

LEASE AGREEMENT BETWEEN THE CITY OF ELLENSBURG  
AND  
THE ELLENSBURG BUSINESS DEVELOPMENT AUTHORITY  
REGARDING THE CITY INCUBATOR BUILDING

THIS LEASE is made at Ellensburg, Washington, this ~~10~~<sup>6th</sup> day of ~~December~~<sup>January</sup>, 2020, by and between the City of Ellensburg, a Washington municipal corporation, hereinafter referred to as "the City," and the Ellensburg Business Development Authority dba CenterFuse ("CenterFuse"), hereinafter referred to as "Lessee."

WITNESSES THAT:

In consideration of the mutual promises, covenants, condition, and terms to be kept and performed, it is agreed between the parties hereto as follows:

1. **Term; termination.** The term of this Lease shall be ten (10) years beginning January 6, 2020 and terminating at midnight on January 6, 2030. This Lease may be terminated for any reason at any time by either Party upon ninety (90) days' prior written notice by one Party to the other.
2. **Compliance with Charter.** In entering into this lease, the City is relying upon Lessee's substantial compliance with the purposes and authority contained in the Lessee's Public Development Corporation Charter, as amended, and approved by the City through adoption of Ordinance 4778.
3. **Lease Premises.** The City hereby leases to the Lessee, the Ellensburg Business Incubator building situated at 1000 Prospect St., Ellensburg, Washington, and legally described as Lot 1 Ellensburg Industrial Park Plat ("the Premises").
4. **Rate.** The Lessee shall pay to City as rent the sum of \$1.00 per year. Payment is due in one installment.
5. **Permitted Uses.** The incubator property is located on land zoned as Industrial-Heavy (IH), therefore all permitted uses must follow existing City Code 15.310.040 Use Tables and City Code 15.130.010 Definitions.
6. **Utilities.** Lessee will pay for the cost of sewer service, water, electricity, natural gas and telephone utilities for the Premises.
7. **Maintenance, Repairs, and Leasehold Improvements.** CenterFuse will contact City Shop for consultation on all repairs and for seasonal work related to swamp coolers and irrigation. Shop Staff will address all concerns and either provide repair services, including ordering of parts, or advise CenterFuse staff on hiring of outside contractors. All City Shop repairs and parts ordered will be charged back to Community Development Economic Development Repairs and Maintenance account. CenterFuse will contact outside contractors or prepare a Request for Proposals when appropriate, following all state

regulations for prevailing wage. The City is responsible for all large repairs (over \$3,000), up to the budgeted annual amount in the Community Development Economic Development Repairs and Maintenance account. CenterFuse is responsible for all other repairs. If any repairs exceed \$10,000 and there are no funds available in the Community Development Economic Development Repairs and Maintenance, City Administration and CenterFuse will work together on a solution. If a repair is considered catastrophic, CenterFuse will be released from the Lease obligation and the City will proceed with appropriate measures, which may include condemnation of the building and notification to tenants.

The Lessee agrees during the term of this lease, at its own cost, to keep the common area floors, counters, and other facilities in a clean and sanitary condition, to use all necessary and approved safeguards against fire risk, to maintain drip pans under its machinery for the purpose of preventing oil, grease or ink or other wet material from sinking in to the floor of the premises leased. The Lessee shall not garage or store overnight any motor vehicle, except for forklifts, in the premises. Such forklifts which are stored in the premises must be stored on a protective pad or surface area to eliminate any marking or spotting of the floor area.

8. **Hazardous Substances.** Lessee shall not allow on the Premises any leakage, spillage or release of any hazardous substance, hazardous waste, petroleum, or toxic material as those terms are defined by federal or state law or regulation. If such a release should occur, Lessee shall notify the City of such fact within two (2) days. Furthermore, in such event, Lessee shall promptly remove and clean up any such leakage, spillage or release, at its own cost, and Lessee shall accomplish such removal and cleanup in strict compliance with all applicable laws, codes and regulations. Lessee shall notify the City within two (2) days if Lessee receives notice of intent to sue, notice of violation, citation, warning or similar notification arising out of operations on the Premises. Lessee shall notify the City within two (2) days if Lessee learns of any federal, state, or local agency investigation or inquiry concerning the Premises or Lessee's or sub-lessee's operations.
9. **Grounds.** Grounds maintenance will be the responsibility of the City and covered under the City Public Works Groundskeeping Contract.
10. **Snow Removal.** Snow Removal will be contracted by the City and billed to CenterFuse.
11. **Tenant Leases, Invoicing, and Financial Responsibilities.** CenterFuse will provide all leases and lease negotiations as well as invoicing to sublessees, including leasehold improvement taxes, reimbursement of tenant utilities, trash removal, water and sewer, and will provide all accounts payable services for vendor billings. All subleases will be between CenterFuse (sublessor) and Tenant (sublessee). CenterFuse will process all invoices for expenses related to the building. City will prepare and process all Leasehold Improvement taxes to the state. CenterFuse will receive and retain all funds obtained through subleases.
12. **Building Safety.** CenterFuse agrees to arrange for annual inspection of fire alarm system, necessary repairs to system, smoke detectors, and monthly cleaning of common areas. City

will provide annual inspection and upkeep of fire extinguishers.

**13. Insurance.**

- A. City Insurance.** The City shall obtain and keep in force during the term of the lease a policy or policies of insurance, or have evidence of coverage through a self-insured risk pool, covering loss or damage to the building and Lessee improvements and betterments which constitute a permanent fixture to the building. The policy will provide protection against perils included within the classification of fire, extended coverage endorsement (riot, explosion, damage by vehicle, civil commotion, smoke, hail, damage by aircraft and windstorm), vandalism, malicious mischief and sprinkler leakage. Said insurance shall provide for the payment for loss thereunder to the City. This insurance policy does not cover the personal premises of the Lessee and it is the Lessee's own responsibility to provide insurance coverage for the premises.
- B. Lessee Insurance.** Lessee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- C.** Lessee shall obtain insurance of the types described below:
1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.
  2. Premises insurance shall be written on an all risk basis.
- D.** Lessee shall maintain the following insurance limits:
1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
  2. Premises insurance shall be written covering the full value of Lessee's premises and improvements with no coinsurance provisions.
  3. Other Insurance Provisions. The Lessee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Lessee's insurance and shall not contribute with it.

- E. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- F. Verification of Coverage.** Lessee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee.
- G. Waiver of Subrogation.** Lessee and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by premises insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.
- H. Notice of Cancellation.** The Lessee shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
- I. Failure to Maintain Insurance.** Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of lease, upon which the City may, after giving five business days' notice to the Lessee to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.
- 14. Subleases and Assignments.** The premises, in whole or in part, and appurtenances thereon may be subleased for any use not otherwise inconsistent with this Agreement without written approval from the City.
- 15. Nondiscrimination.** The Lessee agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, sex, age, sexual orientation or any other status protected under federal, state or local law.
- 16. Lessee Indemnification.** Lessee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to the Premises, which arises out of Lessee's use of the Premises, or from the conduct of Lessee's business, or from any activity, work or thing done, permitted, or suffered by Lessee in or about the building, except only such injury or damage as shall have been occasioned by the sole negligence of the City. The provisions of this section shall survive expiration or termination of this Lease.
- 17. Conformance to Laws.** The Lessee shall not operate, nor allow any sub-lessee to operate, in violation of Local, State and Federal rules regarding the treatment and storage of hazardous materials and hazardous waste, under penalty of termination of the Lease and recovery of any actual and incidental damages.
- 18. Lessee Not to Commit Waste.** Lessee agrees that it will not commit waste and that it will keep the Premises in a safe, sanitary, neat, presentable, and otherwise good condition, and

in general shall comply with all the applicable governmental rules, ordinances and regulations as may be required or imposed by such authorities on said premises and shall comply with any direction pursuant to law of any public officer or officers who shall be empowered to enforce local, state and federal rules, regulations and ordinances upon the Lessee with respect to the said Premises or the use, occupancy, or control thereof, and shall not suffer any improper or offensive use of said Premises.


19. **Bankruptcy.** The Lessee for itself, its successors and assigns and for all persons claiming or to claim under it or them, hereby expressly covenants and agrees that if at any time the Lessee is adjudicated a bankrupt or a receiver of its premises is appointed in insolvency proceedings, then in that event this lease forthwith shall terminate and be at an end at the option of the City, this covenant being one of the considerations whereby City is induced to make this lease.
20. **Delinquency and Failure to Abate.** If the Lessee shall default in the payment of rent or in the performance of any of the covenants contained in this lease or in the event Lessee fails to prevent, correct or abate, within a reasonable time after receiving notification from City to prevent, correct or abate nuisances or other grievances which cause directly or indirectly interference with, harm or damage, the operations or products of another tenant or tenants of City or in the event that the Lessee shall become insolvent or bankrupt or shall make an assignment for the benefit of creditors, City may terminate this lease, and at the expiration of said ten days the term of this lease shall cease and expire as if it were the expiration of the original term. That in case this lease shall be terminated, canceled or forfeited under any of the terms and conditions herein contained or the demised premises be vacant for a period of ten (10) days, City shall immediately have the right to re-enter and take possession of said premises and re-occupy the same without notice and without being liable for damages, and also any part of the premises herein demised that may have been subleased, notwithstanding that the terms are for the best rent it can obtain for the account of the Lessee who shall make good any deficiency, which shall be payable monthly.
21. **Access to Leased Area.** That City, its servants or agents, shall have at all reasonable time, access to any part of the aforesaid premises for the purpose of examining same or making any necessary repairs or changes in plumbing, electric wiring, or pipes, gas pipes, heating or other alterations and repairs in any part of the premises hereby leased, which it may be incumbent upon City to make.
22. **Fire Damage.** The Lessee, in case of fire, shall immediately give notice thereof to City, who shall thereupon cause the damages to that portion of the building hereby leased to be repaired, but if the Premises be so damaged that City shall decide not to rebuild, or condemn the same, the term shall cease and the accrued rent shall be paid up to the time of said fire. In case, however, the destruction of the Premises by fire shall be only partial and a portion thereof shall during the period of repairs be fit for occupancy by the Lessee for the purpose for which said premises are leased, then the rent shall be equitably apportioned and paid for the part so fit for occupancy.


23. **Glass Damage.** In case of any damages or injury to the glass in the Premises or damage or injury to the same premises of any kind whatsoever, said damage or injury being caused by the carelessness, negligence or improper conduct of the Lessee, its agents, servants, guests, or employees, then the said Lessee shall cause the said damage or injury to be repaired in equal quality and type as promptly as possible at its own cost and expense, otherwise the same shall be replaced by City at the cost of the Lessee.

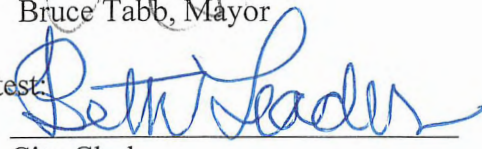
IN WITNESS WHEREOF, the parties hereto have each caused this lease agreement to be executed as of the date first above.

The City of Ellensburg, Lessor:

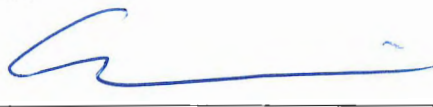
The Ellensburg Business Development Agency, Lessee:

By:   
\_\_\_\_\_  
Bruce Tabb, Mayor

By:   
\_\_\_\_\_  
Linda Schactler,  
CenterFuse Board Chairperson

Attest:   
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney