

(ATTACHMENT 2) ACTION ON A REQUEST TO APPROVE THE FIRST AMENDMENT TO THE LEASE AGREEMENT WITH THE MILWAUKEE BICYCLE COLLECTIVE, INC., FOR USE OF MERRILL PARK FIELDHOUSE

LEASE AGREEMENT

MILWAUKEE BOARD OF SCHOOL DIRECTORS

AND

MILWAUKEE BICYCLE COLLECTIVE, INC.

THIS LEASE, made this 28th day of 2018, by and between the City of Milwaukee by its Board of School Directors, a Wisconsin Statutory Corporation (hereinafter referred to as "the Board") and, Milwaukee Bicycle Collective, Inc. (hereinafter referred to as "Lessee"), collectively the Board and Lessee shall be referred to as (the "Parties").

1. **PREMISES:** The Board does hereby lease, demise and let into Lessee that portion of the Merrill Park Playfield Fieldhouse located at 461 North 35th Street, Milwaukee, WI 53208 ("the Property") described below.

- a. Leased space to include: Use of 739 square feet as shown on Exhibit A (the "Leased Space").
- b. The Board reserves the right to lease any or all of the remaining portion of the Property not leased to Lessee to third parties.

2. **TERM:** The term shall commence on October 1, 2018 and will terminate on June 30, 2019, except either party may terminate the lease by providing the other party 60 day written notice of termination. Upon termination, Lessee shall vacate the premises in a manner consistent with the terms and conditions of the lease.

3. **SUBLEASE:** The Lessee shall not have the option to sublease any portion of the Leased Space.

4. **USE OF THE LEASED SPACE:**

- a) Lessee agrees to use the Leased Space for the storage of bicycles, bicycle parts, and the tools and supplies for repairing bicycles. Such storage shall be done at all times in a reputable and first-class manner so as not to injure the reputation of the Board. Lessee shall provide any and all resources, equipment, and/or personnel required to achieve such a reputable operation.
- b) Lessee shall have access to the Leased Space as follows:
 - i. 8:00am to 4:00pm with 24 hours advance notice to Recreation Facilities Manager.
- c) Lessee agrees that if Lessee wishes to operate outside of the hours listed in this section then Lessee shall pay the Board a fee of \$45 per hour. This fee is in addition to the monthly rental amount in section 5.

5. RENT: Lessee shall pay rent to the Board as follows

- a. \$1.00 for the term of this lease.
- b. Rent is to be paid by check and mailed to: Facilities and Maintenance Services, 1124 North 11th Street, Milwaukee, Wisconsin 53233, Attention: Director.

6. COVENANT OF TITLE: The Board herein warrants that there are no existing restrictions which may deny Lessee the use and occupancy of said premises or restrict its use thereof. Lessee is solely responsible for obtaining at Lessee sole cost the required occupancy permit from the City of Milwaukee, any required approvals of the Board of Zoning Appeals, and any required licenses to operate its facility.

7. BOARD'S RIGHT TO ENTER: The Board or the Board's agents shall have the right at all reasonable times during business hours to enter the Leased Space to examine the same and make repairs. In addition, the Board or its agents shall have the right to enter during business hours to conduct quarterly inspections to insure compliance with the lease agreement.

8. COVENANT OF QUIET ENJOYMENT: The Board hereby covenants that Lessee, upon paying the rent above stipulated and performing all and singular the covenants and conditions of this lease on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the premises for the aforesaid term, and for the term of any renewal or renewals hereof, free from molestation, eviction or disturbance by the Board, or by any other person or persons lawfully claiming the same, and that the Board has good right to make this lease for the full term thereby granted, including the period for which the Board has the right to effect a renewal hereof.

9. DAMAGE TO PREMISES: In the event of damage or injury to the Leased Space or any part thereof, by fire or other casualty, so that the premises are rendered unusable, the Board shall have five (5) days after the loss within which to notify in writing its intention to repair and restore the premises without terminating this lease. In the event said notice of intent to repair the damage is not received within five (5) days, then and in such case, either party hereto upon written notice to the other party may terminate this lease. If, after the five-day (5-day) period, the Board decides to restore the premises, work shall commence immediately and be completed as expeditiously as possible and the Lessee shall have no claim against the Board for any loss due to the condition of the leased premises during the repair and restoration period.

10. COVENANT TO OBEY LAWFUL ORDERS: The Board agrees to obey all ordinances of the City of Milwaukee in regard to cleaning the sidewalk in front of said Leased Space hereto leased and any and all lawful orders, rules and regulations of the proper health officers of said City. The Board and the Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, and City government and of any and all their departments and bureaus applicable to said premises for the correction, prevention, and abatement of nuisances or other grievances, in, upon or connected with said premises during said term, and shall also promptly comply with and execute all rules, orders, and regulations of the Board of Fire Underwriters of the State of Wisconsin.

Lessee shall not knowingly do, or permit anything to be done, which will violate any Federal, State, or City statute, ordinance, rule, order, regulation, or requirement affecting its occupancy. The Lessee may, at its own expense, and by appropriate legal proceeding, contest the validity, in whole or part, of any such statute, ordinance, rule, order, regulation, or requirement provided that neither the Board or the Premises shall be placed in danger of civil or criminal liability or imposition of any lien by the Lessee's failure to comply.

11. ENVIRONMENTAL POLLUTANTS: (a) Lessee shall not (either with or without negligence) cause or permit the escape, unlawful disposal or release beyond lawful limits of any Hazardous Materials (as hereinafter defined). Lessee, its agents, contractors, invitees, students, shall not bring in or onto the property, Premises, or knowingly allow the storage or use of such substances or prevailing in the industry for the storage and use of such substances or materials. For the purposes of this Section, the term "Hazardous Materials" shall mean, (i) any substances defined as "hazardous substances," "pollutants," "contaminants," "hazardous materials," "hazardous wastes," or "hazardous or toxic substances" as now or hereafter defined in any applicable federal, state or local law, regulation, ordinances, or directive, including, but not limited to, the Resource Conversation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et. seq.); the Comprehensive Environmental Response, compensation and Liability Act of 1980, as amended by SARA, 42 U.S.C. Sec. 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sec 1801, et. seq.; the Toxic Substance Control Act, 15 U.S.C. Sec. 2601, et. seq.; the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 9601, et. seq.); the Clean Water Act, 33 U.S.C. Sec. 1251 et. seq.; the Clean Air Act, 42 U.S.C. Sec. 7412, et. seq.; as any such acts may be amended, modified or supplemented; (ii) those substances listed or otherwise identified in the regulations adopted and publications issued, as may be amended, modified or supplemented, pursuant to any of the above-referenced statutes; (iii) any friable asbestos, airborne asbestos, or any substance or material containing asbestos; (iv) any substance, the presence of which is prohibited by any legal requirement of any governmental authority or which may give rise to an assessment of a governmental authority; and (v) any other substance which by legal requirement of any governmental authority requires special handling in its collection, storage, treatment or disposal.

(b) Lessee shall develop and implement a safety plan for all chemicals Lessee may bring on to the Property. As part of the plan, Lessee agrees to develop and maintain an inventory of all chemicals stored on site, and a complete file of Material Safety Data Sheets pertaining thereof. Prior to occupancy, a completed plan must be codified and fully implemented. Lessee agrees to submit to MPS a complete copy of the safety plan. MPS reserves the right to exclude from the site chemicals which are deemed to be detrimental to the welfare of the occupants.

(c) If any governmental agency shall ever, in its reasonable discretion, require testing to ascertain whether or not there has been any release of Hazardous Materials by Lessee, then all of the reasonable costs thereof shall be reimbursed by the Lessee to the Board upon demand. Lessee shall execute affidavits, representations and the like from time to time at Board's request concerning Lessee's best knowledge and belief regarding the presence of Hazardous Materials on the Premises.

(d) Lessee shall unconditionally indemnify and hold harmless the Board, its officers, employees, agents, successors, and assigns from and against any and all losses, claims,

damages, penalties, liabilities, costs, and expenses, (including reasonable attorneys' fees and court costs), fines, injuries, penalties, response costs (including the cost of any required or necessary investigation, testing, monitoring, repair cleanup detoxification, preparation of any closure or other required plans, or other removal, response or remedial action at or relating to the Property) (collectively, the "Claims and Costs"), with respect to, as a direct or indirect result of, or arising out of any of the following: (i) any legal requirements, lawsuit (brought or threatened), reasonable settlement, or requirement of any insurer, relating to the generation, presence, management, disposal, release (or threatened release), escape, seepage, leakage, or cleanup of any Hazardous Materials at, on, from or under all or a portion of the Leased Premises for which the Lessee, its agents, contractors, or invitees are responsible, or (ii) the migration of Hazardous Materials caused by Lessee from the Leased premises to any other property or onto the school property, of (iii) the treatment, disposal or storage of Hazardous Materials or the transportation of Hazardous Materials from the Leased Premises by Lessee, its agents, contractor or invitees; or (iv) the incorporation by the Center of any Hazardous Materials in the Leased Premises.

(e) The foregoing indemnification shall survive the expiration or earlier termination of this Lease.

12. ALTERATIONS: Lessee shall make no alterations to said premises.

13. REPAIRS AND VANDALISM: The Board shall take good care of the premises and, at its own cost and expense, make all repairs thereto, including structural repairs or replacements unless the need therefore was caused by the Lessee, the Lessee's agents, employees, contractors, students, invitees or licensees, in which case the Lessee would reimburse the Board for such repairs. At the end of the expiration of the term, Lessee shall deliver up the premises in good order, reasonable wear and tear excepted. General maintenance of building will be the responsibility of the Board. The Board will not be responsible for the maintenance or repair of any improvements installed or caused to be installed by the Lessee.

The Lessee shall be responsible for cost of repairs for any vandalism that occurs on the premises. When vandalism or other damage is the known result of action by students, agents, employees, invitees or licensees of a specific school or building tenant, that agency shall be solely responsible for all costs of repair, regardless of the location of occurrence. The Board shall complete all repairs required as a result of vandalism. Lessee shall immediately report any vandalism to the Recreation Facilities Manager.

14. INSURANCE: Lessee understands and agrees that financial responsibility for claims or damages to any person, or to Lessee's employees and agents, shall rest with the Lessee. Lessee shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

Throughout the term of this Lease Agreement, Lessee will carry the following insurance

Worker's Compensation and Employers Liability

--Worker's Compensation	Statutory Limit
--Employers Liability	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 each employee
	\$500,000 policy limit

The Workers Compensation policy shall be modified to include a Waiver of Subrogation Endorsement in favor of the Board.

Commercial General Liability

--Bodily Injury/Property Damage	\$1,000,000 per occurrence
	\$2,000,000 aggregate
--Fire Damage Legal Liability (following form with the umbrella insurance)	\$ 50,000 each incident

Excess Liability Insurance (umbrella insurance)	\$1,000,000 per occurrence
	\$5,000,000 aggregate

The Board is to be named as an additional insured under Lessee's Commercial General Liability Insurance and other appropriate policies throughout the term of this Lease Agreement and any subsequent renewals thereof. All insurance coverage for the additional insureds shall be on a primary and non-contributory basis. All policies shall provide that any insurance maintained by the additional insureds is excess and non-contributing with any insurance required hereunder.

Before any services are to commence under this Lease, evidence of all required insurances of Lessee shall be submitted electronically to MPS attention Ms. Linda Dahl, Contract Clerk at dahlx@milwaukee.k12.wi.us and to MPS third party vendor Wesley Insurance Agency attention Ms. Bettie Wesley at bettiew@wesleyagency.com. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be submitted electronically to MPS attention Ms. Linda Dahl, Contract Clerk at dahlx@milwaukee.k12.wi.us and to MPS third party vendor Wesley Insurance Agency attention Ms. Bettie Wesley at bettiew@wesleyagency.com for recording, which records are incorporated into this Lease by reference. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this Contract.

The indemnification obligation under this Lease Agreement shall not be reduced in any way by the existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions. Under no circumstances is the Board's recovery limited due to the fact that it is named as an additional insured under the Lessee's insurance policy as listed above.

The Board is responsible for property insurance covering leased premises. The Lessee agrees to be responsible for insurance covering Lessee's contents and improvements

while on site during term of said lease. The Board shall not be responsible for any damage, loss, vandalism, or theft of Lessee's improvements, equipment, supplies, materials, or personal property including personal property or belongings of its invitees.

It is the intention and agreement that Lessee shall carry such insurance as contemplated herein and shall look to its insurer for reimbursement of any such loss, and further that the insurer involved shall have no subrogation rights against the Board. Lessee shall advise its insurance company of this release and such policy shall, if necessary, contain a waiver of any right of subrogation by the insurer against the Board.

15. INDEMNIFICATION: Lessee agrees to defend, indemnify, and hold harmless the Board, its agents, employees, volunteers, and officers against any and all claims, demands, actions and causes of actions and resulting liability, loss damages, costs and expenses for injury to persons and damages to or loss of physical property to the extent caused directly or proximately by any wrongful, intentional or negligent act or omission of Lessee, its employees, officers, students, invitees, agents, and volunteers who participate in the activities covered by this Lease Agreement.

In accordance with applicable laws, the Board shall be responsible for defending and paying judgments on behalf of its directors, officers, employees, and agents while acting within the scope of their employment or agency for any claims that may arise out of the Board's negligence for acts, policies, or directives that affect the activities covered by this Lease.

Lessee and the Board each agree to promptly notify the other by phone and in writing as soon as reasonably practical of any incident involving any of the other's employees, officers, students, invitees, agents, or volunteers, which may result in action against the other.

16. UTILITIES: The Board will bear the cost of electricity, gas, water, and sewer. Lessee will pay for the installation, maintenance, and service of telephone lines and internet connections for its operation.

17. MAINTENANCE AND CLEANING AND SAFETY SERVICES: The Board shall provide no maintenance and cleaning services under this agreement. The Board shall maintain the exterior of the Leased Space and mechanical equipment.

18. DEFAULT: Each and every of the following will constitute default of this agreement and result in its automatic termination:

a. Failure to pay rent when due, and the failure is not cured within five (5) days after written notice of such failure has been given to Lessee by the Board; or

b. Failure to perform any other terms or conditions of this Lease which are the responsibility of Lessee, and if such failure is not cured within five (5) days after written notice by the Board. If the failure is caused by events beyond the Lessee's reasonable control, the Lessee shall so inform the Board and shall use due diligence to cure the default as soon as feasible and shall not be considered in default; or

- c. Vacating or abandoning the Premises in excess of five (5) days without previously notifying the Board in writing; except that a temporary closing for remodeling or repairs, or for a holiday shall not be deemed vacation or abandonment; or
- d. Adjudgement as a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of the Lessee under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of the State of Wisconsin, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within fifteen (15) days from the date of the entry or granting thereof; or
- e. Filing or admitting the jurisdiction of the court and the material allegations contained in, any petition in bankruptcy, or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or the Lessee shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Lessee under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition of evidence; or
- f. Assignment for the benefit of creditors or application for or consent to the appointment of a receiver for Lessee; or
- g. An assignment, transfer, conveyance or other disposition of its interest in the Premises without the express written consent of the Board; or
- h. Violation of Article 11, Environmental Pollutants.

Additionally, after having obtained permission from a court of competent jurisdiction, the Board may re-enter the Leased Premises, remove all persons and property there from, and store such property in a public warehouse at the sole cost of the Lessee, without becoming liable for any loss or damage, except for loss of damage resulting from willful or negligent acts of the Board, its employees or agents, and such re-entry will not release the Lessee from liability hereunder.

19. ADDITIONAL TERMS:

- a. Lessee is responsible for the conduct of its employees, students, participants, guests and invitees.
- b. Intoxicating liquor, weapons, and illegal substances, in any form, will not be allowed on premises. Also, no smoking is allowed on the premises.
- c. Lewd conduct will not be tolerated.
- d. Lessee will report any repairs or maintenance needed to equipment or facilities to the Recreation Facilities Manager.

20. NOTIFICATIONS: All communications and notifications shall be made to the addresses shown below by U.S. Mail or other express carrier, addressed as follows:

To Lessor:

Milwaukee Board of School Directors
Milwaukee Public Schools
1124 North 11th Street
Milwaukee, WI 53233-1414
Attention: Director

Copies to:

Milwaukee Board of School Directors
Milwaukee Public Schools
5225 West Vliet Street, Room 1
Milwaukee, WI 53202
Attention: Director of Procurement

To Lessee:

Milwaukee Bicycle Collective Inc.
Stephen Haughey
2930 W. Clybourn St.
Milwaukee, WI 53208

Copies to:

or at such other address as either party may hereafter designate in writing. Service of any such written notice shall be deemed complete at the time of personal delivery or within three (3) days after mailing as provided above.

22. HOLDOVER: In the event the Lessee remains in possession of the premises after the expiration of this lease, the Lessee shall be deemed to be occupying the premises on a month-to-month basis. All other obligations contained herein shall continue to be applicable except the Lessee shall pay monthly rent equal to twice the amount of the original term, but in no case shall continue beyond sixty (60) days. In addition, all damages sustained by the Board as a result of the holdover shall be the sole responsibility of the Lessee.

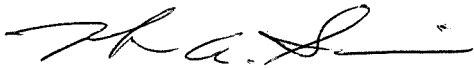
23. ENTIRE AGREEMENT: This lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument and in writing executed by the parties or their successors in interest. The terms, covenants and conditions contained in this lease and any riders and plans attached hereto shall bind and inure to the benefit of the Board and the Lessee and their respective successors, heirs and legal representatives and assigns.

24. This lease was signed this 28 day of Sept. 2018 with all terms beginning October 1, 2018.

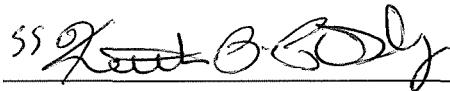
Signature Page to Lease Agreement Between
the Milwaukee Board of School Directors
and
Milwaukee Bicycle Collective, Inc.
For
Merrill Park Playfield Field House

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year first above written.

LESSOR:
MILWAUKEE BOARD OF
SCHOOL DIRECTORS



Mark A. Sain
President
Milwaukee Board of School Directors



Keith P. Posley, Ed.D.
Superintendent of Schools

LESSEE:
MILWAUKEE BICYCLE COLLECTIVE



Stephen Haughey
Principal Officer

10/2/18

EXHIBIT A Description of the Leased Space

