

**LEASE AGREEMENT BETWEEN
MILWAUKEE COUNTY PARKS
AND
AFAR, Inc. d/b/a The Ability Center**

This Lease Agreement (“Agreement”) is made and entered into effective _____, by and between the Milwaukee County Parks (the “County” or “Landlord”) and AFAR, Inc. d/b/a The Ability Center (“Tenant”). Referenced together, the County and the Tenant are the “Parties” to this Agreement.

WITNESSETH:

WHEREAS, the Tenant is a 501(c)(3) nonprofit whose goal is to provide a higher quality of life for people of all abilities by transforming greater Milwaukee into a universally inclusive recreation destination; and

WHEREAS, the Tenant wishes to enter into a lease with the County to use the Wisconsin Park Pavilion located at 10300 W Wisconsin Ave. Wauwatosa, WI 53226, for office and meeting space; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution _____ on _____, has authorized the Parks Department to enter into this agreement with The Ability Center for and on behalf of Milwaukee County; and

WHEREAS, recognizing that the leasing agreement for the use of that certain designated area in Wisconsin Park is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

PROVISIONS:

1. BUILDING AND PREMISES:

The County will rent and the Tenant will lease that portion of the building in Wisconsin Park, located at 10300 W Wisconsin Avenue, Wauwatosa, WI 53226, for the purpose of office and meeting space for the Tenant described in Exhibit A (“Leased Premises”) and will have access to the “Common Area” described below. The Leased Premises and Common Area will be collectively referred to as the “Premises.” A portion of the building is operated by the County as a year-round public restroom (the “Public Area”) and is excluded from the definition of Leased Premises. Tenant will maintain premises in a clean, safe, and accessible manner.

2. TERM:

This Agreement shall commence on the Effective Date and shall terminate one (1) year thereafter (the "Initial Term"); provided, however, that the parties may renew the Agreement for five (5) additional one (1)-year periods if mutually agreeable to both parties (each such period, will be an "Extension Term"). The Initial Term and any Extension Term then effectuated shall be referred to herein as the "Term."

3. RENT:

In lieu of rent, Tenant shall contribute a share of utilities and maintain the building as set forth in Sections 3.1 and 3.2 of this agreement.

3.1. Utilities. Tenant shall pay to the County fifty (50) percent of the actual utility costs per month for the Property. The County shall invoice the Tenant for such Utilities' costs on a monthly basis. Invoices shall be paid within thirty (30) days of issuance. "Utilities" may include sewer, water, gas, telephone, electric, steam, natural gas, and chilled water.

3.2. Maintenance and Repairs:

Tenant shall, at its expense, during the Term of this Agreement, keep and maintain the Leased Premises in good condition and repair so that at the expiration of the Term, the Premises shall be surrendered to County in the same condition or better as of the Agreement's effective date, ordinary wear and tear excepted. County shall have no obligation to make repairs to the Premises. Tenant will make its own repairs and will not subcontract such repairs out to a third party without the express permission of Milwaukee Parks.

4. CONDITION OF THE PREMISES:

County makes no representation or warranty that as of the effective date of this Agreement, all parts of the Premises, including structural elements of the Premises' foundation meet and comply with all federal, state, and local laws, ordinances and regulations at the time of delivery to the Tenant. Tenant acknowledges that it has been made aware by County that the Premises are hereby provided on an "as-is" basis and may or may not prove to be suitable for all purposes contemplated by Tenant, either now or in the future. Tenant further acknowledges that it has freely inspected the Premises and is aware of its general overall condition.

5. PERMITTED USE OF THE PREMISES:

Tenant is hereby authorized and permitted to use the Premises for only those activities directly related to administrative and meeting space activities. No other activities may be conducted on the Premises without the prior written approval of the Parks Director. No political activities may be conducted upon the Premises at any time. There may be no alcohol at any time permitted on the Premises without a paid permit. Additionally, there shall be no parking on the grass for any reason. Finally, the Tenant shall be responsible for all debris that results from their activities on the Premises.

- 5.1. **Compliance with Laws.** Tenant shall, at Tenant's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Premises pertaining to: (a) the physical condition of any improvements constructed by Tenant on the Premises; and (b) Tenant's activities on the Premises.
- 5.2. **Collection and Removal of Trash.** Tenant will dispose of all trash, litter, and garbage associated with the Leased Premises by securely bagging it and leaving it at a place in the Common Area designated by the County or placing it in dumpsters provided at the Premises. Tenant agrees to comply with current recycling efforts and procedures. The Leased Premises and Common Area utilized by the Tenant should be consistently kept clean.
- 5.3. **Cleaning.** The Tenant will share joint responsibility for cleaning the meeting room shown on Exhibit A with the tenant sharing the other half of the Premises. If the tenants cannot agree on how the responsibility should be divided, the County will determine how this will be done in more detail.
- 5.4. **Cleanliness of Surrounding Areas.** Tenant agrees not to accumulate materials, supplies, or equipment which may create a hazard to the public. Continued noncompliance of this provision shall be grounds for Milwaukee County to terminate the contract. County agrees to maintain the Common Area, the Public Area, and the surrounding park area in a state of cleanliness and repair.
- 5.5. **Snow Removal.** Subject to Section 7 below, the County will be responsible for snow removal necessary for the parking lot and access to the Premises.
6. **PUBLIC ACCESS.** Tenant understands, acknowledges, and agrees that Wisconsin Park, including the public restrooms, is a public park and is to remain open and accessible to the public and agrees to maintain the Leased Premises in safe condition.
 - 6.1. **Naming Rights.** Tenant shall not allow or issue "naming rights" to any portion of the Premises or environs for any purposes without the prior written authorization of the Milwaukee County Board of Supervisors.
 - 6.2. **Special Events.** Any special events hosted by Tenant shall be governed by standard Parks Department and Milwaukee County procedures.
 - 6.3. **Signage and Promotions.** All proposed banners, signage and advertising on or within the Premises and temporary or portable structures, must be pre-approved in writing by the Parks Director. Tenant is responsible for all marketing and advertising to promote its activities; and shall acknowledge the

Parks Department and include the Parks' logo in all promotional material generated and controlled by Tenant regarding its activities on the Premises.

6.4. Removal of Equipment and Supplies. Upon expiration or termination of this Agreement for any reason or no reason, Tenant shall remove, at its cost, all of its supplies, structures, displays, furniture, and related items from the Leased Premises within fifteen (15) days of the expiration or termination date, and shall restore the Leased Premises to its prior condition, satisfactory to the Parks Director or his designee. Tenant shall be responsible for any actual documented physical damage to the Leased Premises caused by Tenant, its employees, agents, representatives, and guests. Within three (3) days of the discovery of any such damage, the Leased Premises shall be restored to the satisfaction of the Parks Director or his designee.

7. PARKING:

Tenant understands and acknowledges that the Parks Department will clear snow from a portion of the parking to the best of its ability, which will occur after downtown walkways, areas of commercial activity, parkways, and other priority locations, as assessed by the Parks Department, are cleared of snow.

8. COMMON AREAS:

Tenant and its employees, customers and invitees shall have the reasonable non-exclusive right to use, in common with Landlord, customers, and invitees and all others to whom Landlord has or may hereafter grant rights to use the same, the Common Area and Public Area show on Exhibit A. Landlord shall have the right to close any or all portions of the Common Area or Public Area to an extent as may, in Landlord's opinion, be necessary to prevent a dedication thereof or the accrual of any rights to any person or the public therein. Landlord shall at all times have full control, management and direction of the Common Area and Public Area, and except as provided for in this lease, will clean and maintain the Common Area and Public Area. Tenant shall not cause or allow any storage of materials or equipment outside of the Leased Premises or in the Common Area or the Public Area. Landlord reserves the right at any time and from time to time to close portions of the Premises for security reasons, to perform maintenance, repairs, replacement and alterations; to place signs in the Common Area and on the Leased Premises; to change the name of the Premises; and to perform any other acts as Landlord in the exercise of its good business judgment shall determine to be necessary or appropriate for the Premises.

9. INSPECTION BY COUNTY: County shall at all reasonable times have the right to enter the Premises to inspect the condition thereof; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Tenant's use of the Premises.

10. RENOVATIONS AND IMPROVEMENTS:

- 10.1. Prior Approval.** Improvement of the Premises at any time shall require prior written approval of the Parks Director, a Right of Entry permit from Parks Planning department, and design and construction approvals from the Milwaukee County Division of Architectural and Engineering Services. The Right of Entry permit requirements can be accessed by requesting them from ParksPlanning@milwaukeecountywi.gov. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all construction shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the leased premises.
- 10.2. Lien Waivers.** Tenant shall not permit any mechanics' or materialmen's liens to be levied upon the Premises at any time for any labor or materials furnished to Tenant or to its agents or contractors. Within thirty (30) days of the completion of any renovation, remodeling, or improvements by Tenant's contractor, subcontractors, or suppliers, Tenant shall obtain the appropriate lien waiver from such contractor, subcontractor, or supplier and shall file one (1) copy with the County.
- 10.3. Licensed Tradespersons.** Tenant agrees that all renovations and improvements shall be performed by fully licensed tradespersons who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. The Tenant shall provide the credentials for all project managers or foremen on any and all renovation and improvement projects to Milwaukee County Parks.
- 10.4. Funding of Improvements.** Tenant agrees to provide evidence satisfactory to the County that the total amount of funds necessary to undertake any proposed construction are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction.
- 10.5. Ownership of Improvements.** Upon termination of the Agreement for any reason, including but not limited to, for cause, by mutual written agreement, or by reason of the expiration of any of the calendar terms of the Agreement, all renovations, improvements, or alterations, including generic signage affixed to the Premises, shall become the property of County, at no cost to County.
- 10.6. Targeted Business Enterprises.** If the Tenant undertakes any renovations, improvements, or alterations of the Leased Premises, the Tenant shall comply

with Chapter 42 of the Milwaukee County Code of General Ordinances which requires that the Tenant use good faith efforts to expend 17% of all property maintenance and improvement funds with Targeted Business Enterprise (TBE) firms listed in the Wisconsin Unified Certification Program Directory or the State of Wisconsin Department of Administration (DOA) directory, who may supply construction/maintenance services or materials for property maintenance and improvement. In accordance with this Milwaukee County policy, the Tenant shall ensure that certified firms have the opportunity to participate in the property maintenance and improvement. The efforts employed by the Tenant should be those that one could reasonably expect a Tenant to take if the Tenant were actively and aggressively trying to obtain participation sufficient to meet these established goals. Mere pro forma efforts are not good faith efforts to meet this requirement as detailed in 49 CFR §26.53 and Appendix A to 49 CFR Part. Specifications and required forms are included as attachments. For guidance regarding this requirement, or to obtain a list of certified firms, contact the Community Business Development Partners Department (CBDP) at 414-278-4747. The list of certified firms is also available at <http://app.mylcm.com/wisdot/Reports/WisDotUCPDirectory.aspx> or <https://wisdp.wi.gov/>

11. NONDISCRIMINATION AND AFFIRMATIVE ACTION:

There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises, and Tenant (or any person claiming under or through Tenant) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises. In accordance with Section 56.17 of the Milwaukee County General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, Tenant certifies to the County as to the following:

11.1. Non-Discrimination:

Tenant certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause.

12. INSURANCE:

Before the Effective Date, Tenant shall furnish an original or electronic copy of Certificate(s) of Insurance to the Landlord's Director of Risk Management, which shall be completed by a broker or agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and

which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or electronic copy of the form(s) must have the agent's signature, including the signer's company affiliation, title and phone number, and be sent directly from the agent to Landlord. Landlord shall have no duty to perform under this Lease until such certificate shall have been delivered to Landlord, and no officer or employee other than the Landlord's Director of Risk Management shall have authority to waive this requirement. The liability limits required can be satisfied through a combination of primary and umbrella policies.

Landlord reserves the right to review the insurance requirements of this section during the Term, but in no instance will Landlord allow modification whereupon Landlord may incur increased risk.

Tenant's financial integrity is of interest to Landlord, therefore, subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by Landlord, Tenant shall obtain and maintain in full force and effect for the duration of this Lease and any extension thereof, at Tenant's sole expense, insurance coverage written on occurrence basis, by companies authorized and admitted to do business in and to be served notice in the State of Wisconsin and rated A or better by A.M. Best Company and/or otherwise acceptable to Lessor in the following types:

<u>Type of Coverage</u>	<u>Minimum Limit</u>
Commercial General Liability including Bodily Injury & Property Damage, Contractual Products & Completed Operations & Fire Legal	\$1,000,000 Per Occurrence \$2,000,000 General Aggregate \$1,000,000 on Fire Legal (no sublimits)
Workers' Compensation	Statutory (Waiver of Subrogation required)
Employers' Liability	\$100,000/\$500,000/\$100,000
Comprehensive Automobile Liability Bodily Injury & Property Damage	\$1,000,000 per Accident

Tenant agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- (1) Name the Landlord and its officers, employees, agents and elected representatives as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with Landlord, on Commercial General Liability and Automobile Liability;
- (2) Tenant's insurance shall be deemed primary with respect to any collectible insurance or self-insurance carried by Landlord for liability arising out of Tenant's operations under the contract with Landlord;
- (3) State that the Tenant's insurance is primary without right of contribution from any insurance maintained by Landlord arising out of operations of Tenant.
- (4) Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of Landlord.

Tenant shall notify Landlord in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to Landlord at the following address:

Milwaukee County Risk Management
901 N. 9th Street, Room 302
Milwaukee, WI 53233

It is expressly understood and agreed that all operations of Tenant under this Lease between Landlord and Tenant shall be covered by such policies of insurance or self-insurance as approved by Landlord's Director of Risk Management and that all personal property placed in the Premises shall be at the sole risk of Tenant. The procuring of policies of insurance shall not be construed to be a limitation upon Tenant's liability or as a full performance on its part of the indemnification provisions of this Lease.

13. INDEMNIFICATION:

To the fullest extent permitted by law, Tenant shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Tenant, its agents or employees. Tenant shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

13.1. ENVIRONMENTAL INDEMNIFICATION. Tenant shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Tenant, its contractors, subcontractors, or agents. Tenant hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous

Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

“Hazardous Materials” as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a “hazardous waste” or “hazardous substance” under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

14. ASSIGNMENT / SUBLETTING:

Tenant may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director.

15. TERMINATION:

This Agreement will automatically renew unless either party gives the other written notice not less than 60 days in advance of the beginning of the next sequential renewal term. Either Party may terminate this Agreement with written notice if the Leased Premises must be closed due to failure of the heating system, vandalism, fire, or any other event that makes the Premises uninhabitable. In such event, the Tenant shall be afforded an opportunity to present an alternative proposal to the County to continue operating in the Leased Premises.

16. PARTNERSHIP:

Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors or assigns and the Tenant or its successors or assigns. This Agreement does not create the relationship of principal and agent.

17. FORCE MAJEURE:

In the event that Landlord shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations orders or decrees, riots, insurrection, war, acts of God, inclement weather, or other reason beyond Landlord's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Such failure to perform shall not be grounds for termination or default.

18. CONFLICT OF INTEREST:

During the Term of this Agreement, Tenant shall not hire, retain, or utilize for compensation any member, officer, or employee of the County or any person, who to the actual knowledge of Tenant, has a conflict of interest. Tenant hereby acknowledges that portion of the County's Code of Ethics, which states in part: “No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family may solicit or receive anything of value pursuant to an understanding that such officers or employee's, vote, official actions or judgment would be influenced thereby.”

19. OFFICIAL NOTICES:

All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To Tenant:
The Ability Center
Damian Buchman, Executive Director
10300 W Wisconsin Avenue
Wauwatosa, WI 53226

To County:
Milwaukee County Parks
Guy Smith, Executive Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

20. **AUTHORITY:** If Tenant is a corporation, or limited liability company or other entity, each individual executing this Agreement on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, limited liability company or other entity, as the case may be, and that this Agreement is binding upon said corporation in accordance with its terms without the joinder or approval of any other person.
21. **COUNTY RIGHTS OF ACCESS AND AUDIT:** The Contractor, Tenant, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Tenant, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Tenant, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts shall include a statement that the Contractor, Tenant, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

Signature page follows

DRAFT

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

Tenant:
AFAR, Inc. d/b/a The Ability Center

By _____ Date _____
Damian Buchman, Executive Director

Landlord:
Milwaukee County Dept. of Parks

By _____ Date _____
Guy Smith, Executive Director

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Approved for execution:

Reviewed by:

By: _____ Date: _____ By: _____ Date: _____
Corporation Counsel Risk Management

Approved by:

Approved by:

By: _____ Date: _____ By: _____ Date: _____
County Executive Chris Abele Comptroller Scott B. Manske

Approved as compliant under Sec. 59.42(2)(b)5, Stats.:

By: _____ Date: _____
Corporation Counsel