City of Benson
City Council Communication

Regular Meeting **December 12, 2016**

To: Mayor and Council Agenda Item # 3

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding a Commercial Lease Agreement between the Benson Area Food Bank and the City of Benson for a portion of space upon real property located at 370 S. Huachuca Street, Benson, Arizona

Discussion:

Attached is a letter, per the contract, from the Benson Area Food Bank requesting the continuation of the lease for the real property located at 370 S. Huachuca Street for the period beginning January 1, 2017 and ending December 31, 2017.

There have not been any issues with the lease of this property to the Benson Area Food Bank.

Staff Recommendation:

Approval of the Commercial Lease Agreement between the Benson Area Food Bank and the City of Benson for a portion of space upon real property located at 370 S. Huachuca Street, Benson, Arizona

Benson Area Food Bank
Serving the Hungry since 1989
370 South Huachuca Street
Benson, Arizona 85602

520-586-7916 Tax ID: 86-0761813

December 7,2016

City of Benson
120 West 6th Street
Benson, Arizona 85602

To Whom it May Concern:

For 2017, the Benson Area Food Bank would like to renew our lease contract for 370 South Huachuca Street on the same terms and conditions as the present contract.

Thank you for all the assistance you have given us over the years. The volunteers and our recipients are very grateful.

Sincerely,

Joy Reilly

Joy Reilly
{President)

I

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement is entered into this ___ day of December, 2016 by and between the CITY OF BENSON, an Arizona body politic, acting through its duly authorized City Manager, hereinafter referred to as "CITY", City Hall being located at 120 W. 6th Street, Benson, Cochise County, Arizona, 85602, telephone number (520)586-2245, herein referred to as "LESSOR," and BENSON AREA FOOD BANK, whose headquarters is located at 370 S. Huachuca Street, Benson, Cochise County, Arizona, 85602, herein referred to as "LESSEE."

LESSEE hereby offers to lease from LESSOR the real property located at 370 S. Huachuca, Benson, Cochise County, Arizona, that portion not presently occupied by the Friends of the Benson Library, upon the following terms and conditions:

1. TERM: The term hereof shall commence on the 1st day of January, 2017 and expires on the 31st day of December, 2017.

2. RENT: The total rent shall be $1.00 dollar, to be paid at 120 W. 6th Street, Benson, Arizona, 85602 or at such other places as the LESSOR may designate from time to time.

3. USE OF BUILDING: The premises being rented herein are to be used only for the purpose of operating LESSEE's Food Bank business, otherwise known as BENSON AREA FOOD BANK. Any alternative use must be approved in writing by the LESSOR.

4. USES PROHIBITED: LESSEE shall not use any portion of the premises for purposes other than those specified hereinabove, and no use shall be made or permitted to be made upon the premises, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering said property.

5. 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, gives the LESSOR the right immediately terminate this lease. Should LESSOR consent in writing to such assignment of sublease, LESSEE shall still remain primarily liable to LESSOR for payment of the total rental due under the terms of this lease.

6. ORDINANCES AND STATUTES: LESSEE shall comply with all statues, 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.

7. MAINTENANCE, REPAIRS, ALTERATIONS: LESSEE shall, at its own expense, and at all times, maintain the premises in a similar condition as said premises were at the initiation of this Lease Agreement, including any plate glass, electrical wiring, plumbing and heating installations and 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. LESSEE shall be responsible for all repairs required, excepting the roof, exterior walls, and structural foundations, which shall be maintained by LESSOR. No improvement or alteration of the premises shall be made without the prior written consent of the LESSOR. Prior to the commencement of any improvement, alteration, substantial repair, or alteration, 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 not commit any waste upon the premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant or owner in or near the leased building, at issue herein.

8. 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, and will permit LESSOR at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "For Lease" signs, if necessary, and permit persons desiring to lease the same inspect the premises thereafter.

9. DEFENSE, INDEMNIFICATION AND HOLD HARMLESS OF LESSOR: LESSOR shall not be liable for any damage or injury to LESSEE, or any other person, or to any property, occurring on the leased premises or any part thereof, and LESSEE agrees to fully defend, indemnify and hold LESSOR completely harmless from any and all claims for such damages, no matter how caused.

10. 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.

11. UTILITIES: LESSOR 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.

12. 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.

13. 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.

14. 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 any part thereof, provided however, that LESSEE shall be entitled to any part thereof, provided however, that LESSEE shall be entitled to retain any amount awarded to him for his trade fixtures or moving expenses.

15. 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.

16. 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.

17. 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; and/or (c) any other amount that reasonably compensates 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.

18. SECURITY: There shall be a _(N/A)___ security deposit to secure the performance of the LESSEE's obligations hereunder.

19. ATTORNEY'S FEES: In case suit should be brought by one of the parties for recovery of the premises, or for any sum due hereunder, or arising from any act or omission related to this Lease Agreement, the prevailing party shall be entitled to all reasonable costs incurred in connection with such action, including a reasonable attorney's fees.

20. WAIVER: No failure of LESSOR to enforce any term hereof shall be deemed to be a waiver.

21. NOTICES: Any notice which either party may or is required to give, shall be in writing and shall be delivered served by personal delivery or by certified mail upon the other party at the following addresses, or at such other places as may be designated in writing by the parties from time to time.

LESSOR	LESSEE
City of Benson	Benson Area Food Bank
120 W. 6th Street	370 S. Huachuca Street
Benson, AZ 85602	Benson, AZ 85602

22. 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 rate of _(N/A)___ Dollars per month, otherwise in accordance with the terms hereof, as applicable.

23. TIME: Time is of the essence of this lease.

24. HEIRS, ASSIGNS, SUCCESSORS: This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to LESSOR.

25. 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.

26. 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 1 year commencing at the expiration of this lease term. All of the terms and conditions of the lease shall apply during the renewal term. The option shall be exercised by written notice given to LESSOR not less than thirty (30) days prior to the expiration of this lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire.

27. TERMINATION: Either party may terminate this lease by giving thirty (30) days written notice to the other party delivered in person or by mail addressed to the addresses in as directed in Section 21.

28. NOTICE OF CONFLICT OF INTEREST CANCELLATION: This Agreement may be cancelled for conflict of interest pursuant to A.R.S. § 38-511.

The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

The undersigned LESSEE hereby acknowledges receipt of a copy hereof.

Dated this _____day of _____, 2016.

_____

_____
Name of Representative,
Benson Area Food Bank, LESSEE

The undersigned LESSOR hereby acknowledges receipt of a copy hereof.

Dated this _____day of _____, 2016.

_____
Toney D. King, Sr., Mayor

ATTEST:

_____
Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Gary J. Cohen, City Attorney