

**RESOLUTION 44-2011**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE BENSON UNIFIED SCHOOL DISTRICT #9 (THE "DISTRICT") AND THE CITY OF BENSON FOR THE PROPERTY LOCATED AT 197 E. 7TH STREET FOR THE PURPOSE OF OPERATING A CHARTER HIGH SCHOOL PROGRAM**

WHEREAS, the staffs of the City of Benson and the District have developed a Lease Agreement (the "Agreement"), which is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the Agreement may be renewed for a one-year successive term by resolution of the governing body of each party and notice to the office in which the original agreement was filed; and

WHEREAS, on November 24, 2008, the City of Benson and the District entered into a Lease Agreement for the lease of that portion of real property located at 197 E. 7th Street, Benson, Cochise County, Arizona (the "Agreement"); and on July 25, 2011, the City of Benson elected to renew the Agreement by such resolution as permitted by the Agreement; and

WHEREAS, the Lease Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference, provides the terms and conditions upon which the City of Benson and the District agree to renew the Agreement for a subsequent one year period; and

WHEREAS, the City of Benson and the District desire to avail themselves of all provisions of law applicable to the Agreement and desire to jointly exercise their powers as provided for in A.R.S. § 11-951 *et seq.*; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Lease Agreement and have determined that entering into it is in the best interests of the City and its residents.

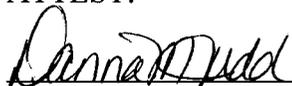
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, that the City hereby approves the Lease Agreement between the City of Benson and the Benson Unified School District #9, attached hereto as Exhibit "A", and the Mayor is hereby directed to execute said Agreement on behalf of the City of Benson.

BE IT FURTHER RESOLVED that the staff of the City is hereby directed to take all actions necessary and proper to implement the Lease Agreement and further its purposes.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 25th day of July, 2011.

  
\_\_\_\_\_  
TONEY D. KING, SR., Mayor

ATTEST:

  
\_\_\_\_\_  
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

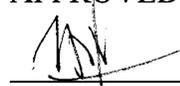
  
\_\_\_\_\_  
MICHAEL J. MASSEE, City Attorney

Exhibit "A"  
The Lease Agreement

## THE LEASE AGREEMENT

This lease agreement is entered into by and between the **CITY OF BENSON**, an Arizona body politic, hereinafter referred to as "**LESSOR**", located at 120 W. 6th Street, Benson, Cochise County, Arizona 85602, and the **BENSON UNIFIED SCHOOL DISTRICT NO. 9.**, herein referred to as "**LESSEE**", located at 360 S Patagonia Street, Benson, Cochise County, Arizona 85602.

LESSEE hereby offers to lease from the LESSOR that portion of the real property located at 197 E. 7th Street, Benson, Cochise County, Arizona, not presently occupied by the BENSON FOOD BANK, upon the following terms and conditions:

1. **TERM:** The term hereof shall commence on the 1st day of July, 2011, and shall expire on the 30th day of June, 2012. Thereafter, it may be renewed for a one-year successive term by resolution of the governing body of each party and notice to the office in which the original agreement was filed.
2. **RENT:** The total rent shall be Ten thousand One Hundred Twenty-One Dollars and Fifty-Five Cents (\$10,121.55) due and payable on or before the 1st day of July, 2011, to be paid at 120 W. 6th Street, Benson, Cochise County, Arizona 85602, or at such other time and place as the LESSOR may designate.
3. **USE OF BUILDING:** The premises are to be used only for the purpose of operating LESSEE'S Charter High School Program which shall accommodate approximately forty (40) students for the purpose of providing students with the opportunity to take core curriculum through computer driven programs while being given chances for career exploration, community partnerships and community service opportunities.
4. **CARE AND USES OF PREMISES:** LESSEE shall use reasonable care and caution against damage and destruction to the Premises. LESSEE shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, hazardous or otherwise upon the Premises, or use the Premises in any way that creates a hazard to persons or property and LESSEE shall keep the Premises in a safe, neat, clean and presentable and in good condition and repair.  
  
LESSEE shall not use any portion of the premises for purposes other than those specified hereinabove, and LESSEE shall comply with all governmental laws, ordinances, rules, regulations and orders relating to LESSEE'S use of the Premises.
5. **LIENS:** LESSEE shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from the LESSEE'S use of the Premises. LESSOR shall have the right to discharge any such liens at LESSEE'S expense.
6. **PREMISES AS-IS:** LESSEE accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied.

LESSEE acknowledges that LESSOR shall have no duty to maintain, repair or improve Premises.

- 7. ASSIGNMENT AND SUBLETTING:** LESSEE shall not assign this Lease or sublet any portion of the premises without prior written consent of the LESSOR. Any such assignment or subletting without consent shall be void and, at the option of the LESSOR, LESSOR may terminate this Lease. Should LESSOR consent in writing to such assignment of sublease, LESSEE shall still remain primarily liable for payment of the total rental due under the terms of this Lease.
- 8. ORDINANCES AND STATUTES:** LESSEE shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by LESSEE.
- 9. MAINTENANCE, REPAIRS, ALTERATIONS:** LESSEE shall, at his own expense and at all times, maintain the premises in a similar condition as said premises were at the initiation of the Lease Agreement, including any plate glass, electrical wiring, plumbing and heating installations and on any other system or equipment upon the premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted.

Upon written authorization of the LESSOR, to be determined and provided by the City Manager, LESSEE shall be authorized to perform improvements and alterations to the premises. Prior to the commencement of any substantial repair, improvement, or alternation, LESSEE shall give LESSOR at least two (2) days written notice in order that LESSOR may post appropriate notices to avoid any liability for liens. LESSEE shall be financially responsible for all improvements and repairs performed, including, but not limited to, roofing, exterior walls, and structural foundations. LESSEE shall not commit any waste upon the premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building.

- 10. IMPROVEMENTS:** All improvements made upon the premises by LESSEE shall become the property of the LESSOR, at no cost to the LESSOR, upon termination of this agreement.
- 11. ENTRY AND INSPECTION:** LESSEE shall permit LESSOR or LESSOR'S agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same as long as such inspection does not interfere with LESSEE'S use of the premises.
- 12. INSURANCE:** LESSEE shall be responsible for naming the LESSOR as an additional insured on a general liability policy covering the premises in the amount of ten million dollars (\$10,000,000.00) aggregate and five million dollars (\$5,000,000.00) per occurrence.
- 13. RELEASE AND INDEMNITY:** LESSEE hereby waives and releases any and all claims against LESSOR for, and agrees to indemnify, defend and hold harmless LESSOR, its

officers, agents and employees from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorney's fees and courts costs), fines or penalties incurred by any indemnified party and arising from or related to any (i) any use of the premises by LESSEE for any invitee or licensee of LESSEE, (ii) any act or omission of LESSEE, its officers, agents, employees, licensees or invitees, or (iii) any breach of this agreement by LESSEE.

LESSEE shall not be responsible to LESSOR for the sole negligence or misconduct of LESSOR'S officers, employees or agents. Further, in the event that LESSOR'S officers, employees or agents were a contributing cause to any claim, LESSEE'S liability and its indemnification obligation hereunder shall be governed by the principals of Arizona law related to comparative negligence.

No provision of this Lease with respect to insurance shall limit the extent of this release and indemnity provision.

- 14. POSSESSION:** If LESSOR is unable to deliver possession to the premises at the commencement hereof, LESSOR shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but LESSEE shall not be liable for any rent until possession is delivered. LESSEE may terminate this lease if possession is not delivered within ten (10) days of the commencement of the term hereof.
- 15. UTILITIES:** LESSEE shall be responsible for the payment of all utilities, including, but not limited to, water, gas, electricity, heat and other services delivered to the premises.
- 16. SIGNS:** LESSOR reserves the exclusive right to the roof, side and rear walls of the Premises. LESSEE shall not construct any projecting sign or awning without the prior written consent of LESSOR which consent shall not be unreasonably withheld.
- 17. ABANDONMENT OF PREMISES:** LESSEE shall not vacate or abandon the premises at anytime during the term hereof, and if LESSEE shall abandon or vacate the premises, or be dispossessed by process of law, or otherwise, any personal property belonging to LESSEE left upon the premises shall be deemed to be abandoned, at the option of the LESSOR.
- 18. CONDEMNATION:** In the event that the demised premises are condemned in whole, or that such portion is condemned that the remainder is not susceptible for use hereunder, this lease shall terminate upon the date upon which the condemner acquires possession. All sums which may be payable on account of any condemnation shall belong to the LESSOR, and LESSEE shall not be entitled to retain any amount awarded to him for his trade fixtures or moving expenses.
- 19. TRADE FIXTURES:** Any and all improvements made to the premises during the term hereof shall belong to the LESSOR, except trade fixtures of the LESSEE. LESSEE may, upon termination hereof, remove all his trade fixtures, but shall repair or pay for all repairs necessary for damages to the premises occasioned by removal.

**20. DESTRUCTION OF PREMISES:** In the event of a partial or total destruction of the premises during the term hereof, from any cause, LESSOR and LESSEE shall, at that time, determine whether to continue or terminate this agreement.

**21. REMEDIES OF LESSOR ON DEFAULT:** In the event of any breach of this Lease by LESSEE, LESSOR may, at his option, terminate the lease and recover from the LESSEE: (a) the worth at the time of award of the unpaid rent which was earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the LESSEE proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of which the unpaid rent for the balance of the term after the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that LESSEE proves could be reasonably avoided; and (d) any other amount necessary to compensate LESSOR for all detriment proximately caused by LESSEE'S failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

LESSOR may, in the alternative, continue this Lease in effect, as long as LESSOR does not terminate LESSEE'S right to possession, and LESSOR may enforce all his rights and remedies under the lease, including the right to recover the rent as it becomes due under the lease. If said breach of lease continues, LESSOR may at any time thereafter, elect to terminate the lease. Nothing contained herein shall be deemed to limit any other rights or remedies which LESSOR may have.

**22. ATTORNEY'S FEES:** In case suit should be brought for recovery of the premises or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

**23. WAIVER:** No failure of LESSOR to enforce any term hereof shall be deemed to be a Waiver.

**24. NOTICES:** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to LESSEE and LESSOR at the address shown below, or at such other places as may be designated by the parties from time to time.

**LESSOR:**

Mr. Glenn Nichols  
City Manager  
120 W. 6th Street  
Benson, Arizona 85602

**LESSEE:**

Dr. David Woodall  
Superintendent of Schools  
360 S. Patagonia  
Benson, Arizona 85602

**25. HOLDING OVER:** Any holding over after the expiration of this Lease with the consent of LESSOR, shall be construed as a month-to-month tenancy at a rental of One Thousand Dollars (\$1,000.00) per month, otherwise in accordance with the terms hereof, as applicable.

**26. TIME:** Time of the essence of this Lease.

**27. HEIRS, ASSIGNS, SUCCESSORS:** This Lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

**28. PROPERTY TAXES:** LESSOR shall pay all real property taxes and any assessments of any nature levied on the property leased by an authorized governmental agency.

**29. OPTION TO RENEW:** Provided that LESSEE is not in default in the performance of this Lease, LESSEE shall have the option to renew the lease for an additional term of one (1) year commencing at the expiration of the lease term (June 30, 2012). All of the terms and conditions of the lease shall apply during the renewal term except that the annual rent shall be the sum of Ten thousand One Hundred Twenty-One Dollars and Fifty-Five Cents (\$10,121.55), which shall be increased by a rate equal to the then current rate of the consumer Price Index or Four percent (4%), whichever is greater.

**30. SUSPENSION OR DISCONTINUATION OF SERVICES; TERMINATION:** this Agreement may be terminated by either party at will by giving thirty (30) days prior written notice of termination to the other party. Such termination shall not relieve either party from those liabilities or costs already incurred under this Agreement. This Agreement may be canceled by LESSEE for conflict of interest pursuant to A.R.S. §38-511.

This Agreement and all obligations upon LESSEE arising therefrom shall be subject to any limitation imposed by budget law. LESSEE represents that it has within its budget sufficient funds to discharge the obligations and duties assumed under this Agreement. If, for any reason, the Benson City Council does not appropriate sufficient monies for the purpose of maintaining this Agreement, this Agreement shall be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, City of Benson and LESSEE shall have no further obligation to the other party other than for payment for services rendered prior to cancellation.

**31. LEGAL WORKER REQUIREMENTS:** As mandated by A.R.S. §41-4401, LESSEE is prohibited after September 30, 2008 from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. §23-214(A). LESSEE must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. §23-214(A). Therefore, in signing or performing any contract for LESSEE, Benson Public School District No. 9 fully understands that:

- A. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214(A).

- B. A breach of the warranty described in subsection A shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement; and
- C. LESSEE or its designee retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Agreement to ensure that the contractor or subcontractor is complying with the warranty under subsection A.

**32. ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

The undersigned LESSOR hereby acknowledges receipt of a copy hereof.

Dated this 25 day of July, 2011. City of Benson.

  
\_\_\_\_\_  
Toney D. King, Sr., Mayor

The undersigned LESSEE hereby acknowledges receipt of a copy hereof.

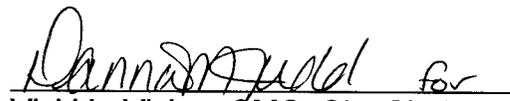
Dated this 6 day of July, 2011. Benson Public School District No. 9.

  
\_\_\_\_\_  
Dr. David Woodall,  
Superintendent of Schools

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Michael J. Masee, City Attorney

  
\_\_\_\_\_  
Vicki L. Vivian, CMC, City Clerk