



COUNTY FACILITIES PLANNING WORK INITIATION REQUEST FORM

Please complete a form for each new proposal review request.

Work Proposal Name:

PEAK Lease & Development Agreement at Tiefenthaler

Date of Request:

3/10/20

Requesting Department:

Parks

Department Contact Name:

Erica Hayden

High Org:

9000

Low Org:**Approval Signature of Department Head:**

DocuSigned by:

Guy Smith

3C64EEF1D1CC409

DESCRIPTION

Please provide a detailed description of the request:

Milwaukee County Parks requests authorization to enter into a Lease Agreement and Development Agreement with the Kellogg PEAK Initiative (" PEAK ") for certain land within Tiefenthaler Park to support the construction of a new community center and associated amenities. The lease is for an initial ten years with eight five-year renewals. PEAK wishes to invest an estimated \$5 million into a renovated and expanded pavilion to house their activities, improve certain areas of the park outside of the building, and partner with other non-profit organizations that are focused in the Midtown neighborhood to bring further investments to the park.

How will this proposal improve your operations, enhance customer service or otherwise benefit your department and the County?

PEAK is a 501(c)3 non-profit organization whose mission is " to bring out the limitless potential in young leaders through extraordinary experiences and nurturing relationships. " PEAK serves about 500 youth each year at their location in Tiefenthaler Park and at their resident camp in Boscobel, WI. The day camp is free for participants and provides a much needed community service in an underserved area. The investment in the building and the shifting of maintenance responsibilities to PEAK will reduce maintenance and deferred maintenance obligations for Parks.

Desired Timeline:**Begin Date:**

4/1/20

End Date:

4/1/20

Duration:

50 years

Anticipated Funding Source (check all that apply and include amount allocated under each category):**Operating Budget:****Capital Budget:****Other (i.e. grants, donations, etc.; please describe):****Request Involves:**

✓ Parks Property

BHD Property



COUNTY FACILITIES PLANNING WORK INITIATION REQUEST DETERMINATION

CFPSC ACTION FOR CFPSC USE ONLY

CFPSC Project Tracking #:

2020-005

TYPE OF REQUEST (Refer to paragraph 4.3 of the CFPSC charter for more details)

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> 1. Property Management | <input type="checkbox"/> 2. Move Management | <input type="checkbox"/> 3. Property Improvements |
| <input type="checkbox"/> 4. New Footprint | <input type="checkbox"/> 5. Contractual Obligations | <input type="checkbox"/> 6. Centralized Facilities Management Process Improvement |

CFPSC Review Comments:

FOR EASEMENTS ONLY

Reviewed & Recommended for Approval:

DAS — FM, AE&ES (Legal Description)

Director, DAS

Corporation Counsel

Note:

1. Easements affecting lands zoned "Parks" require County Board approval.
2. Forward a copy of the recorded easement to AE&ES.

CFPSC RECOMMENDATION

The County Facilities Planning Steering Committee reviewed this proposal on . As evidenced by the authorized signature below, the County Facilities Planning Steering Committee recommends approval of this proposal.

Chair or Vice-Chair:

Date:

County Facilities Planning Steering Committee



March Board Cycle

Milwaukee County Parks

9480 Watertown Plank Rd.

Wauwatosa, WI 53226

(414) 257-PARK

Date: February 19, 2020

To: Theodore Lipscomb, Sr., Chairman, County Board of Supervisors

From: Guy Smith, Executive Director, Milwaukee County Parks

Subject: **Authorization to enter into a Lease Agreement and Development Agreement with the Kellogg PEAK Initiative in Tiefenthaler Park – ACTION**

Issue

Milwaukee County Parks requests authorization to enter into a Lease Agreement and Development Agreement with the Kellogg PEAK Initiative ("PEAK") for certain land within Tiefenthaler Park to support the construction of a new community center and associated amenities.

Background

In 2009, Milwaukee County entered into a 5-year lease with renewal extensions for up to 20 years for the pavilion in Tiefenthaler Park with the Lake Valley Camp non-profit organization. Lake Valley Camp rebranded in 2018 as the Kellogg PEAK Initiative and except for the name change is the same organization. PEAK is a 501(c)3 non-profit organization whose mission is "to bring out the limitless potential in young leaders through extraordinary experiences and nurturing relationships." PEAK serves about 500 youth each year at their location in Tiefenthaler Park and at their resident camp in Boscobel, WI. Their organization has been successful in its mission and has outgrown their current facility in the park. PEAK is seeking to construct a new community center building with associated amenities at the location of the existing pavilion. In support of this project, Parks would enter into a new lease with PEAK to replace the existing lease.

Over the last few years, leadership from PEAK and Milwaukee County Parks have met to discuss the long-term future for PEAK in Tiefenthaler Park. In addition to the renovation of the pavilion, PEAK has invested in improvements in the park including to help coordinate the installation of peace posts and the basketball court revitalization in 2018. It is the desire of Parks to keep PEAK in their current location as they grow due to the positive after-school and summer programming that they provide, the "safe space" that the Tiefenthaler pavilion has become in the park, and the overall investment that PEAK continues to make despite Milwaukee County's financial challenges.

Milwaukee County Parks provided an informational report to the Milwaukee County Board of Supervisors in the January 2020 cycle that described the proposed project (File No. 20-87). This report described the thorough public outreach that was conducted in support of the project and the primary concerns from residents that will be addressed through new



investments. The master plan that was created addresses the community desires along with an expansion of PEAK's presence through a renovated building. The combination of creating new public park improvements along with the expansion of youth engagement and programming through PEAK creates great potential for Tiefenthaler Park to become an important community center in the Midtown neighborhood.

PEAK wishes to invest an estimated \$5 million into a renovated and expanded pavilion to house their activities, improve certain areas of the park outside of the building, and partner with other non-profit organizations that are focused in the Midtown neighborhood to bring further investments to the park. In order to provide the certainty that is needed for such a large investment, PEAK would enter into a long-term lease agreement to remain in the park. If fully realized, this project could result in a complete transformation of the park that has not seen significant investment in decades and strengthen the long-term programming partnership that has been built to provide positive activities for youth in Milwaukee.

Lease Terms

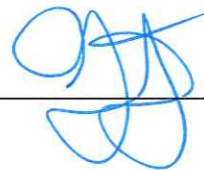
A new long-term lease is required as the current lease does not adequately capture the relationship between the County and PEAK with regard to the new improvements. The lease is for 10 years with eight 5-year extensions. PEAK will be required to operate the new facility in support of its non-profit use and educational and recreational programs. PEAK will be required to maintain the building and is required to establish a maintenance reserve fund for the maintenance and repair of the structure. The lease requires that the new structure is to be a public facility and allow for public access.

Recommendation

Parks respectfully requests authorization to enter into a Lease Agreement and Development Agreement for certain land within Tiefenthaler Park for the existing pavilion and adjacent areas to support the construction of a new community center building with the Kellogg PEAK Initiative.

Prepared By: Jim Tarantino, Director of Recreation and Business Services, Milwaukee County Parks

Approved By: Guy Smith, Executive Director, Milwaukee County Parks



Attachments

- Resolution
- Fiscal Note
- Lease Agreement
- Leased Premises
- Development Agreement



Copy

- Chris Abele, County Executive
- Raisa Koltun, Chief of Staff, County Executive's Office
- Jason Haas, Parks, Energy & Environment Chair, Supervisor District 14
- Sheldon Wasserman, Parks, Energy & Environment Vice-Chair, Supervisor District 3
- Marcelia Nicholson, Parks, Energy & Environment Committee Member, Supervisor District 5
- Felesia Martin, Parks, Energy & Environment Committee Member, Supervisor District 7
- Steven Shea, Parks, Energy & Environment Committee Member, Supervisor District 8
- Supreme Moore-Omokunde, Supervisor District 10
- Kelly Bablitch, Chief of Staff, County Board of Supervisors
- Kelsey Evans, Committee Coordinator, Office of the County Clerk
- Emily Peterson, Research & Policy Analyst, Office of the Comptroller
- Pam Mathews, Budget & Management Analyst, DAS -Office of Performance, Strategy & Budget



MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: February 19, 2020

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Authorization to enter into a Lease Agreement and Development Agreement with the Kellogg PEAK Initiative for the construction of a new community center and public improvements to the pavilion structure in Tiefenthaler Park.

FISCAL EFFECT:

- | | |
|--|---|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input checked="" type="checkbox"/> Existing Staff Time Required | <input checked="" type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures
(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues |
| <input type="checkbox"/> Absorbed within Agency's Budget | <input type="checkbox"/> Decrease Capital Revenues |
| <input type="checkbox"/> Not Absorbed within Agency's Budget | |
| <input checked="" type="checkbox"/> Decrease Operating Expenditures | <input type="checkbox"/> Use of contingent funds |
| <input type="checkbox"/> Increase Operating Revenues | |
| <input type="checkbox"/> Decrease Operating Revenues | |

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	(\$1,000)
	Revenue	0	0
	Net Cost	0	(\$1,000)
Capital Improvement Budget	Expenditure	0	(\$75,300)
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.
-
- A. Authorization for Milwaukee County Parks to enter into a lease agreement to redevelop the Tiefenthaler Park pavilion with the Kellogg PEAK Initiative ("PEAK"). This project would shift all operational expenses of the pavilion to UEC (\$1,000 per year), reduce deferred maintenance to Parks with regard to the assets included in the project (\$753,000 over 10 years), and result in new improvements funded for Parks that were otherwise included in the capital budget.
- B. Capital expenditure savings are estimated based on the deferred maintenance expense information available through the County's VFA system based on the lifecycle of the property divided by 10. Operating expenses are based upon real costs of operating the pavilion.
- C. No impact in the current year as it is anticipated the project would not begin construction until 2021. Milwaukee County will shift the operational expenses of the pavilion and new improvements to PEAK.
- D. None

Department/Prepared by: Jim Tarantino, Director of Recreation and Business, Milwaukee County Parks

Authorized Signature: _____

Did DAS-Fiscal Staff Review?

☐

Yes

☒

No

Did CBDP Review?²

☐

Yes

☒

No

☐ Not Required

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

**AMENDED AND RESTATED LEASE AGREEMENT
BETWEEN
MILWAUKEE COUNTY PARKS DEPARTMENT
AND
KELLOGG PEAK INITIATIVE, LLC**

This Amended and Restated Lease Agreement (the "Lease" or "Agreement") is made and entered into effective _____, by and between the MILWAUKEE COUNTY PARKS DEPARTMENT (the "County" or "Landlord") and KELLOGG PEAK INITIATIVE, LLC (the "PEAK" or "Tenant"). Referenced together, the County and PEAK are the "Parties" to this Lease.

Recitals

WHEREAS, PEAK is a 501(c)(3) not-for-profit privately funded organization, whose mission is to bring out the limitless potential in young leaders through extraordinary experiences and nurturing relationships; and

WHEREAS, since 2009, pursuant to that certain Lease Agreement effective as of September 9, 2009, by and between the County and PEAK, as successor-in-interest to Lake Valley Camp, Inc. (the "Existing Lease"), PEAK has occupied the pavilion (the "Pavilion") within Tiefenthaler Park (the "Park"), and has successfully developed and operated its educational and community programs at the Park; and

WHEREAS, PEAK wishes to expand its presence and enhance its programming in the Park and construct an expansion to the existing building improvements for the purposes of operating PEAK programming and a community center with associated amenities (the "Building"),

WHEREAS, to support the desired work and achieve the desired goals, the Parties desire to enter into this Lease; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution # _____ on _____, has authorized the County to negotiate this agreement with the Tenant for and on behalf of Milwaukee County; and

WHEREAS, recognizing that the continued partnership of the Parties is beneficial to Tiefenthaler Park and is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

1. INCORPORATION OF WHEREAS CLAUSES:

The above WHEREAS clauses are incorporated into and are made a part of this Agreement.

2. BUILDING AND LEASED PREMISES:

Tenant shall lease land located underneath the Building in Tiefenthaler Park, 2480 W. Cherry Street in Milwaukee, Wisconsin and agreed upon adjacent areas, together with any and all improvements, appurtenances, rights, privileges and easements benefiting,

belonging or appertaining thereto (collectively, the "Leased Premises"). The Leased Premises are further described in Exhibit A.

3. RENT:

The Parties acknowledge and agree that, in lieu of rental payments, (i) Tenant has or will agree to complete certain work and renovations to the Leased Premises set forth in that certain Development Agreement which has been entered into or will be entered into by the County and PEAK (the "Development Agreement") and (ii) Tenant has agreed to the covenants and promises set forth in this Lease, including, without limitation, the payment of utilities serving the Leased Premises.

4. TERM:

This Lease shall be for an initial term of ten (10) years commencing on the Effective Date of this Lease and expiring ten (10) years thereafter (the "Initial Term"), unless renewed, extended or sooner terminated as provided herein.

5. RENEWAL:

After the Initial Term of the Lease, Tenant shall have the option to extend the Lease for eight (8) additional five (5) year periods (each an "Extension Term" and, together with the Initial Term, the "Term"), provided that Tenant:

- i. Is not then in default under the Lease past any applicable notice and cure period; and
- ii. Is maintaining and managing the Building as herein required; and
- iii. Is not then in default of any other agreements with the County; and
- iv. Is actively operating the Building for its intended purposes as further defined in Section 6 of this Agreement.

Each such option shall be deemed to be automatically exercised unless Tenant provides written notice to Landlord given at least one hundred eighty (180) days prior to the expiration of the then-current Term that Tenant desires to terminate the Lease effective as of the expiration of the then-current Term. In the event the County has not received a notice of termination by the foregoing deadline, prior to the extension(s) taking effect, the County shall submit an agenda report to the Milwaukee County Board of Supervisors setting forth Tenant's compliance with the terms of the Lease.

6. PERMITTED USE:

Consistent with County ordinances and other applicable laws, PEAK shall have use of the Leased Premises and other areas PEAK has access to in Tiefenthaler Park, for activities related to its educational and recreational programs, community programs and events, and administrative activities. PEAK will be permitted to use designated areas and picnic tables near the Building for activities consistent with PEAK's educational and community programs and events, including, but not limited to, planting gardens and storing program materials with prior written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

7. UTILITIES:

Tenant shall separate and pay any and all utility costs serving the Leased Premises and Building. "Utilities" may include sewer, water, gas, telephone, internet, electric, steam, natural gas, and chilled water, excluding those associated with standard County provisions in the public parks space and the wading pool. Any costs related to the installation, service, and maintenance of Utilities for the Leased Premises, including, but not limited to, the installation of any electrical outlet(s) necessary for the operation of the Tenant, shall be the sole responsibility of the Tenant. Tenant shall have the right to enter into reasonable agreements with utility companies as required in order to service the Building. County agrees to timely review and approve any such agreements. PEAK shall obtain a Right-of-Entry permit from County before construction of any utilities.

8. PUBLIC BENEFIT ANNUAL REPORTS:

By December 31 each year, Tenant shall submit a written report to the County listing a description of the number and types of activities provided at the Building for the prior year; the number and demographic information of the participants served by each of the activities; and, if applicable, the focus and types of any new activities planned for the upcoming calendar year.

9. SPECIAL EVENTS:

PEAK may from time to time hold certain events in the Park beyond the Leased Premises and shall make reasonable efforts to notify the County at least 1 (one) week in advance of such events. All such events with anticipated attendance of greater than one hundred (100) people require at least ninety (90) days' notice and written permission of the County, which shall not be unreasonably withheld, conditioned, or delayed. PEAK shall obtain and may be required to pay a Special Event Permit at the standard County fee in effect at the time. PEAK shall also obtain any permits required by other governmental authorities having jurisdiction over the Park if necessary under applicable laws or ordinances.

10. SIGNAGE:

PEAK shall have the right to place external signage on the Building. In addition, PEAK will have the right to place a large identifying sign(s) for the main access point(s) to the Building at the street entrance(s). PEAK will work with the County regarding the design of the large identifying sign(s) and potential wayfinding signs in the park. PEAK shall not allow or issue naming rights to any portion of the Building without the County's written consent. If approval is granted, no agreements entered into by PEAK with any third party relating to naming rights shall extend beyond the Term of this Lease. PEAK will work with County regarding the design of the large identifying sign(s). PEAK must obtain a Right of Entry Permit from the County prior to installation of any external signage covered by this paragraph and all such external signage must be approved by the County prior to placement which approval shall not be unreasonably delayed or withheld. Installation of signage that requires disturbance of the ground, whether temporary or permanent, requires the prior approval of the County including but not limited to the issuance of a Right of Entry Permit. For the purposes of this Lease, all signage installed by or on behalf of Tenant shall be referred to herein as, collectively, the "Signage."

Tenant hereby covenants and agrees that Tenant shall, at its own cost and expense: (i) be responsible for ensuring that the Signage is in compliance with all applicable codes, ordinances, statutes, rules and regulations, including any action or rule of any landmark commission having jurisdiction; (ii) obtain and comply with all consents, approvals and permits necessary from all governmental and quasi-governmental authorities and landmark commissions having jurisdiction over the Signage, with any consents, approvals, and permits from the County to not be unreasonably withheld, conditioned or delayed; (iii) insure the Signage as part of its property and shall also carry liability and property damage insurance with respect to the Signage; (iv) ensure that the Signage retains an attractive appearance at all times; and (v) pay all costs associated with creating, designing, manufacturing, installing, cleaning, maintaining, repairing and replacing (if necessary) the Signage.

11. PUBLIC ACCESS AND USE OF THE LEASED PREMISES:

PEAK and County recognize that public use of the Park and Building is mutually desirable. PEAK shall make the Building available for neighborhood group meetings as PEAK program schedule reasonably allows. PEAK uses and public uses in the Park shall at all times be subject to the requirements and restrictions in Milwaukee County General Ordinances (“MCGO”) Sections 47.02 and 47.16, and to all other rules, regulations, policies, and procedures applicable to properties and space owned by the County, not covered by this Lease and open for general use by the public; provided, however, that PEAK, subject to the Special Events section of this Agreement, is permitted to hold events listed in MCGO Section 47.02 without obtaining a written permit or paying a fee as long as such events are related to PEAK’s use of the Leased Premises as set forth in Section 6 of this Agreement and are not solely profit-oriented private rentals. Likewise, PEAK is permitted to sell, keep and offer for sale all things listed in MCGO Section 47.04 without obtaining a permit or paying a fee as long as such activities are related to PEAK’s use of the Leased Premises as set forth in Section 6 of this Agreement. County further represents it will use its best effort to promptly respond and enforce reported violations of the above-referenced ordinances, policies, procedures, rules and regulations.

12. PUBLIC RESTROOMS:

PEAK agrees that the Building will allow restroom access to the public controlled and managed by PEAK during PEAK business hours; typically 9am to 5pm Monday through Friday with exceptions for holidays, PEAK offsite retreats, and weather related closures. PEAK maintains the discretion to adjust their business hours. PEAK will provide for all supplies, maintenance, and routine cleaning of the restrooms.

13. SOUND/AMPLIFIED MUSIC RESTRICTION:

Amplified music shall be limited to acoustic and vocal reinforcement to provide background music throughout the Leased Premises and surrounding areas. Events or performances with concert style amplification must be approved in writing by the Parks Director or his/her designee. All amplified music approved by the Parks Director or his/her designee, as well as ambient music, shall comply with the appropriate City of Milwaukee and Milwaukee County noise ordinances.

14. HOURS OF OPERATION:

The Parties acknowledge and understand that pursuant to Section 47.27 of the Milwaukee County Code of General Ordinances, the County has the authority to adjust the hours of operation of County parks, including the Park, in the County's reasonable discretion, and nothing in this Agreement is intended to limit or abrogate such authority; provided, however, (i) PEAK, its employees, clients, invited visitors, contractors, and service providers shall have access to the Leased Premises at all times, (ii) the County shall not limit public access to the Park to less than eight hours a day, and (iii) PEAK shall have the right to host Private Events in the Leased Premises until midnight of any night during the Term. For the sake of clarity, PEAK employees, invitees, and attendees of Private Events shall have the right to access the Leased Premises through access roads and paths leading to the Leased Premises regardless of whether the Park is open to the Public.

15. COUNTY APPROVAL OF ITEMS TO BE SOLD/RENTED:

Tenant shall provide County with a list and pricing information for the products it intends to sell or rent within the Leased Premises for approval. The Parks Director or his/her designee maintains the right to prohibit the sale or rental of any item that he/she reasonably deems to be inappropriate within the Milwaukee County Parks System; provided, however, notwithstanding the foregoing, PEAK shall be permitted to sell PEAK-logoed merchandise and other items consistent with the missions of PEAK. Tenant agrees to comply with the County's prohibitions including the sale of gum and glass bottles and to operate subject to the Milwaukee County Parks System's exclusive product contracts such as a food or non-alcoholic beverage contracts.

16. CLEANLINESS, GARBAGE:

Tenant is responsible for maintaining the Leased Premises and surrounding area as further described in Exhibit B, and surrounding areas in a state of cleanliness and repair to prevent injury to the public. Tenant is also responsible for the collection, disposal, and removal of all municipal solid waste (trash) and recycling associated with its activities. Tenant is strongly encouraged to establish a recycling program to reduce landfill waste. Tenant may contract with a commercial waste service and, upon coordination with County, place municipal solid waste and recycling containers in a designated area of the parking lot.

17. PARKING:

Tenant and Tenant's employees, customers and invitees shall have the right to use the parking spaces located within the parking area as further described in Exhibit C. Landlord reserves the right to regulate parking within the Park, including the right to preclude Tenant from parking in certain areas or requiring Tenant and its employees to park their cars only in areas specifically designated from time to time by Landlord for that purpose. Tenant shall not permit vehicles to be abandoned or stored in the parking areas of the Leased Premises. If in the future, the County establishes parking fees for the Park, PEAK and its employees, agents, clients, and invitees shall be exempt from such parking fees.

18. MAINTENANCE AND REPAIRS:

- i. During the Term of this Lease, Tenant shall, at its expense, pay for and make all necessary repairs and replacements, structural or otherwise, to the Leased Premises

and Building, parking lot, and access drive, including, but not limited to, any existing structures and any structures it erects, including the Building, in and on the Leased Premises, and any plumbing, electrical and lighting, doors, door hardware, windows, fixtures, heating, ventilating and air conditioning facilities located in or serving the Leased Premises or Building or any structures the Tenant erects. All repairs shall be done by licensed tradespersons if so required by applicable law. Landlord shall have no obligation to make repairs to the Leased Premises or any structures the Tenant erects or to any utility systems servicing the Leased Premises or any structures the Tenant erects.

- ii. During the Term of this Lease, Tenant will be responsible for repairing, maintaining, salting, and plowing/shoveling the parking lot on the Leased Premises, new access roads and new sidewalks constructed by Tenant, salting and hand shoveling required at entrances to the building, and repairing and maintaining all lighting Tenant erects in the Leased Premises. The County shall be responsible for repairing, maintaining, and for performing snow and ice removal on all remaining access roads and sidewalks, and repairing and maintaining all other lighting and existing Park equipment.
- iii. After the conclusion of each year during the Term, Tenant shall provide Landlord with a maintenance report, in a form reasonably agreed upon by the Parties, for the Building. The report shall include the maintenance records from the prior year. Maintenance records include, but are not limited to, fire inspections, HVAC maintenance, elevator maintenance, and generator maintenance.
- iv. Timeliness of Repairs: Tenant shall perform its obligations under Section 18 of this Lease promptly after learning of the need for such repairs, but in any event within thirty (30) days of the occurrence or notice provided by the County. If Tenant fails to make such repairs for which it is obligated within thirty (30) days after County's notice, and such failure constitutes a health or safety hazard to the public, or has the potential to cause further damage to the Leased Premises, then the County shall have the right to make the repair with its own staff or contract with a third party to make the repair, and charge all reasonable costs associated with making the repair to Tenant (including salary and benefits if done with County's own staff).

19. MAINTENANCE RESERVE FUND:

PEAK shall establish and manage a Maintenance Reserve Fund ("Fund") for maintenance of the Building, which shall total forty thousand dollars (\$40,000.00) which will be fully fundraised by PEAK. As additional consideration, PEAK agrees to augment the Fund by depositing the interest accrued on any balance invested into the Fund, and hereby agrees that if the value of the Fund falls below \$20,000.00 at any time, PEAK shall add to the Fund enough assets to maintain a minimum balance of \$40,000.00. The Failure to maintain a balance of \$20,000.00 shall be grounds for termination of this Agreement by County, provided Tenant fails to cure any such shortage within one hundred and eighty (180) days of receipt of notice from County that the shortage has occurred. The Fund is to be used as follows:

- i. Maintenance, repair and replacement to assure upkeep of the Building and the improvements to be constructed on the Building;
- ii. Additional improvements or non-routine maintenance to the Building;

- iii. Maintenance, repair, and replacement of the Leased Premises.

Management of the Fund shall include the establishment of an interest-bearing account(s), changing investment strategies, monitoring account activity, and providing joint written approval from Tenant and the County only in the event the balance in the Fund falls below twenty thousand dollars (\$20,000.00). Such approval shall not be unreasonably withheld, conditioned or delayed by either party. Notwithstanding the foregoing, Tenant shall have the right to make withdrawals from the Fund without County's approval, but upon notice to County, for up to ten thousand dollars (\$10,000) for any item described in this Section, provided that the Fund does not fall below twenty thousand dollars (\$20,000.00) as a result thereof and the aggregate amount so withdrawn from the Fund without County approval in any twelve (12) month period does not exceed twenty-five thousand dollars (\$25,000.00). Tenant shall provide County with annual reports relating to the Fund in general, including an annual report prepared by independent auditors. Tenant shall also provide County with an annual report regarding Fund activities, including funds received, monies spent, and any long-term obligations. Upon expiration or termination of this Lease, the Fund shall be immediately released to the County and shall be the property of County to be used for maintenance of the Building.

20. IMPROVEMENTS:

- i. Tenant's future plans to renovate, improve and alter any structure on the Leased Premises hereunder are contingent upon Tenant obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Leased Premises, as further described in the Development Agreement. All costs associated with the construction and renovation of the Leased Premises, including disconnection and/or hookup of Utilities in conjunction with such construction or renovation, shall be the responsibility of the Tenant. The County will not incur any costs, pay any expenses or issue any debt associated with the Leased Premises, improvements and renovations to the Leased Premises or equipment used on the Leased Premises during the Term.
- ii. Construction Escrow: Tenant agrees to provide evidence reasonably satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Leased Premises 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 of the renovations. Tenant shall deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Leased Premises. The County agrees that a letter from the Tenant's banking institution stating that Tenant has such funds available for the purposes set forth above shall satisfy the requirements set forth herein.
- iii. County Approval: Prior to the start of any construction or renovation of the Leased Premises, including any subsequent alterations or renovations, Tenant shall send all plans and associated documents to the County and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative

Services, together with the name of Tenant's proposed contractor(s), for review and approval, which approval shall not be unreasonably withheld or delayed. Submittals shall include, but not limited to, shop drawings containing product information and materials and products. Contractors must obtain a Right of Entry permit from County prior to commencing work, such permit shall not be unreasonably withheld or delayed.. Tenant shall reimburse County for the actual cost of a Milwaukee County Project Manager (including salary and benefits) during the construction phases of the improvements, including any subsequent construction, alterations or improvements, which reimbursement amount shall not exceed Five Thousand Dollars (\$5,000.00) in the aggregate. Conditions for approval shall include, but not be limited to provision that Tenant shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.

- iv. Construction Standards: All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Leased Premises. Tenant shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party for work or materials which may arise in connection with any alteration, addition or improvement to the Leased Premises undertaken by or on behalf of Tenant. In no event shall Tenant make any alterations or additions to the Leased Premises without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, in the event of an emergency, such consent shall not be required so long as notice shall be given as soon as reasonably possible thereafter. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations, improvement, or additions requiring such approval, providing they do not individually exceed Fifty Thousand Dollars (\$50,000.00) in cost per year.
- v. Builder's Risk: Tenant or its general contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed and the Leased Premises are ready for occupancy. Prior to construction, Tenant shall supply County with written evidence of Builder's Risk insurance. Tenant shall not commence construction activities without written approval from the Parks Director and his/her designee, which approval shall not be unreasonably withheld, conditioned or delayed. The County shall provide a written response to the Tenant within ten (10) days of receiving written evidence of the Tenant's Builder's Risk insurance documents.
- vi. Licensed Tradespersons: Tenant agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. Tenant shall require its contractors and subcontractors

to obtain and maintain adequate insurance coverages with liability limits not less than that required of Tenant by County. Tenant shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.

- vii. Construction Documents: Tenant agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Tenant shall provide to County a complete set of construction documents to be included at a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Milwaukee final occupancy permits, if applicable.

21. PARKS LOGO:

Tenant is responsible for all marketing and advertising to promote its activities. Tenant may acknowledge the Parks Department and may include the official Proudly Supporting Parks logo, which logo shall be approved by Parks Department, in promotional materials, whether print or digital, directly related to its activities covered under this Agreement.

22. PERMITS, LICENSES, AND OTHER COSTS:

Tenant shall procure, maintain, and pay the fees for all appropriate federal, state, and local licenses and permits required for its activities.

23. COMPLIANCE WITH LAWS – NONDISCRIMINATION, AFFIRMATIVE ACTION AND TARGETED BUSINESS ENTERPRISE GOALS:

- i. Generally: 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 Leased 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 Leased Premises.
- ii. 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.
- iii. Affirmative Action Program: Tenant certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Tenant also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

- iv. Affirmative Action Plan: Tenant certifies that if it has fifty (50) or more employees (excluding any and all seasonal employees), it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Comptroller's Audit Services Division, 633 W. Wisconsin Ave, 9th Floor, Milwaukee, WI, 53203.
- v. Non-Segregated Facilities: Tenant certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.
- vi. Reporting Requirement: When applicable, Tenant certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.
- vii. Compliance: Tenant certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.
- viii. Targeted Business Enterprise Goals: Tenant shall use reasonable efforts to cause its contractors to establish Targeted Business Enterprise ("TE") participation goals, consistent with Milwaukee County TE goals of twenty-five percent (25%) for construction and seventeen percent (17%) for goods and services, purchases and subcontracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Tenant in soliciting potential TE vendors for the improvements and monitor such goal attainment.

24. COMPLIANCE WITH LAWS – ADA:

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 Leased Premises pertaining to: (a) accessibility, ensuring that the Leased Premises and environs are fully accessible pursuant to the American with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 and such accessibility is approved by the Milwaukee County Office of Persons with Disabilities; and (b) Tenant's activities on the Leased Premises.

25. 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 Leased 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; provided, however, Tenant shall have no obligation to indemnify the County for any liability, claims, damage, injury, loss or expenses relating to or arising from the negligence or willful misconduct of the County or its employees, agents or contractors. 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.

26. 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 Leased Premises or surrounding areas by Tenant, or its 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 the introduction of any such Hazardous Materials into or onto the Leased Premises by Tenant or its agents.

- i. "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, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Wisconsin, or any political subdivision thereof; or (iv) the presence of which on lands within the Leased Premises causes or threatens to cause a nuisance upon the Leased Premises or surrounding area or poses or threatens to pose a hazard to the Leased Premises or surrounding areas or to the health or safety of persons on or about the Leased Premises; or (v) which contains gasoline, diesel fuel, or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos, or urea formaldehyde foam insulation; or (vii) which causes notification of release and required actions in accordance with Chapter 292 Wisconsin Statutes.

27. INSURANCE:

Tenant, and every contractor and all parties furnishing services or product to Milwaukee County (County) or any of its subsidiary companies must provide County with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the contract. All parties shall, at their sole expense, maintain the following insurance:

- i. Commercial General Liability Insurance including contractual coverage:
The limits of this insurance for bodily injury and property damage
Combined shall be at least:

Each Occurrence Limit	\$1,000,000
-----------------------	-------------

General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

- ii. Business Automobile Liability Insurance:
Should the performance of this Agreement involve the use of automobiles, Tenant shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Tenant shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.
- iii. Workers' Compensation Insurance:
Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.
- iv. Employers Liability Insurance:
Such insurance shall provide limits of not less than \$500,000 policy limit.
- v. Excess/Umbrella Liability Insurance:
Such insurance shall provide additional limits of not less than \$3,000,000 per occurrence in excess of the limits stated in (1.), (2.), and (4.) above.

Additional Requirements:

- vi. Tenant shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below, unless the written consent of the County is obtained for any lower insurance coverages for Tenant's contractors and subcontractors.
- vii. The insurance specified in (1), (2), and (5) above shall: (a) name County, including its directors, officers, and employees and agents as additional insureds by endorsement to the policies, and, (b) provide that such insurance is primary coverage with respect to all insureds and additional insureds.
- viii. The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. County may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order. Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

- ix. Tenant shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Tenant shall require all insurers to provide County with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

28. SITE RESTORATION:

Tenant shall be responsible for any actual documented physical damage to the Leased Premises caused by Tenant, its employees, agents, representatives, and guests, including any necessary site restoration. Within thirty (30) days of the discovery of any such damage (or a reasonable longer period if such damage cannot be repaired and restored within such initial thirty (30) day period), the Leased Premises shall be restored to the satisfaction of the Parks Director or his/her designee. If damage is not restored by the Tenant after thirty (30) days of the discovery (or such longer period as set forth above) and the County elects to restore such damage, then the County shall have the right to restore the damage with its own staff or contract with a private company to restore the damage, and have all reasonable costs directly associated with performing the restoration work paid from the Fund (including salary and benefits if done with the County's own staff); provided, however, notwithstanding anything to the contrary, if the County elects to restore such damage, Tenant's liability for the County's costs directly associated with performing such restoration work shall be limited to the amounts remaining in the Fund at the time such work is completed.

29. SECURITY:

Unarmed security personnel are permitted within the Leased Premises and Building for the purposes of checking identification and general observation. Tenant shall be solely responsible for and assume all risks related to Tenant's use of security personnel.

30. INSPECTION BY COUNTY:

County shall at all reasonable times, upon one (1) business day's prior written notice, have the right to enter the Leased Premises and Building to inspect the condition thereof, and to improve or repair the Leased Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; 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 Leased Premises.

31. COUNTY RIGHTS OF ACCESS AND AUDIT:

The Contractor, Lessee, 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, Lessee, 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, Lessee, 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, lessee, 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.

32. ASSIGNMENT AND SUBLETTING:

The Lease will not be assignable by either Tenant or County, in whole or in part, without the written consent of the other party; provided, however, that such consent will not be unreasonably withheld. An approved assignment shall only be to an entity performing a similar recreational and/or educational mission to Tenant and that any use of the Building and leased area will be consistent with City of Milwaukee "PK" Parks zoning.

33. RELATIONSHIP OF PARTIES:

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Landlord and Tenant.

34. TERMINATION BY TENANT:

Except for Tenant's right to terminate the Lease as of the expiration of the then-current Term, the Lease may be terminated by Tenant only for cause. Tenant may terminate for cause upon ninety (90) days' written notice. Prior to termination for cause, Landlord will be afforded such ninety (90) days in which to cure the alleged breach after having been notified of such breach; provided, however, that if Landlord is diligently pursuing a cure, Landlord will have such additional time as is reasonably necessary to effect a cure.

35. OWNERSHIP OF IMPROVEMENTS:

Upon the completion of any alterations, expansions, additions to the improvements on the Leased Premises, the County will own such improvements. Upon the expiration or termination of this Lease, Tenant shall surrender the Leased Premises to Landlord with the improvements in their then-existing condition.

36. DEFAULTS & REMEDIES:

- i. Tenant's Defaults. Tenant agrees that any one or more of the following events shall be considered events of default as said term is used herein:

- i. Tenant shall fail to contest the validity of any lien or claimed lien and give security to County to insure payment thereof, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, and such default continues for ninety (90) days after notice thereof to Tenant; or
 - ii. Tenant's failure to perform any other covenant or condition of this Agreement within ninety (90) days after notice and demand, unless the failure is of such a character as to require more than ninety (90) days to cure, in which event Tenant's failure to proceed diligently to cure such failure shall constitute an event of default.
- ii. County's Remedies. If a Default occurs, County shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive County of any other right or remedy allowed it by law:
 - i. County may terminate this Agreement by giving to Tenant notice of County's election to do so, in which event the Term of this Agreement shall end, and all right, title and interest of Tenant hereunder shall expire, on the date stated in such notice;
 - ii. County may enforce the provisions of this Agreement and may enforce and protect the rights of County hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Agreement.

37. CASUALTY:

If the Leased Premises or the Building is damaged or destroyed by fire or other casualty covered by insurance, then this Lease shall continue in full force and effect and Tenant may proceed to repair or restore the Leased Premises or the building(s) with the insurance proceeds subject to the requirements of improvements under Section 21 of this Lease.

38. AUTHORITY:

Each individual executing this Agreement on behalf of Tenant and Landlord represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity, as the case may be, and that this Agreement is binding upon said entity in accordance with its terms without the joinder or approval of any other person.

39. NOTICES:

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

To Tenant:

Kellogg PEAK Initiative, LLC
2480 W. Cherry Street
Milwaukee, WI 53205
Attn: Dan Schiller, Executive Director

To County:

Milwaukee County Department of Parks
Parks Director
9480 W. Watertown Plank Rd.
Wauwatosa, WI 53226

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

40. RESTATEMENT. Landlord and Tenant acknowledge and agree this Lease restates and replaces the Existing Lease. Upon the execution and delivery of this Lease by both Landlord and Tenant, the Existing Lease and the terms and provisions set forth therein shall terminate and this Lease shall be the operative lease agreement between Landlord and Tenant relating to the Leased Premises.

[Signatures on Following Pages.]

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

PEAK:

KELLOGG PEAK INITIATIVE, LLC

By: _____ Date: _____

Name: _____

Title: _____

Milwaukee County

By: _____ Date: _____

Name: _____

Title: _____

[Signature Page 1 of 2]

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____

Community Business Development Partners

Reviewed by:

Approved for execution:

By: _____ Date: _____

Risk Management

By: _____ Date: _____

Corporation Counsel

Approved as to funds available per Wisconsin Statutes Sec. 59.255(2)(e):

By: _____ Date: _____

Comptroller

Approved:

By: _____ Date: _____

County Executive

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

By: _____ Date: _____

Corporation Counsel

[Signature Page 2 of 2]

Exhibit A
Leased Premises

EXHIBIT A – LEASED PREMISES

LEGEND

 - Leased Premises

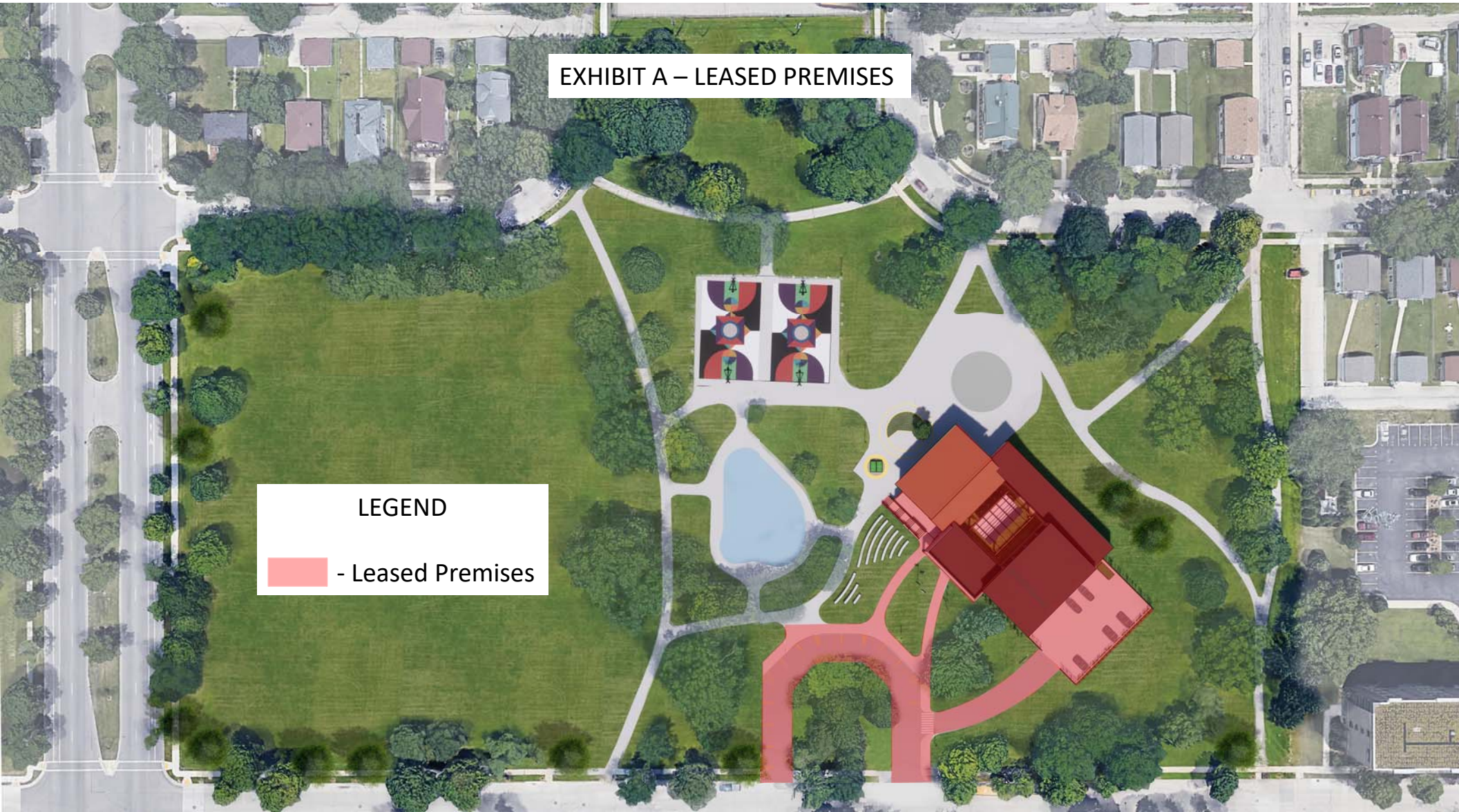


Exhibit B

Trash and Litter Maintenance Location

EXHIBIT B – TRASH AND
LITTER MAINTENANCE AREA

LEGEND



- Litter
maintenance area

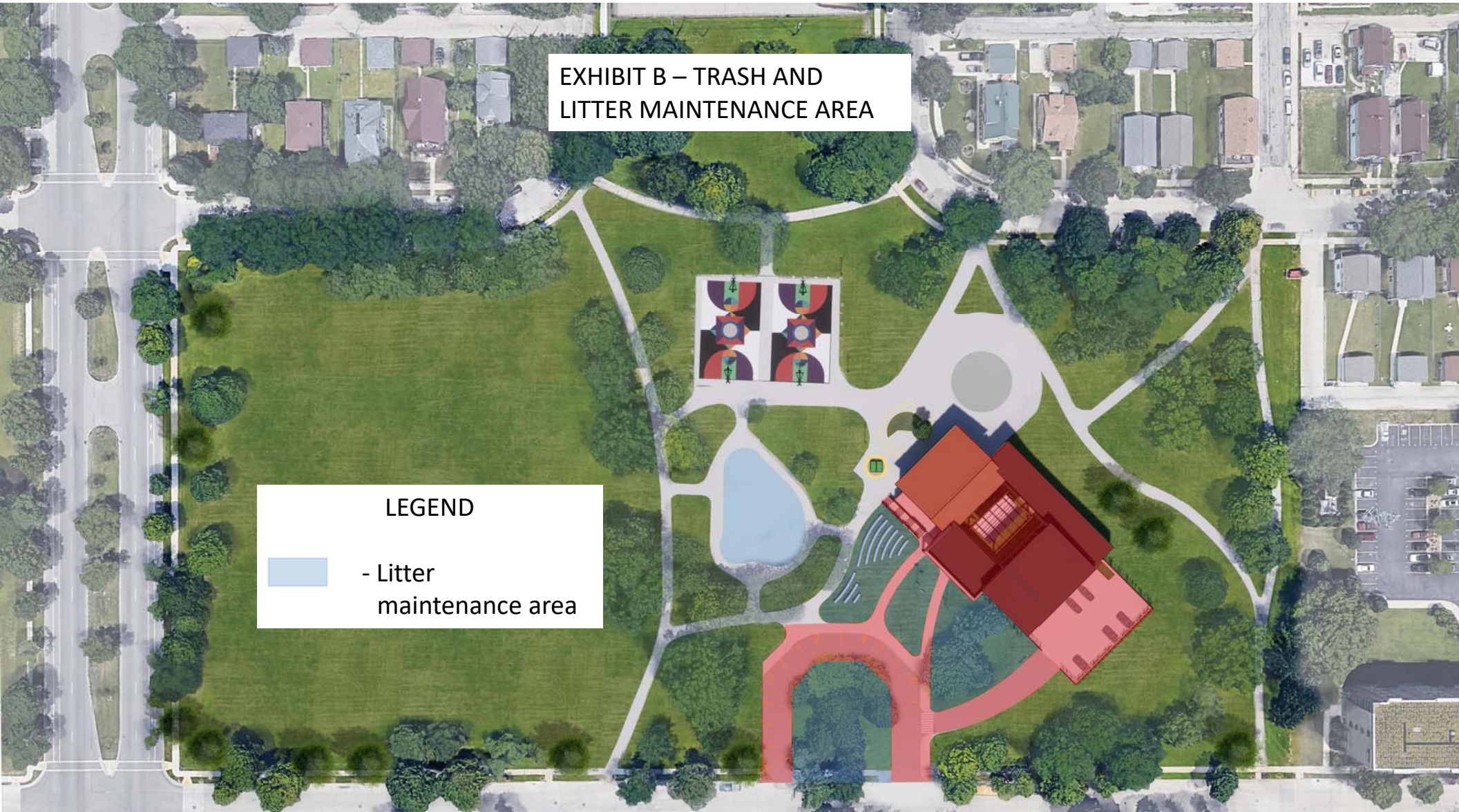


Exhibit C
Parking Area

EXHIBIT C – PARKING AREA

LEGEND

 - Parking area



**DEVELOPMENT AGREEMENT
FOR THE
RENOVATED BUILDING IN TIEFENTHALER PARK
BETWEEN
MILWAUKEE COUNTY PARKS DEPARTMENT AND
KELLOGG PEAK INITIATIVE, LLC**

This Development Agreement (this "Agreement") is made and entered into effective _____, 2020 (the "Effective Date"), by and between the MILWAUKEE COUNTY PARKS DEPARTMENT (the "County"), and KELLOGG PEAK INITIATIVE, LLC (the "Developer" or "PEAK"). Referenced together, County and Developer are the parties (the "Parties") to this Agreement.

WITNESSETH:

WHEREAS, PEAK is a 501(c)(3) not-for-profit privately funded organization, whose mission is to bring out the limitless potential in young leaders through extraordinary experiences and nurturing relationships; and

WHEREAS, since 2009, pursuant to that certain Lease Agreement effective as of September 9, 2009, by and between the County and PEAK, as successor-in-interest to Lake Valley Camp, Inc. (the "Existing Lease"), PEAK has occupied the pavilion (the "Pavilion") within Tiefenthaler Park (the "Park"), and has successfully developed and operated its educational and community programs at the Park; and

WHEREAS, PEAK wishes to expand its presence and enhance its programming in the Park, and construct an expansion to the existing building improvements (the existing building improvements together with the expansion are, collectively, the "Renovated Building") for the purposes of a community center and associated amenities (collectively, the "Project"), which Project work is represented in the preliminary plans attached hereto as Exhibit A (the "Preliminary Plans"); and

WHEREAS, to support the desired work and achieve the desired goals, the Parties desire to enter into (i) this Agreement and (ii) that certain Amended and Restated Lease Agreement dated as of the effective date herewith (the "New Lease"), which restates the terms of the Existing Lease and sets forth the terms of the lease of certain real property within the Park from the County to PEAK (the "Premises"); and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution # _____ on _____, has authorized the County to negotiate this agreement with PEAK for and on behalf of Milwaukee County; and

WHEREAS, recognizing that the continued partnership of the Parties is beneficial to Tiefenthaler Park and is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

1. USE OF THE PREMISES FOR IMPROVEMENTS: Developer shall furnish and complete the Project through a general contractor selected by Developer after the date of this Agreement (the "Contractor"). The Parties agree that the Developer shall obtain any and all approvals necessary for the improvements as contemplated by this Agreement.

2. CONDITION OF THE PREMISES: County makes no representation or warranty that the Premises, including but not limited to the land, electrical and other mechanical systems: (a) meet and comply with all federal, state, and local laws, ordinances and regulations; and (b) are in workable and sanitary order and state of repair at the time of delivery to Developer. Developer acknowledges that it has been made aware by County that Developer may use the Premises on an "as-is" basis which may or may not prove to be suitable for all purposes contemplated by Developer, either now or in the future. The County shall not be responsible for performing any grading or compaction work with respect to the Premises. The Developer is solely responsible for and must make adequate allowance for all excavation and disposal costs necessary for the Project including site restoration and soil relocation. The Developer shall be solely responsible for procuring all property development costs, including, but not limited to, extension of utilities to the Premises. Developer hereby releases and disclaims any claim, damage, loss, injury or obligation whatsoever of the County in any way relating to or arising out of the physical condition of the Premises and the matters described in this Section 2. Such disclaimer and release shall include any action at law or in equity, whether arising out of contract or tort law. Developer further acknowledges that it has freely inspected the Premises and is aware of its general overall condition. Notwithstanding anything to the contrary set forth in this Agreement, (i) Developer shall have the right to perform a Phase I environmental site assessment and other inspections of the Premises at any time after the Effective Date to assist Developer in determining the feasibility of the Project, and (ii) in the event the findings in such Phase I environmental site assessment or other inspection reports are not satisfactory to Developer for any reason, including, without limitation, potential environmental liability arising pursuant to Section 16 of this Agreement, (a) Developer may terminate this Agreement by written notice to the County and (b) the parties shall terminate the New Lease and reinstate the Existing Lease.

3. TERM: This Agreement shall commence on the Effective Date and expire on the County's acceptance of the improvements contemplated herein (the "Term"). The Developer agrees (i) to commence construction of the Project, defined as commencement of site improvements for the Project on or before a date that is within eighteen (18) months of the effective date of this Agreement (the "Project Commencement Date") and (ii) to substantially complete construction of the Project within thirty-six (36) months from the commencement of construction (the "Project Completion Date"), or such longer period of time as may be needed to complete construction if Developer is diligently pursuing construction. If Developer fails to commence construction by Project Commencement Date, County shall have the right to declare a default on this Agreement, on ten (10) days written notice. If Developer fails to substantially complete construction by Project Completion Date (or such specified longer period of time), County shall have the right to declare a default on this Agreement, on ten (10) days written notice of the eighteen (18) month anniversary from the commencement of construction. The Project Commencement Date shall be confirmed by the Developer's Project architect delivering certificates to the County stating that construction on the Project has been commenced. The Project Completion Date shall be confirmed by the County upon the Developer's Project architect delivering certificate to the County stating that construction on the Project has been substantially completed and the Developer

completing a final punch list of tasks as required by the County. In the event the Developer ceases construction of the Project, other than due to a Force Majeure Delay, for sixty (60) consecutive days, such event shall be deemed a "Construction Stoppage." Notwithstanding anything to the contrary set forth herein, a default under this Agreement shall not be deemed to be a default under the New Lease.

4. SCOPE OF WORK: County agrees to use reasonable efforts to assist Developer in its efforts to complete the Project. Using reasonable efforts shall not impose on County any obligation to budget or pay for the improvements to the Premises but may require County staff time and advisory support. County shall not be responsible for securing any required approvals, zoning changes, building permits or other required authorizations from regulatory or governmental agencies, but County agrees to assist Developer in obtaining rezoning, licenses, permits or approvals, at Developer's sole cost and expense. The County acknowledges that it has approved the Preliminary Plans. Prior to commencing construction of the Project, the Developer shall submit to County detailed concept plans for the Project ("Plans") for approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Plans will be consistent with the Project as herein defined. Any Material Alteration to the Plans must be approved by the Milwaukee County Parks Executive Director, which approval shall not be unreasonably withheld, conditioned or delayed. "Material Alteration" means any change to the equipment type, location, or construction materials, or any change to the borders and extent of the Project. Material Alteration does not include an alteration required by any municipality or other governmental agency or otherwise required by law, or an alteration required due to shortages or unavailability of materials (though substitute must be of comparable quality). The Project's scope of work shall include, but not be limited to, construction of the following:

- a. New improvements in the Renovated Building including common spaces, multi-purpose rooms, learning labs and kitchens, administrative space, and auxiliary and support space.
- b. A new parking lot with secured access and fencing.
- c. A new service drive connecting the Renovated Building to Cherry Street.
- d. Outdoor learning space/amphitheatre seating in the park adjacent to the Renovated Building.

5. BUDGET: Prior to the construction of the Project, Contractor or Developer will submit a final budget and proposal to County for the above referenced project for approval, which approval shall not be unreasonably withheld, conditioned or delayed.

6. CONSTRUCTION:

a) Prerequisites. Developer plans to renovate, improve, and alter the Premises, including the construction of the improvements, are contingent upon Developer obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Premises. All costs associated with the construction and renovation of the Premises, including disconnection and/or hookup of Utilities in conjunction with such construction

or renovation, shall be the responsibility of Developer. "Utilities" shall include sewer, water, gas, phone, internet, and electricity.

b) County Approval. Prior to the start of any construction or renovation of the Premises, including any subsequent alterations or renovations, Developer shall submit detailed construction plans and specifications to the County and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of Developer's proposed Contractor(s), for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Submittals shall include, but not be limited to, shop drawings containing product information and materials and products shall be approved by County. Conditions for approval shall include, but not be limited to provision that Developer shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.

c) Construction Standards. 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 alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Developer shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Premises undertaken by or on behalf of Developer. Any structures, alterations, additions or improvements installed on the Premises by Developer (including generic signage permanently affixed to the Premises) shall become the property of County upon the expiration or termination of this Agreement. In no event shall Developer make any alterations or additions to the Premises without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, in the event of an emergency, such consent shall not be required so long as notice shall be given as soon as reasonably possible thereafter.

d) Builder's Risk. Developer or its general Contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed. Prior to construction, Developer shall supply the Parks Director with written evidence of Builder's Risk insurance. Developer shall not commence construction activities without written approval from the Parks Director and his/her designee, which approval shall not be unreasonably withheld, conditioned or delayed. The Parks Director shall provide a written response to the Developer within ten (10) days of receiving written evidence of Developer's Builder's Risk insurance documents.

e) Construction Escrow. Developer agrees to provide evidence reasonably satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Premises 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 of the renovations. The County agrees that a letter from the

Developer's banking institution stating that Developer has such funds available for the purposes set forth above shall satisfy the requirements set forth herein.

f) Workforce Goals – Targeted Business Enterprise Participation. Developer shall use commercially reasonable efforts to ensure that Targeted Business Enterprises ("TBE") have an equal opportunity to receive and participate in the Project and shall require that its contractors and subcontractors do the same, as required by Chapter 42 of the Milwaukee County Code of General Ordinances. Developer shall utilize commercially reasonable efforts to achieve its goal of a minimum of 25 percent (25%) TBE participation for Project costs relating to the hard construction costs and a minimum of 17 percent (17%) TBE participation for Project costs relating to professional services, in the event traditional construction methods are used. Developer's community benefits compliance plan, which will require the approval of the County's Office of Community Business Development Partners, will restate these goals, outline the commercially reasonable efforts to be utilized to achieve the goals and specify the reporting requirements of Developer. Achievement of the foregoing TBE goals may be impacted by the actual available workforce across and within certain trades at the time of construction.

g) Licensed Tradespersons. Developer agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. Developer shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of Developer by County. Developer shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.

h) Construction Documents. Developer agrees that within sixty (60) days after the conclusion of each construction phase, project, renovation or improvement, Developer shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Milwaukee final occupancy permits, if applicable.

i) Permits, Licenses and Other Costs. Developer shall procure and pay the fees for all appropriate federal, state, and local licenses and permits required for its activities.

j) Removal of Equipment and Supplies. Upon expiration or termination of this Agreement, Developer shall remove, at its costs, all of its equipment, supplies, and related items from the Premises within thirty (30) days of the expiration or termination date and shall restore the Premises to a parklike condition (excepting any improvements constructed and/or performed by Developer, which may remain), reasonably satisfactory to the Parks Director or his/her designee. Damage caused to the Premises by any removal of personal property to the Premises will be repaired by Developer. If for any reason Developer does not comply in a timely manner with its obligations under this paragraph (which shall mean within thirty (30) days of the expiration of the Agreement), then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from

Developer any and all reasonable costs, as determined by the County, related to this Section. Developer agrees to surrender the Premises in good condition, subject to ordinary wear and tear and casualty.

k) Nondiscrimination and Affirmative Action. In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. The Developer will post in conspicuous places, accessible to employees, notices setting forth the provisions of the foregoing nondiscriminatory clause. The Developer will use commercially reasonable efforts to implement the principles of equal employment opportunities through an effective affirmative action program, which program shall have as its objective to increase the utilization of women, minorities and handicap persons, and other protected groups in the Developer's employment at the Project for so long as it is located there, and in construction of the Project. The Developer will include this requirement in any and all contracts and subcontracts entered into under this Agreement.

7. DEFAULTS AND REMEDIES:

a. Events of Default by the Developer. Any one or more of the following events are hereby defined as, declared to be, and constitute an "Event of Default" by the Developer for purposes of this Agreement: (a) a Construction Stoppage (as defined in Section 3 hereof) by the Developer after the construction of the Project has commenced, subject to extension for Force Majeure Delays; (b) the Developer fails to commence construction of the Project by the Project Commencement Date subject to extension for Force Majeure Delays; (c) the Developer fails to complete construction of the Project by the Project Completion Date, subject to extension for Force Majeure Delays or (d) the failure of the Developer to perform any other term, condition or covenant to be performed or observed by the Developer, subject to extension for Force Majeure Delays. In the event an Event of Default by the Developer shall occur, the County shall send written notice to the Developer (the "Default Notice") specifying the nature of the Event of Default in detail, and the Developer shall have ninety (90) days after receipt of the Default Notice to cure such Event of Default (or such reasonably longer period in the event such Event of Default cannot be cured in such ninety (90) day period and the Developer, upon receipt of Default Notice, promptly commences the process of curing such Event of Default and diligently and continuously pursues such cure to completion). In the event that the Developer does not cure such Event of Default within such ninety (90) day period (or such other reasonable time as necessary if such Event of Default cannot be cured within ninety (90) days and the Developer, upon receipt of Default Notice, promptly commences the process of curing such Event of Default and diligently and continuously pursues such cure to completion), the County may pursue any available remedy against the Developer, either at law or in equity, including, without limitation, the right to pursue specific performance and collect actual damages (but not consequential damages) for the Developer's failure to perform (including, without limitation, the cost to restore the site to its previous condition, the damages, if any, related to, or arising out of, the infrastructure related to the Premises and the cost of financing used to construct such infrastructure, and any guaranty thereof, any costs

associated with overtime or additional labor forces in order to timely construct the Project, and other outside fees, including reasonable attorneys' fees).

The Developer agrees that damages will not be an adequate remedy at law and that the County shall have the right to an injunction or other judgment of specific performance to enforce any provision in this Agreement, the County ordinances or any other State or Federal law. Venue for such action shall be Wisconsin State Court with venue in Milwaukee County. The County shall be entitled to its reasonable attorneys' fees in any action, in which it prevails, to enforce such provisions of this Agreement, including the actual costs of Milwaukee County Corporation Counsel's office if it is the attorney for the County or reasonable attorney fees for other attorneys that may be hired by the County.

b. Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other party.

8. COMPLIANCE WITH LAWS: Developer shall, at Developer's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Developer's use of the Premises pertaining to: (a) accessibility, ensuring that the Premises and environs are fully accessible pursuant to the American with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 and such accessibility is approved by the Milwaukee County Office of Persons with Disabilities; and (b) Developer's activities on the Premises. Developer shall procure, maintain, and pay the fees for any appropriate federal, state, and local licenses and permits required for its activities.

9. CLEANLINESS OF SURROUNDING AREAS: Developer shall be responsible for the collection and removal of all trash, litter and garbage associated with Developer's activities. Developer shall be responsible for maintaining the areas immediately surrounding the Premises during construction in a state of cleanliness to prevent injuries to the public. Developer agrees not to store or accumulate unused or excess materials, supplies, or equipment which may create a hazard to the public or result in unsightly surroundings.

10. SIGNAGE AND NAMING RIGHTS:

a. Temporary Signage. Developer may display appropriate signage relating to the Renovated Building with County's prior written consent, which may not be unreasonably withheld, conditioned, or delayed (the "Signage"). Developer hereby covenants and agrees that Developer shall, at its own cost and expense: (i) be responsible for ensuring that the Signage is in compliance with all applicable codes, ordinances, statutes, rules and regulations, including any action or rule of any landmark commission having jurisdiction; (ii) obtain and comply with all consents, approvals and permits necessary from all governmental and quasi-governmental authorities and landmark commissions having jurisdiction over the Signage; (iii) insure the Signage as part of its property and shall also carry liability and property damage insurance with respect to the Signage; (iv) ensure that the Signage is in good condition and repair; and (v) pay all costs associated with creating, designing, manufacturing, installing, cleaning, maintaining, repairing and replacing (if necessary) the Signage.

b. Naming Rights. Developer shall not sell, advertise, promise, allow, or issue naming rights to any portion of the Premises without the prior written authorization of the Parks Director.

11. COUNTY RIGHTS OF ACCESS AND AUDIT: The Contractor, Developer, 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, Developer, or other party to the contract, related to the terms and performance of the Agreement for a period of up to three (3) 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 Agreement will be bound by the same terms and responsibilities as the Developer. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Developer, 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, Developer, 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.

12. INSURANCE:

a. Developer agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Developer's activities, by whomever performed, in such coverage and amounts set forth in this Section 12. Reasonably acceptable proof of such coverage shall be furnished to the County prior to commencement of activities under this agreement. A certificate of insurance shall be submitted for review for each successive period of coverage for the duration of the agreement, unless otherwise specified by the County, in the minimum amounts: General Liability \$1,000,000 per occurrence \$2,000,000 general aggregate, Workers' Compensation Statutory limit and Employer's Liability \$100,000/\$500,000/\$100,000. Milwaukee County shall be named as an additional insured on the General Liability policy. A waiver of subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County. All Carriers must be approved to do business in the State of Wisconsin and be A rated or better per AM Best's Rating Guide. Milwaukee County assumes no responsibility for any loss or damages to Developer's personal property while in use or stored on the Premises.

b. Developer shall cause its consultants, contractors, and subcontractors to have and maintain in connection with any work being performed through this agreement insurance policies with at least the following coverages and limits (Limits can be obtained through Umbrella and/or Excess policies that follow form to the underlying policy) listed below. Acceptable proof of such coverage shall be furnished to the County prior to commencement of activities under this agreement.

Type of Coverage

Minimum Limits

Workers' Compensation and Employer's Liability & Disease to include Waiver of Subrogation	Statutory \$100,000/\$500,000/\$100,000
General Liability to include: Bodily Injury and Property Damage, Personal Injury, Products and Completed Operations	\$5,000,000 Per Occurrence \$5,000,000 General Aggregate
Automobile Liability to include: Bodily Injury & Property Damage All Autos	\$1,000,000 Per Accident
Professional Liability (If applicable, required for Construction Managers, Architects, Engineers and Designers)	\$2,000,000 Per Claim \$2,000,000 Aggregate
Contractor's Pollution Liability (If applicable, required for employed general contractor)	\$1,000,000 Per Occurrence or Claim

Developer shall cause its consultants, contractors, and subcontractors to name Milwaukee County as an additional insured on the General, Automobile, Contractor's Pollution Liability policies and provide a waiver of subrogation in favor of Milwaukee County on the Workers' Compensation and Contractor's Pollution Liability policies as respects to the services provided in this agreement. All Carriers must be authorized to do business in the State of Wisconsin and be A rated or better per AM Best's Rating Guide. Certificates of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this agreement. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement.

15. INDEMNIFICATION: To the fullest extent permitted by law, Developer 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 Developer, its agents, or employees; provided, however, Developer shall have no

obligation to indemnify the County for any liability, claims, damage, injury, loss or expenses relating to or arising from the negligence or willful misconduct of the County or its employees, agents or contractors. Developer 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. Milwaukee County's liability shall be limited by Wis. Stats. § 345.05(3) for automobile and for § 893.80(3) general liability.

16. ENVIRONMENTAL INDEMNIFICATION: Developer 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 Developer or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of any improvements made by Developer, located in the Premises, that are discovered or disturbed as a result of Developer activities on, at, or near the Premises. Developer shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. "Hazardous Materials" as the term is used herein shall mean any substance: (a) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (b) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

17. ASSIGNMENT AND SUBLETTING: Developer may not assign this Agreement without the prior written approval of the Parks Director or his designee, which shall not be unreasonably withheld, conditioned or delayed..

18. TERMINATION: County may terminate this Agreement: (a) if Developer fails to cure any default within the time periods set forth in Section 7 hereof; or (b) if Developer ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Agreement. Developer may terminate this Agreement at its sole and absolute discretion upon one hundred eighty (180) days' prior notice to County.

19. FORCE MAJEURE: Notwithstanding anything to the contrary contained in this Agreement, neither the Developer nor the County shall be considered in breach or default of its obligations with respect to the construction of the Project (including the Project Commencement Date, Construction Stoppage or the Project Completion Date) or the construction of any items of the infrastructure, as the case may be, in the event that a delay in the performance of such obligations is due to causes which were beyond its reasonable control, such as adverse weather conditions, strikes, acts of God, acts of a public enemy, acts of any governmental authorities (including the County in the case of the Developer), fire, flood, epidemics, embargoes or shortages of material from all reasonable sources, which shall not in any event include any economic hardship or delay due to the condition of the economy or real estate market ("Force Majeure Delay"). In the event of a Force Majeure Delay, the time for performance of the affected obligation shall be extended for the period of the Force Majeure Delay; provided, however, the delayed party

shall, within fifteen (15) business days after the occurrence of the event causing the Force Majeure Delay, deliver written notice to the other party of the cause thereof. Failure to deliver written notice of such delay, with back up documentation if appropriate, shall constitute a waiver of the delayed party's right to claim an extension of its time period because of the Force Majeure Delay.

20. PARTNERSHIP: Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than that defined in this Agreement.

21. NOTICES: All notices with respect to this Agreement shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the Party addressed as follows:

To Developer: Kellogg PEAK Initiative, LLC
2480 W. Cherry Street
Milwaukee, WI 53205
Attn: Dan Schiller, Executive Director

To County: Milwaukee County Parks
Executive Director
9480 Watertown Plank Rd.
Wauwatosa, WI 53226
guy.smith@milwaukeecountywi.gov

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

22. WAIVERS: Waiver by the County or the Developer of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any future breach of the same or any other term, covenant or condition of this Agreement.

23. SEVERABILITY: Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

24. ENTIRE AGREEMENT AND AMENDMENTS: This Agreement, including exhibits, and all documents referenced herein, contains all the covenants and agreements between the County and the Developer relating in any manner to development of the Project and other matters set forth in this Agreement. No prior oral agreements or understandings pertaining thereto shall be valid or of any force or effect, and the covenants and agreements of this Agreement shall not be altered, modified or amended except in writing signed by the County and the Developer. The County and the Developer reserve the right to modify and amend this Agreement without the joinder or approval of any other party.

25. AUTHORITY: The Developer hereby acknowledges and agrees that it is a validly formed and existing limited liability company formed in the State of Wisconsin. The undersigned signatory has the requisite power and authority, statutory and otherwise, to enter into and perform this Agreement pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the County, Developer shall deliver copies of its limited liability company resolution or other authorizing documentation demonstrating that it has the power and authority to enter into this Agreement. The County hereby acknowledges and agrees that the undersigned signatories have the requisite power and authority, statutory or otherwise, to enter into and perform this Agreement, pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the Developer, the County shall deliver copies of its authorizing documentation demonstrating that it has the power and authority to enter into this Agreement.

26. RULES OF CONSTRUCTION: Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

- a. Words importing the singular number shall include the plural number and vice versa.
- b. The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
- c. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and masculine genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.
- d. The laws of the State of Wisconsin shall govern this Agreement.
- e. Since both parties to this Agreement have had adequate opportunity to review and negotiate its terms, in no event shall this Agreement be construed against the drafter.

Signature page follows

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

PEAK:

KELLOGG PEAK INITIATIVE, LLC

By: _____ Date: _____

Name: _____

Title: _____

COUNTY:

MILWAUKEE COUNTY DEPT. OF PARKS
RECREATION AND CULTURE

By: _____ Date: _____

Name: _____

Title: _____

[Signature Page 1 of 2]

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____

Community Business Development Partners

Reviewed by:

Approved for execution:

By: _____ Date: _____

Risk Management

By: _____ Date: _____

Corporation Counsel

Approved as to funds available per Wisconsin Statutes Sec. 59.255(2)(e):

By: _____ Date: _____

Comptroller

Approved:

By: _____ Date: _____

County Executive

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

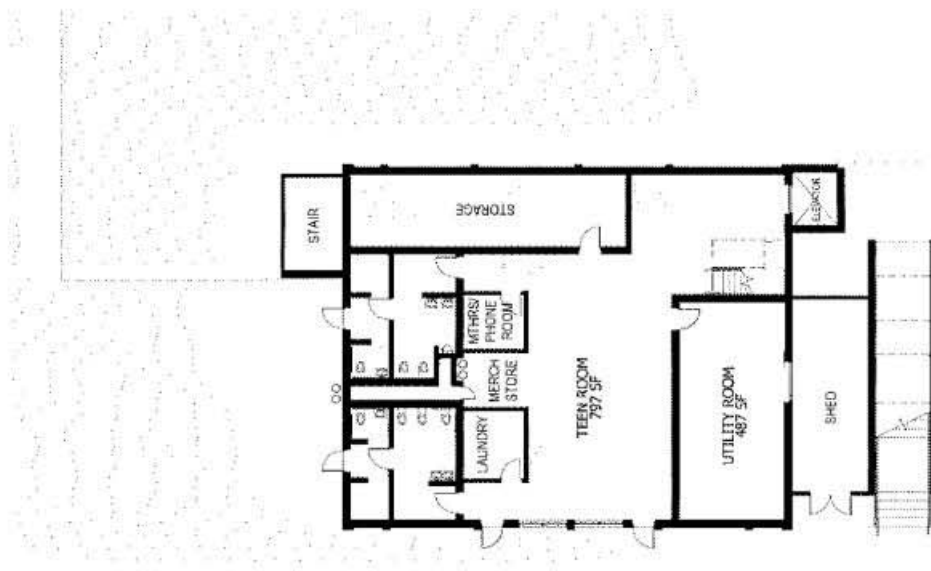
By: _____ Date: _____

Corporation Counsel

[Signature Page 2 of 2]

Exhibit A
Conceptual Plans for the Project





Common Spaces (~2,000sf)	Qty.	Area (ASF)	Total ASF	Comments
Vestibule + Lobby	1	250	250	
Reception (secure)	1	150	150	
Interior Lobby + Gathering	1	600	600	with cubbies, waiting area for parents
Stairs & Elevator	1	840	840	
Restrooms	1	500	500	with locker rooms/shower + gender neutral option
Multi Purpose (~4,500sf)				
Multipurpose Room (gym, cafeteria)	1	3600	3600	
MP Room Storage	1	260	260	(table/chairs, games, puzzles)
Core Program Spaces (~4,000sf)				
Servory + Learning Kitchen	1	450	450	
Learning Lab	4	380	1520	Half could be 3 season (adventure, maker, environ.)
Learning Lab Support/Storage Bays	0	60	0	Within Lab space
Auxiliary Program Spaces (~3,000sf)				
Library/Quiet/Meditation	0	300	0	Integrate into Labs/NIP
Computer Room	0	300	0	Integrate into Labs/Teens
Teen Room	1	800	800	
Merch/Stock Store	1	60	60	
Overnight Rooms	0	140	0	Separate M/F. Dual purpose
Health Check Areas	0	60	0	Dual purpose with Learning Labs
Staff Spaces (~3,000sf)				
Phone/Private Rooms	1	80	80	
Workstations	12	36	432	
Offices	2	100	200	
Handling Stations	3	36	108	Touchdown space for LVC Staff
Small Conference Room	0	120	0	Dual purpose with Learning Labs
Medium Conference Room	0	200	0	Dual purpose with Learning Labs
Kitchenette	1	150	150	
Breakroom/Kitchenette Seating	1	200	200	coffee shop vibe
Central Services	1	20	20	(Printer/Phone/luminair)
Wellness Room	0	80	0	convert (1) phone room as required
Open Collaboration Table	1	120	120	
Booth	1	85	85	
Staff Restroom	1	65	65	w/shower
Support (~1,500sf)				
Building Storage	1	450	450	
Custodial	1	80	80	
MEP	1	500	500	
Restrooms	1	600	600	with access to park
Laundry Room	1	100	100	for skill development
Subtotal Common Floor Amenities			Subtotal ASF 12,220	Grossing factor @ 30% 15,965