

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 3C
Amend No. _____

Date prepared: August 14, 2008

Council Meeting Date: September 16, 2008

TO: Carl Swenson, City Manager
FROM: J.P. de la Montaigne, Community Services Director *J.P.*
THROUGH: Brenda Rehnke, Recreation Manager *BR*
PREPARED BY: Maria Traci, Management Analyst *MT*
SUBJECT: Peoria Presbyterian Church Lease Agreement

RECOMMENDATION:

Discussion and possible action to approve a lease agreement with the Peoria Presbyterian Church to use the Fellowship Hall for the Adult Day Program for a cost of \$4,320 for FY09.

SUMMARY:

Since 1987, the City of Peoria has been offering the Adult Day Program for individuals with disabilities who are age 18 and over. The primary emphasis of this program is personal growth for participants including increased social skills, independent living skills and physical activity through a variety of experiences such as recreational opportunities, service projects and interaction with the community. The program has a one to three ratio, staff to participants, and is fully funded by the Arizona Department of Economic Security, Division of Developmental Disabilities (DES/DDD).

Currently, there are 15 adults in the program which operates Monday through Thursday from 8:00 a.m. to 2:00 p.m., year round at the Peoria Presbyterian Church Fellowship Hall, located at 10236 N. 83rd Avenue. On Fridays, all participants meet at the Peoria Community Center.

The Adult Day Program has been located in the Peoria Presbyterian Church since the program began. In 2005, a formal agreement was established that allowed the City to give a donation to the Church in exchange for the use of the Fellowship Hall. This agreement has been renewed on an annual basis since then.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 17508 LIC. # _____
Action Date: _____

The new Lease Agreement shall automatically renew on the anniversary date with an increase of rental costs of 7.5% per year. If either party decides to change the terms of the lease or not renew, this can be accomplished in writing, 30 days prior to the anniversary date, each year.

The City Attorney's Office has reviewed the lease agreement.

FISCAL NOTE: The FY09 Lease amount of \$4,320 will be expended from the Adult Day Program Grant, Building/Land Lease/Rental Account (7180-7250-524506). The Adult Day Program Grant includes budgeted funds for the lease of the Presbyterian Church for the Adult Day Program from year to year.

ATTACHMENT: Peoria Presbyterian Church Lease Agreement

FACILITY LEASE

This Lease Agreement (Lease) is dated _____, by and between Peoria Presbyterian Church (LANDLORD) and the City of Peoria (TENANT) as related to the operation of the Adult Day Program (City Program). The parties agree as follows:

LANDLORD, in consideration of the lease payments provided in this Lease, leases to TENANT use of the facilities known as the Fellowship Hall, including the kitchen and attached restrooms; first right of use remains solely to The First Presbyterian Church of Peoria.

No use of these facilities by TENANT is to be permitted during or within one-half hour of any scheduled or non-scheduled worship service or any other activity associated with the business and function of The First Presbyterian Church of Peoria, except as may be allowed by consultation and agreement with LANDLORD.

The LANDLORD advises and TENANT understands and agrees that the City Program shall operate on a written, agreed upon timetable, not to deviate without prior written notice given a minimum of thirty (30) days in advance by TENANT and delivered to the Church Office during normal business hours. TENANT shall provide written schedules of regular activities that utilize LANDLORD'S property, including tables, chairs, lighting and kitchen equipment, and shall include the number of individuals normally associated with each Program activity. Said timetable and schedules shall be updated periodically as required each time changes are made that affect usage patterns of the facilities. Any use of the facilities will be subordinate to the needs and requirements of LANDLORD.

TENANT shall coordinate with LANDLORD for usage, cleanup and any other issue that may arise from usage or conflict with individual or collective requirements for usage. TENANT shall report in writing within one (1) business day to LANDLORD any equipment or property belonging to LANDLORD that is damaged or broken by TENANT use. The report shall be delivered to the Church Office during normal business hours.

In no way will the activities of TENANT interfere with LANDLORD'S right to control or use the property for any purpose.

THE PREMISES. Located at 10236 N. 83' Ave, Peoria AZ, 85345

LEGAL DESCRIPTION. The legal description for the premises is Lots 1* through 5*, Block 33 of Peoria, also known as Assessor's Parcel Numbers 142-41-093.

TERM. The lease term will begin on July 1, 2008, and will terminate on June 30, 2009 with renewal options as stated hereunder.

LEASE PAYMENTS. TENANT shall pay to LANDLORD the lease payment of Four Thousand, Three Hundred and Twenty Dollars (\$4,320.00) for the first annual term. The total payment is due and payable in advance, on the first day of the annual period. The amount of rents shall increase 7.5% per annum. This increase will be based upon the average commercial utility rate increase for the prior year, and the percentage increase will be reviewed on an annual basis. The Lease payments shall be made to LANDLORD at P.O. Box 96, Peoria AZ, 85380, which address may change from time to time by the LANDLORD. No expenditure by TENANT for leasehold improvements may be considered as in-lieu payment of rents for the current lease period

POSSESSION. TENANT shall be entitled to the prescribed use of the property on the first business day of the term of this Lease, and shall yield such use to LANDLORD on the last

business day of the term of this Lease, unless otherwise agreed to by both parties in writing. At the expiration of the term, TENANT shall remove all goods and effects and peaceably yield up the Premises to LANDLORD in as good a condition as when delivered to TENANT, with consideration given for ordinary wear and tear due to daily usage of the Facility.

USE OF PREMISES. TENANT may use the Premises only for daytime use consistent with the stated business of the City Program, and shall not allow persons not registered for, or employed to conduct Program activities to use the facilities.

THE FOLLOWING ACTIVITIES AND USES ARE NOT PERMITTED:

1. Consumption of alcohol or drugs, legal or not, including tobacco. The single exception shall be for prescription medication(s) belonging to individuals registered in the Program All such medications shall be stored in a locked cabinet during Program activities and shall be removed from the Premises daily at the close of business. Said cabinet shall be supplied by and maintained by TENANT.
2. Sale, distribution or offering of any merchandise or services for sale or trade or compensation.
3. Dispersal, storage or disposal of any detritus or trash.
4. Storage or parking of any vehicles not associated with the principal business or activities of this agreement between LANDLORD and TENANT.
5. The Premises may be used for another purpose only with the prior written consent of LANDLORD, which decision shall be reserved solely as a function of the LANDLORD Board of Trustees.

PARKING. TENANT shall be entitled to use up to five (5) parking spaces for the parking of TENANT'S clients/guests motor vehicle (s).

PROPERTY DAMAGE. In the event that TENANT may cause damage to the facilities, contents, parking surface or appurtenant fixtures, either through negligence or improper usage, TENANT shall be responsible for any and all repairs associated with such damage regardless of coverage by other insured interests. An example of other insured interests would be a car fire on the property that could be covered by an individual's insurance policy. Any damage to the facilities or equipment, whether caused by a client or employee of TENANT, either by accident or negligence, shall cause TENANT to reimburse LANDLORD for any repairs or replacement undertaken. An evaluation and inventory of ordinary wear and tear and specific facility damage shall be undertaken by the LANDLORD thirty (30) days prior to the expiration of the term and written notice of such inventory shall be forwarded to TENANT fifteen (15) days prior to the expiration of the term. Prior to execution of lease renewal, TENANT shall reimburse LANDLORD for all damage to property and facilities as identified by the inventory, above and beyond normal wear and tear as pertains to daily usage of the facility. When agreed upon by both parties, the reimbursement shall be for actual cost, not a prorated or depreciated value.

Receive 30 days written notice from the insurer prior to any termination of such insurance policies.

RENEWAL TERMS. This Lease shall automatically renew on the anniversary date for the following annual period. Either party must give written notice of intent to renew or not renew no later than thirty (30) days prior to the end of the term in order that such notice shall serve to reserve the Right of First Refusal. Renewal of the lease is subject to successful renegotiation of the terms and conditions set forth above, if required, as well as the parties agreeing in advance of renewal that any property damage and/or wear and tear replacement has been resolved and LANDLORD appropriately reimbursed.

MAINTENANCE.

LANDLORD'S obligations shall include:

- The parking lot, driveways and sidewalks
- All other items of maintenance not specifically delegated to TENANT under this Lease.

TENANT'S obligations for maintenance shall include:

- To ensure that trash and other debris are kept from the Premises.
- The tables and chairs used each day for Program activities, including the general appearance and normal wear and tear.
- The kitchen facilities as used for Program activities, including all appurtenant fixtures and appliances.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES: LANDLORD shall pay all real estate taxes and assessments for the Premises.

PERSONAL TAXES. TENANT shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to TENANT'S use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

TERMINATION UPON SALE OF PREMISES. Notwithstanding any other provision of this Lease, LANDLORD may terminate this lease upon thirty (30) days written notice to TENANT that the Premises have been sold.

DEFAULTS. TENANT shall be in default of this Lease if TENANT fails to fulfill any lease obligations or term by which TENANT is bound. Subject to any governing provisions of law to the contrary, if TENANT fails to cure any financial obligation within five (5) days (or any other obligation within five days) after written notice of such default is provided by LANDLORD to TENANT, LANDLORD may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing LANDLORD'S rights to damages. In the alternative, LANDLORD may elect to cure any default and the cost of such action shall be added to TENANT'S financial obligations under this Lease.

TENANT shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by LANDLORD by reason of TENANT default. All sums of money or charges required to be paid by TENANT under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent". The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

Should the LANDLORD be in default of this Lease (i.e., by unreasonably withholding access to the property from the TENANT or failing to fulfill any lease obligations, etc.), the TENANT shall be entitled to and the LANDLORD shall pay all costs, damages and expenses (including reasonable attorney fees and expenses) suffered by the TENANT by reason of the LANDLORD default.

HOLDOVER. If TENANT maintains possession of the Premises for any period after termination of this Lease (Holdover Period), TENANT shall pay to the LANDLORD lease payment (s) during the Holdover Period at a rate equal to the normal payment rate set forth in the Lease Payments paragraph.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

NON-SUFFICIENT FUNDS. TENANT shall be charged thirty-five dollars (\$35:00) for each check that is returned to LANDLORD for lack of sufficient funds.

INDEMNITY REGARDING USE OF PREMISES. To the extent permitted by law, TENANT agrees to indemnify, hold harmless, and defend LANDLORD from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which LANDLORD may suffer or incur in conjunction with TENANT'S possession, use or misuse of the Premises, except LANDLORD'S act or negligence.

LIABILITY INSURANCE. TENANT shall maintain liability insurance on the Premises in a total aggregate sum of at least one million dollars (\$1,000,000.00), said policy shall include LANDLORD as an additional insured, and provide a certificate of insurance, with a thirty days written notice of cancellation or non renewal. TENANT shall deliver appropriate evidence to LANDLORD as proof that adequate insurance is in force issued by companies reasonably satisfactory to LANDLORD.

DANGEROUS MATERIALS AND ITEMS. TENANT shall not keep or have on the Premises any article or thing of a dangerous, flammable or explosive character that might substantially increase the danger of a fire on the Premises, or that might be considered hazardous by a responsible insurance company. Firearms and other weapons are not permitted on the Premises at any time.

COMPLIANCE WITH REGULATIONS. TENANT shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters.

MECHANICS LIENS. Neither the TENANT nor anyone claiming through the TENANT shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease shall constitute notice that such liens are invalid. Further, TENANT agrees to:

1. Give actual advance notice to any contractors, subcontractors or suppliers of goods, labor or services that such liens will not be valid, and
2. Take all steps necessary in order to keep the Premises free from all liens resulting from construction done by or for the TENANT.

ARBITRATION. Any controversy or claim relating to this contract, including the construction or application of this contract, may be settled by non-binding arbitration under the rules of the American Arbitration Association.

SUBORDINATION OF LEASE. This Lease is subordinate to any mortgage that now exists, or may be given later by LANDLORD, with respect to the Premises.

ASSIGNABILITY / SUBLETTING. TENANT may not assign or sublease any interest in the Premises, nor effect a change in the Responsible Charge for the operation of the Program (from the responsible charge existing at the inception of this lease), nor assign, mortgage or pledge this Lease.

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Peoria Presbyterian
Church c/o Clerk of
Session 10236 N. 83^d
Avenue Peoria AZ, 85345

TENANT:

City of Peoria Adult Day Program
c/o Recreation Supervisor, Community Center
8335 W. Jefferson St.
Peoria AZ 85345

Either party may change such addresses from time to time by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of Arizona.

ENTIRE AGREEMENT / AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether written or oral, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the party obligated under the amendment signs the writing.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting

such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of each party and their respective legal representatives, successors and assigns.

CONFLICT OF INTEREST - This Lease shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

LANDLORD: Peoria Presbyterian Church

By: _____ Date: _____

Chairman, Board of Trustees

TENANT: City of Peoria, an Arizona municipal corporation

By: _____ Date: _____

Bob Barrett, Mayor

ATTEST:

By: _____ Date: _____

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

By: _____ Date: _____

Steve Kemp, City Attorney