C. Skoog, Mayor

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____, known to me to be the Executive Director of the Northern Arizona Council of Governments, a non-profit organization, who signed the same on behalf of said organization after being duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

EXHIBIT "A"

Premises

Lot 2229, Unit 6, Prescott Valley
3045 Tani Road
Assessor's Parcel No. 103-26-477

Lots 2223 and 2224, Unit 6, Prescott Valley
(for parking purposes only, in compliance with Prescott Valley
zoning and building codes)