

## LEASE AGREEMENT

This LEASE AGREEMENT ("Lease") is between the City of Olympia, a municipality organized under the laws of the State of Washington ("Lessor"), and South Sound Young Men's Christian Association, a Washington non-profit corporation, also commonly known as South Sound YMCA, ("Lessee"), jointly referred to as "the Parties." This Lease shall not be effective until the "Effective Date" (as defined in Paragraph 13.15 below).

### RECITALS

Lessor is the owner of a certain real property commonly located at 108 State Avenue Northwest in Olympia, Thurston County, Washington, consisting of approximately 15,400 square feet and shown on Exhibit "A" (general vicinity sketch) attached hereto and by this reference incorporated herein.

Lessee wishes to lease the first floor of the property or approximately 7980 square feet of space and the outdoor play areas as shown on Exhibit "A" from Lessor for the sole purpose of using it for a childcare facility.

The signatories to this Lease acknowledge that they are authorized to execute this lease and any associated documents, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Lease.

The Parties now enter into this Lease to memorialize the terms and conditions under which Lessor will lease the property to Lessee.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Leased Property. Lessor agrees to lease to Lessee the property located at 108 State Avenue Northwest in Olympia, Thurston County, Washington, located as shown on Exhibit "A" (general vicinity sketch) attached hereto and by this reference incorporated herein. The Leased Property described in this Paragraph 1 is referred to in this Lease as the "Property."

2. Use and Occupancy. The Parties agree that Lessee shall use the Property herein as a site to provide childcare services to support the Olympia School District in responding to the Covid-19 pandemic and the changes in school operations to accommodate social distancing requirement and for no other purpose or use without the express written consent of Lessor.

3. Term. The term of this Lease shall be for one year, effective as of the date of the last authorizing signature affixed hereto, and may be renewed for an additional term upon mutual agreement of the Parties, subject to the terms herein and any modifications or amendments. In the event Lessee ceases to use the Property for the purpose stated herein, the tenancy shall automatically terminate without further notice and the Lessee, shall be required to vacate the

property. Lessor may terminate this lease with sixty (60) days written notice to Lessee, with or without cause.

4. Acceptance of Property As Is. Lessee accepts and acknowledges use of the Property in its “as is” condition.

5. Maintenance and Repairs. Lessee shall be responsible for any and all maintenance and repairs to the interior except common systems such as HVAC, electrical and plumbing. Lessee must submit requests to modify any fixed building components such as walls, plumbing fixtures, doors, and any other requested modifications to [facilityrequests@ci.olympia.wa.us](mailto:facilityrequests@ci.olympia.wa.us) and shall await written approval from Lessor before proceeding with any such modification. Lessee shall conduct and document in written detail monthly playground inspections and is responsible for playground repair if needed. Lessor shall be responsible for any and all maintenance and repairs to the exterior and for common interior systems such as HVAC, electrical, and plumbing.

6. Utilities. Lessee shall directly pay and be financially responsible for any and all utility services to the Property, including but not limited to electricity, water, sewer, storm water, solid waste, recycling services, telephone, pay television, internet or wi-fi access.

7. Insurance, Indemnification and Hold Harmless Agreement. Lessee shall defend, indemnify and hold harmless Lessor, its agents, officers, officials, employees and volunteers from and against any and all claims, suits, actions, liabilities for injuries, death of any person, or for loss or damages to property which arises out of Lessee’s use of the Property, 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 Property, except only such injury or damage as shall have been occasioned by the sole negligence of Lessor. It is further specifically and expressly understood that the indemnification provided herein constitutes the Lessee’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated and agreed to by the Lessee and Lessor. The provisions of this paragraph shall survive the expiration or termination of this Lease.

7.1 Concurrent negligence. Should a court of competent jurisdiction determine that this Lease is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Lessee and the Lessor, or their respective officers, officials, agents, employees, and volunteers, the Lessee’s liability, including the duty and cost to defend, hereunder shall be only to the extent of Lessee’s negligence.

7.2 Insurance term. Lessee shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damage or loss to property, which may arise from or in connection with the Lessee’s operation and use of the leased Property.

7.3 No Limitation. The Lessee’s maintenance of insurance as required by this Lease shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the Lessor’s recourse to any remedy available at law or in equity.

7.4 Minimum scope of insurance. The Lessee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The Public Entity shall be named as an additional 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 at least as broad coverage.
2. Property insurance shall be written on an all risk basis.

7.5 Minimum amounts of insurance. The 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 and \$5,000,000 per occurrence/aggregate umbrella or excess insurance.
2. Property insurance shall be written covering the full value of Lessee's property and improvements with no coinsurance provisions.

7.6 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 to the Lessor. Any insurance, self-insurance, or self-insured pool coverage maintained by the Lessor shall be excess of the Lessee's insurance and shall not contribute with it.

7.7 Acceptability of insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

7.8 Verification of coverage. The Lessee shall furnish the Lessor 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.

7.9 Waiver of subrogation. Lessee and Lessor hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said any building or structures on the Property. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

7.10 Lessor's property insurance. Lessor shall purchase and maintain during the term of the lease all-risk property insurance covering any building or other structures for its full replacement value without any coinsurance provisions.

7.11 Notice of cancellation. The Lessee shall provide the Lessor with written notice of any policy cancellation within two business days of Lessee's receipt of such notice.

7.12 Failure to maintain insurance. Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of the Lease, upon which the Lessor may, after giving five (5) 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 Lessor on demand.

7.13 Lessor full availability of Lessee limits. If the Lessee maintains higher insurance limits than the minimums shown above, the Lessor shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this Lease or whether any certificate of insurance furnished to the Lessor evidences limits of liability lower than those maintained by the Lessee.

## 8. Acknowledgment and Acceptance.

8.1 Rent. As a result of negotiations and mutual benefits and consideration exchanged between the Parties, it is agreed that Lessee shall pay Lessor the sum of One Dollar and No Cents (\$1.00) per year as rent. Said rental payment shall be due and payable upon commencement of the Lease.

8.2 Taxes and assessments. In the event a leasehold tax is imposed upon Lessee's tenancy by the State of Washington during the term of this Lease, Lessor agrees to pay said leasehold tax amount to the State of Washington during the period Lessee has occupied such property.

8.3 Mechanics' liens. In the event Lessee causes any labor, material or services to be furnished in, on or about the Leased Property, or any part thereof, Lessee hereby agrees to pay, resolve, settle or compromise such liens or claims and to fully satisfy same so as to prevent or remove any liens against Lessor's Property. Lessee will not allow any lien to attach to the Leased Property. Lessee further agrees to fully indemnify and hold harmless the Lessor from any and all claims of liens against the Leased Property incurred by Lessee, including any attorney's fees, costs or other litigation expenses incurred by Lessor in connection with such claims of lien.

8.4 Subleases and other agreements. Lessee shall not enter into any leases, subleases, licenses, or easements with any person(s) or entities for profit or other charge or consideration upon the Leased Property. Lessee agrees that the Leased Property shall be solely used as set forth in Paragraph 2 above, during the term of this Lease.

8.5 Due authority. Lessee and Lessor have all requisite power and authority to execute and deliver this Lease and to carry out its obligations hereunder and the transactions contemplated hereby. This Lease has been, and the documents contemplated hereby will be,

duly executed and delivered by Lessor and Lessee and constitute their legal, valid and binding obligation enforceable against Lessor and Lessee in accordance with its terms.

9. Covenants of Lessee. Lessee covenants and agrees as follows:

9.1 Perform obligations. From the effective date of this Lease, Lessee will perform any monetary and non-monetary obligations they have regarding the Leased Property.

9.2 No encumbrances. From the date of this Lease, Lessee will not grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Leased Property or any part thereof.

9.3 Environmental. Lessee shall defend, indemnify, and hold Lessor harmless with respect to any loss, liability, claim, demand, damage, or expense of any kind, including attorneys' fees, costs, and expenses (collectively, "Loss") arising out of the release or threatened release of Hazardous Substances on, under, above, or about the Leased Property by Lessee, except for any release or threatened release of any Hazardous Substance on, under, above, or about the Leased Property caused or contributed by Lessor, or any employee, agent, or contractor of Lessor.

9.4 Definitions. The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," or "solid wastes" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; (d) chlorinated solvents; and (e) asbestos. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions, or hazardous substances.

9.5 Compliance with laws. Lessee covenants and agrees to comply with any and all statutes, codes, regulations, covenants or laws that may affect the use and occupancy of the Leased Property including but not limited to laws regarding background checks for those who supervise children. Violation of this covenant by Lessee shall be grounds for termination of this Lease.

9.6 Nuisance or waste. Lessee shall not permit any nuisance upon the Leased Property or permit any waste or destruction of the property.

9.7 Indemnification. Lessee shall defend, indemnify and hold harmless the Lessor, 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 property, which arises out of Lessee's use of 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 Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Lessor. It is further specifically and expressly understood that the indemnification provided herein constitutes the Lessee's waiver of immunity under Industrial Insurance, Title 51 RCW,

solely for the purposes of this indemnification. This waiver has been mutually negotiated and agreed to by the Lessee and Lessor. The provisions of this section shall survive the expiration or termination of this Lease.,

9.8 Access to leased property. Lessee shall permit Lessor or its agents, employees, officials, officers or contractors to access the Property for the purpose of any environmental studies or work for restoration purposes that is required by permitting agencies.

10. Casualty. If any fire, windstorm, earthquake, volcanic eruption or casualty occurs and materially affects all or any portion of the Leased Property on or after the date of this Lease, Lessor is under no duty or obligation to repair, replace or rebuild any structure, dwelling or outbuilding located upon the Leased Property.

11. Legal Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Lessor: Steven J. Burney, City Manager  
City of Olympia  
P.O. Box 1967  
Olympia, WA 98507-1967  
Email: [jburney@ci.olympia.wa.us](mailto:jburney@ci.olympia.wa.us)

With a copy to: Mark Barber, City Attorney  
City of Olympia  
P.O. Box 1967  
Olympia, WA 98507-1967  
Email: [mbarber@ci.olympia.wa.us](mailto:mbarber@ci.olympia.wa.us)

To Lessee: Kyle Cronk, President/CEO  
South Sound YMCA  
2102 Carriage Dr SW Suite K  
Olympia WA 98501  
Email: [cronkk@ssymca.net](mailto:cronkk@ssymca.net)

Any party hereto may change its address for receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

12. Contract Manager. For routine issues of contract management such as insurance, invoices, and issues related to routine management of this Lease, please contact:

Lessor's Manager: Mike Reid, Economic Development Director  
City of Olympia  
P.O. Box 1967  
Olympia, WA 98507-1967  
360.753.8591  
Email: [mreid@ci.olympia.wa.us](mailto:mreid@ci.olympia.wa.us)

Lessee's Manager: Kyle Cronk, President/CEO  
South Sound YMCA  
2102 Carriage Dr SW Suite K  
Olympia, WA 98501  
360.918.0311  
Email: [cronkk@ssymca.net](mailto:cronkk@ssymca.net)

13. Miscellaneous.

13.1 Applicable law. This Lease shall in all respects, shall be governed by the laws of the State of Washington.

13.2 Further assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the intent of the Parties hereto.

13.3 Modification or amendment, waivers. No amendment, change or modification of this Lease shall be valid, unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Lease shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Lease. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

13.4 Successors and assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, and successors, if applicable. No assignment shall be permitted by Lessee of this Lease.

13.5 Entire agreement and no third party beneficiaries. This Lease constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Lease to any person, firm or corporation other than the immediate Parties.

13.6 Attorneys' fees. Should either party bring suit to enforce the terms of this Lease, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

13.7 Construction. Captions are solely for the convenience of the Parties and are not a part of this Lease. This Lease shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.

13.8 Partial Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

13.9 Survival. The covenants, agreements, obligations to indemnify, representations and warranties made in this Lease shall survive unimpaired. The Parties agree this Lease shall not be recorded, but a Memorandum of Lease may be recorded at the request of a party.

13.10 Time. Time is of the essence of every provision of this Lease.

13.11 Risk of loss. All of Lessee's personal property, of any kind or description whatsoever that is on the Leased Property shall be at Lessee's sole risk of loss. Lessor shall not insure Lessee's personal property of whatever kind or nature. Any such insurance must be obtained by Lessee.

13.12 Force majeure. Performance by Lessee or Lessor of their obligations under this Lease shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

13.13 Recitals. The Recitals set forth above are incorporated by this reference into this Lease and are made a part hereof.

13.14 Counterparts. This Lease may be executed in a number of identical counterparts which, taken together, shall constitute collectively one Lease; but in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Lease may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned or electronically created signature, where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of



this Lease shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same Lease.

13.15 Effective Date. This lease shall be effective as of the date of the last authorizing signature affixed hereto.

14. Event of Default. In the event of a default under this Lease by Lessee (including a breach of any representation, warranty or covenant set forth herein), Lessor shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Lessee's obligations hereunder or termination of this Lease.

**\*\*\*SIGNATURES APPEAR ON THE FOLLOWING PAGE\*\*\***

LESSEE:

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Lease Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

SOUTH SOUND YMCA,  
a Washington nonprofit corporation

Kyle Cronk  
Kyle Cronk, President/CEO

Date: 08/04/2020

LESSOR:

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Lease Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

CITY OF OLYMPIA, a Washington  
municipal corporation

\_\_\_\_\_  
Steven J. Burney, City Manager

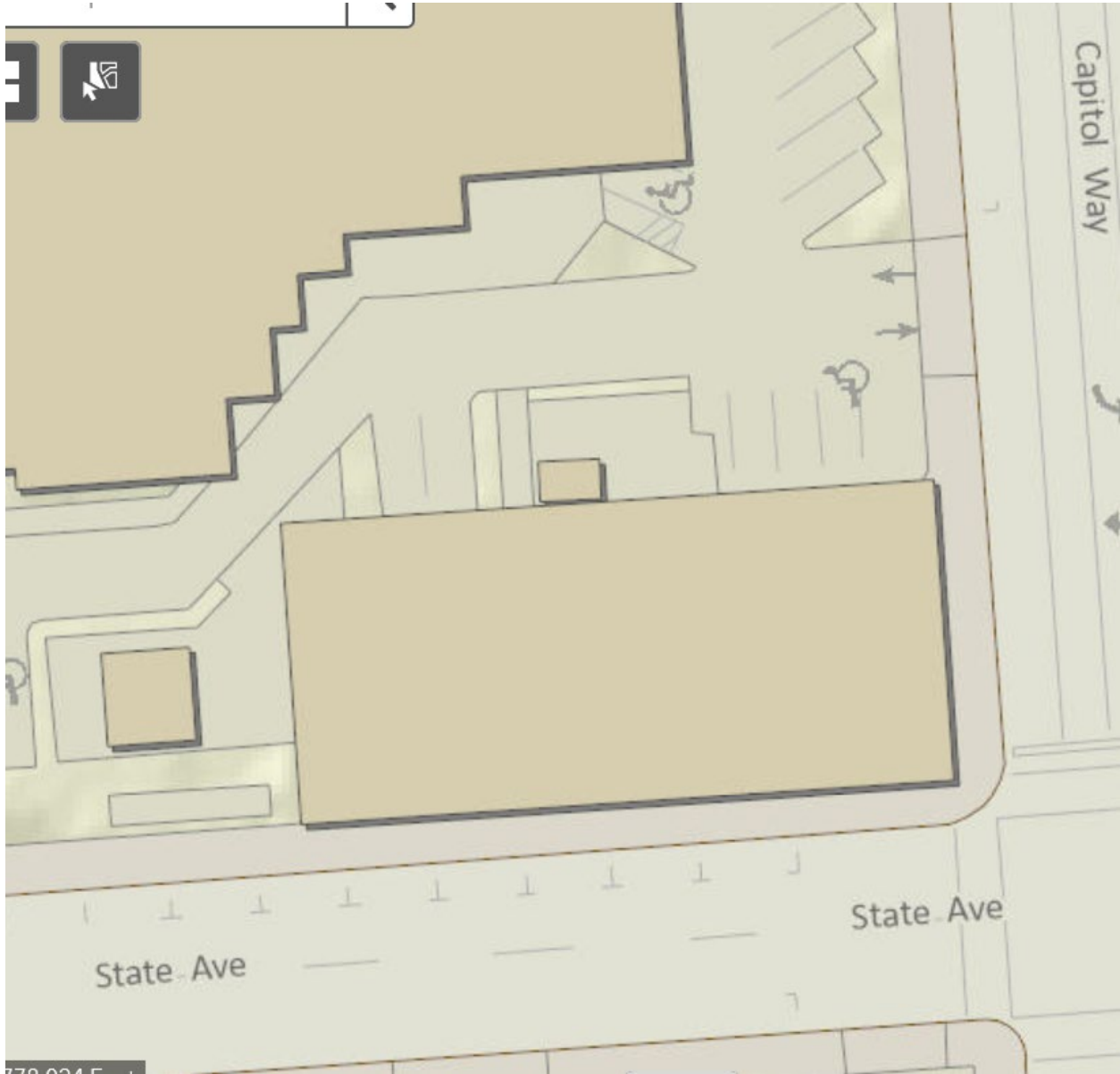
Date: \_\_\_\_\_

APPROVED AS TO FORM:

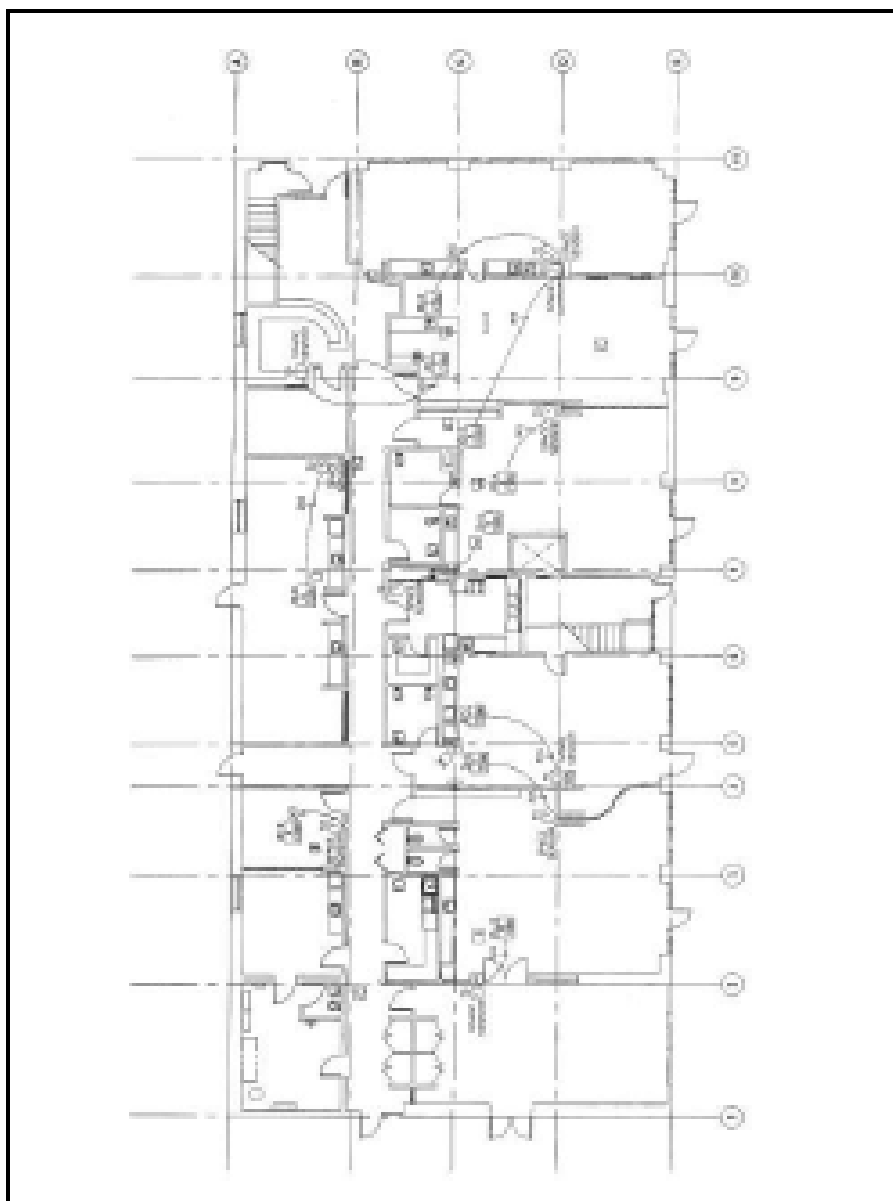
Annaliese Harksen  
Annaliese Harksen, Deputy City Attorney

Date: 08/04/2020

Exhibit "A"  
General Vicinity Sketch



**FACTUAL DESCRIPTION**



**FIRST FLOOR PLAN**