

Staff Summary Report



Council Meeting Date: 07-22-08

Agenda Item Number: _____

SUBJECT: Request approval for the Renewal of the Community Use of School Facilities Lease Agreement between Kyrene School District No. 28 and the City of Tempe Kid Zone Enrichment Program for the before school, after school, breaks (fall, winter and spring) and summer facilities for the Kid Zone Enrichment Program from July 1, 2008 to June 30, 2009.

DOCUMENT NAME: 20080722cskb03 **COMMUNITY SERVICE ADM (0701-01)**

SUPPORTING DOCS: Yes

COMMENTS: Total cost shall not exceed \$148,000.

PREPARED BY: Kathy Berzins, Deputy Community Services Manager, Social Services, 480-350-5464.

REVIEWED BY: Tom Canasi, Community Services Manager, 480-350-5305

LEGAL REVIEWED BY: David Park, Assistant City Attorney, 480-350-8907

FISCAL NOTE: Sufficient funds have been appropriated in cost center 2457.

RECOMMENDATION: Staff recommends approval for the Renewal of the Community Use of School Facilities Lease Agreement between the Kyrene School District No. 28 and the City of Tempe Kid Zone Enrichment Program.

ADDITIONAL INFO: The Kid Zone Enrichment Program serves more than 1,100 children, attending five (5) Kyrene elementary schools within the City of Tempe, in kindergarten through 5th grade each year. It offers an affordable, safe, nurturing environment, held at the child's own school and eliminates the need for transportation for children. Working parents are able to feel confident that their children are spending their out of school time in a familiar and safe environment with their friends.

**RENEWAL OF THE COMMUNITY USE OF SCHOOL FACILITIES LEASE
AGREEMENT BETWEEN THE CITY OF TEMPE AND THE KYRENE
SCHOOL DISTRICT**

C2008-

THIS RENEWAL OF THE COMMUNITY USE OF SCHOOL FACILITIES LEASE AGREEMENT BETWEEN THE CITY OF TEMPE AND THE KYRENE SCHOOL DISTRICT (herein after the "**Renewal**") is entered into by and between the CITY OF TEMPE, a municipal corporation (hereinafter "**City**") and the KYRENE SCHOOL DISTRICT (hereinafter the "**District**") this _____ day of _____, 2008.

RECITALS

- A. WHEREAS**, the City and the District are parties to that certain Community Use of School Facilities Lease Agreement dated June 28, 2007 and that certain Use Agreement Addendum Between the Kyrene School District and the City of Tempe, effective July 1, 2007 (collectively hereinafter "**the Agreement**") attached hereto as Exhibits A and B (respectively);
- B. WHEREAS**, the City and the District desire to enter extend the Agreement into 2008-2009 under the same previously agreed upon terms and conditions.

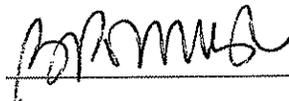
NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties as are more particularly set forth in the Agreement attached hereto as Exhibits A and B, the same be and is hereby adopted and incorporated by this Renewal except as amended as follows:

1. **Term.** The term of this Agreement shall commence on July 1, 2008 and terminate on June 30, 2009, and shall automatically expire unless extended in writing by the District, at its sole discretion.

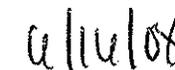
CITY OF TEMPE

KYRENE SCHOOL DISTRICT NO. 28

Hugh Hallman, Mayor



Date



Date

ATTEST:

City Clerk

Approved as to form:

City Attorney

C2007-105

**COMMUNITY USE OF SCHOOL FACILITIES LEASE AGREEMENT
USE AGREEMENT FOR CATEGORIES IIA, IIB, IIC, III, AND IV**

Representative of: City of Tempe Kid Zone Enrichment Program Date: June 28, 2007

I, Mayor Hugh Hallman, as the duly authorized representative of said group, do hereby agree to the terms and conditions set forth herein and in District Policy KF, and its Regulations and Exhibits: KF-RA, KF-RB, KF-EA, KF-EB AND KF-EC and agree that all terms and conditions that must be met prior to use will be met in accordance with the requirements of the District found in its Policy, Regulations and Exhibits. I further understand that said use may not occur until all requirements have been met.

INDEMNIFICATION

Lessee agrees to conduct its activities in Facility in a careful and safe manner. As a material part of the consideration to District, lessee hereby assumes all risk of damage to and loss or theft of property, as well as injury or death to persons, related in any way to lessee's use or occupancy of any portion of Facility from any cause whatsoever, including when caused in whole or in part by lessee, and lessee hereby waives all claims in respect thereof against District. Lessee shall indemnify, defend, and save harmless District and all of its employees, agents, and representatives from any and all claims, notices of claim(s), demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by District, on account of loss of or damages to any property and/or for injuries to or the death of any person(s) arising in whole or in part out of any act or omission by lessee or its employees, agents, representatives, invitees, or subcontractors, or arising in whole or in part out of its and/or their use of Facility, or arising in whole or in part out of workers' compensation claims or unemployment disability compensation claims of employees of lessee or out of claims under similar such laws

Mandatory Insurance Requirement

Coincidentally with the approval for use and execution of the agreement, the lessee shall procure and maintain in full force during the lessee's occupancy a policy of public liability and property damage insurance from a reliable insurance company authorized to transact business in the State of Arizona.

In addition to the lessee, the District shall be named as additional insured in the policy, which shall include a minimum of one million dollars (\$1,000,000) combined single-limit bodily injury and property damage liability coverage. Responsibility for obtaining such insurance coverage rests solely with the lessee and will be shown on the agreement.

All outside groups using District facilities must comply with these requirements. Only District-sponsored groups that are covered by District insurance are exempt from these requirements.

Re-leasing

The District reserves the right to re-lease any portion of the facilities that become vacant during the term of any agreement or any area wherein the agreement therefore has been voided or canceled by either party. If the District re-leases because of lessee's default, no refund will be due first lessee of any sums paid in advance; e.g., the District may have incurred expenses in connection with the lessee.

Assignment and Subletting

No lessee shall assign any agreement on any of the facilities or any area therein or any rights under said agreement without prior written approval from the District, which approval may be granted or withheld in the District's sole and absolute discretion.

Alteration of Premises

Each lessee shall take the premises in the condition found, and in the event any lessee finds it necessary to remove or change the location of any stage, rigging, or equipment, such changes shall be made at the lessee's expense, and the lessee shall agree to change all such equipment, stages, and rigging back to the condition in which same was found. No lessee shall make any such changes or alterations without prior written approval from the designee from the District.

Damage to Buildings and Contents

The lessee shall submit a deposit of \$250.00, as determined by the District, prior to occupancy. Deposit is refundable if no damage occurs.

The lessee using the facilities shall be responsible for the payment of any and all damage to the buildings, furnishings, fixtures, equipment, etc. sustained from such use, whether caused by the lessee or the lessee's patrons, ordinary wear and tear excepted. Damages to facilities resulting from use by the organization shall be repaired by the District and deducted from the damage deposit. Any damage fees over the amount of deposit will be billed to the organization. Failure to pay for damages may be cause for canceling the use agreement.

No decorative or other materials shall be attached to any part of the building so as to damage the building. All decorative or other materials shall be of a noncombustible type or shall be suitably treated with a flame retardant approved by the fire department. Nor shall any persons bring, exhibit, or set off fireworks or explosives on the premises without the written consent of the city and the mayor.

Machinery, Flammable Liquids, and Electricity

No person shall erect any engine, motor, rocket, or other machinery on the premises, nor use any gas, electricity, flammable liquid, or charcoal therein without prior written approval from the designee. All electrical connection of any kind must be made by the

District electrician or his representative, and all District equipment must be operated by District personnel approved by the designee.

Obstruction of Doors, Passageways, Sidewalks, Corridors, or Lobbies

No portions of the sidewalks, entries, passageways, doors, aisles, elevators, vestibules, windows, ventilators, lighting fixtures, fire lanes or hydrants, or ways of access to the public utilities of the premises shall be obstructed or caused to be obstructed, or caused to be used for any purpose other than that originally intended by the District. Any damage resulting from the misuse of any portion of the premises shall be repaired by the District and billed to the lessee.

Liability for Lessee Property

The District shall not be liable for any loss, damage, or injury to properties of any kind that are shipped or otherwise delivered to or stored in or on the premises. Properties shall not be delivered until the lessee has made proper arrangements for receiving, handling, and storage of such material.

Lost or Misplaced Articles

The District shall have the sole right to collect and have the custody of articles left on the premises by the lessee's patrons and to provide the disposition thereof. Such articles shall be kept on the premises for sixty (60) days and then disposed of as the designee deems advisable. The District shall assume no responsibility for losses suffered by the lessee or the lessee's agents, servants, or employees that are occasioned by the theft or disappearance of equipment, articles, or other personal property.

Abandoned Equipment

Any equipment or effects of the lessee remaining on the premises for more than ten (10) days after the expiration of the agreement shall be deemed abandoned and shall be disposed of by the District's designee as deemed advisable by the District.

Entrance and Exit

All persons shall use – and all articles, exhibits, fixtures, displays, and other equipment shall be brought into and out of the building only at – designated entrances and exits. Vehicular traffic or parking in areas on the premises not designated for such purposes shall require prior approval by the designee of the District.

Permits and Licenses

The lessee has the responsibility to obtain any additional permits and licenses required by, and shall permit inspection by, appropriate personnel, e.g., health permits or inspection by the fire marshal.

Security and Safety Patrol

The lessee shall employ, through the District and at the lessee's expense, such security and safety personnel as are required and approved by the designee. The necessity of

security and safety personnel will be determined by the Principal and designee of the District.

Observance of the Law

This Agreement shall be governed by the laws of the State of Arizona, the courts of which state shall have jurisdiction of the subject matter hereof. The lessee of the facilities shall comply with all laws of the United States and the State of Arizona, and with all applicable city ordinances, including any rules and regulations for the facilities under the charge and control of the District. Violations by the lessee may result in cancellation of the agreement and discontinuance of the use of the facilities.

To the extent lessee's use of the facility involves the performance of copyright protected material or the recording of such performance, lessee agrees to obtain any necessary copyright licenses or permissions associated with such performance and any recording of such performance by the lessee or any individual acting on behalf of the lessee. To the extent a claim is made against the District arising out of any alleged copyright infringement as a result of lessee's use of the facility, lessee agrees to indemnify and hold the District harmless from any and all damages, including attorney's fees. In the event of any action, suit or proceeding arising from or based upon this Agreement brought by either party hereto against the other, the prevailing party shall be entitled to recover from the other its attorneys' fees in connection therewith in addition to the costs of that action, suit or proceeding.

Objectionable Performances of Persons

Any use of the facilities that is contrary to public policy or that is not in the best interests of the District, or is in violation of any law, shall be a violation of the agreement, and any performer or any other person whose conduct is objectionable, disorderly, or disruptive to facility use, or in violation of any law, shall be refused entrance or shall be immediately removed from the premises by the District's designee.

Relationship

The parties agree that neither lessee nor any employees or other personnel of lessee will for any purpose be considered employees of District, and with respect to lessee and any employees or other personnel of lessee, District shall not be responsible in any manner for the supervision, direction, and control of lessee and/or any of its employees or other personnel, the payment of salary (including the withholding of income taxes and social security) of any such employees or other personnel, and/or the provision of workers' compensation and disability benefits for any such employees or other personnel.

Signs, Posters, and Literature

The licensee shall not post or permit to be posted any sign upon said premises or anything that will tend to injure, mar, or in any manner deface said premises, and will not permit nails, hooks, adhesive fasteners, tacks, or screws to be installed on any part of the building or premises. Signs may be posted only on billboards provided for such use, and all signs advertisements, posters, etc., must be related to the performance or

exhibition to be given on the premises. The hanging of pictures, banners, or any other items on walls or draperies requires written prior approval by the designee of the District.

The lessee shall not distribute or circulate or permit to be circulated any advertising matter or program at the entrance to or on any part of the premises that does not pertain completely to the immediate attraction. Such material must have prior approval from the District's designee, and at no time shall any such advertising matter or programs be distributed or circulated on parking facilities or sidewalks adjacent to the facilities.

Advertising

All advertisement of performances and/or attractions for which an admission is to be charged must state the total admission prices. The lessee shall not advertise any performance or the appearance of any performer unless and until agreements between all parties involved have been properly executed prior to signing the agreement with the District. All advertising must clearly state the sponsoring agent.

Facility Capacity

Persons will not be permitted inside any facility in excess of its established capacity. Enforcement of the requirement rests solely with the lessee.

Suspension of Use;

District may, by written notice, direct lessee to suspend its use of the facility for such period of time as may be determined by District to be necessary or desirable. Upon receipt of such termination notice, lessee shall immediately discontinue use to the facility under this Agreement. Payment for use already completed or in process at the time of the notice of termination is received shall be adjusted between District and lessee in a fair and reasonable manner, but shall exclude any allowance for unperformed use or anticipated profits thereon.

Termination of Use

The District has the right to terminate the use agreement (/invoice) in the event the lessee or the lessee's representative is found to be in violation of District rules, regulations, or procedures or the lessee's use is found to interfere with the District's instructional program. The lessee will be given written notification of the cause for termination of the agreement and the date on which the lessee is to discontinue use of the District's facilities.

In case of fire, casualty, or other unforeseen occurrences that render impossible the fulfillment of an agreement by the District, said agreement shall be immediately terminated by the designee of the District. In such cases, payments shall be paid only for the time the premises are actually used. The lessee shall waive any and all claims for damages in the event of such termination.

Conflict of Interest

The parties understand that this Agreement is subject to cancellation pursuant to A.R.S. §38-511, without penalty or further obligation on the part of the District, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the District is, at any time while this Agreement or any extension hereof is in effect, an employee or agent of lessee, in any capacity, or a consultant to lessee, with respect to the subject matter of this Agreement.

Priority of District Activities

If unexpected or unplanned District activity is planned after a facility has been scheduled for an outside agency program, the District activity will take priority. The District designee should: (1) make every effort to both inform the outside agency of this situation as soon as possible and preferably no later than forty-eight (48) hours before the District activity is scheduled to take place; and (2) make every effort to find an alternative location for the outside agency sponsored activity, preferably forty-eight (48) hours before the activity is scheduled to take place.

Five (5) business days written notice is required for cancellation of the agreement by the lessee. Notice should be sent to the school/facility of intended occupancy. Failure to provide five (5) business days written notice will result in a \$15.00 penalty per use. Additional custodial charges may apply.

Default

In the event that lessee fails to pay any fee or other sum required to be paid by lessee hereunder when due or otherwise fails to comply with or observe any other provisions of this Agreement, in addition to any other remedy that may be available to District by reason of such failure, whether at law or in equity, District may immediately and unilaterally terminate this Agreement and all rights of lessee hereunder—including any right of adjustment of amounts paid hereunder.

The lessee, in accepting this Agreement, shall agree that the District shall not be liable to prosecute, nor be held liable for damages in the event that the District declares the lessee in default thereof.

Amendments to contract

Any and all amendments/changes to an existing invoice/agreement must be submitted in writing on a Request for Use of Facilities application form and submitted to the District's designee. These changes shall be subject to the approval of the District's designee and Principal and shall be considered binding in the same manner as a full invoice/agreement. There will be a \$15 change fee assessed per change.

Specific Terms of Use

When using the facility, or any portion thereof, lessee agrees to comply with all applicable state, federal or city laws and regulations, and with the policies and regulations of the District pertaining to the use and occupancy of the facility. Lessee agrees to take good care of the facility and any equipment and furniture located therein, and to leave the facility at all times in as good order and condition as existed prior to

lessee's use thereof. Lessee shall not use or allow any portion of the facility to be used for any unlawful purpose. Lessee shall not commit or allow to be committed any waste or nuisance in or about the facility, or subject the facility to any use that would damage any portion of the facility or raise or violate any insurance coverage maintained by the District. Lessee shall not allow a number of persons in any portion of the facility at any time in excess of the legal or normal capacity of such portion of the facility. Lessee shall not permit any food or drink in any portion of the facility without the prior written consent of the District.

All activities must be under competent adult supervision supplied by the lessee.

The District's designee may require the lessee to provide additional adult supervision, custodial support, or security, as the District's designee deems appropriate. When facilities are used by any organization during hours outside of the normal workday, or during a time when a staff member is not normally present, a District employee must be present. Compensation for employees will be in addition to facility use fees. Payment to employees will be made by the District and billed to the lessee according to the fee schedule.

The following specific rules shall be observed while using any facility, and the lessee shall be held responsible for enforcing them and for any damages growing out of any violation thereof:

- The use of tobacco in any facility in any form is prohibited.
- Drinking of alcoholic beverages or gambling anywhere in or on the premises is prohibited.
- Food and drinks shall not be allowed inside school gymnasiums.
- Persons attending functions shall confine themselves to the specific part of the facility assigned in the agreement/invoice.
- The use of school equipment or supplies shall not be permitted without the permission of the designee as outlined in the agreement/invoice.
- Facilities must be vacated by 9:30 P.M. unless permission is otherwise granted specifically in the agreement/invoice. It is the responsibility of the lessee to see that this requirement is administered.

Use of District Kitchens

No District kitchen facility shall be used except as specifically outlined by the supervisor of cafeterias and approved by the District's designee. Charges for food served and/or staff necessary to serve food shall be established by the supervisor of cafeterias, approved by the District's designee, and paid directly to the food services department.

Special-Interest Groups

Setup and rearranging of chairs, etc., is the responsibility of the lessee. The storing of paraphernalia may be a part of this agreement, contingent upon space availability at the designated site. A fee shall be charged for the storage of equipment/paraphernalia. The fee shall be based upon the monthly cost per square foot of space utilized.

The lessee agrees:

To take proper care of the field(s) and complementing facilities during the period of their use and to return the facilities to the District not later than the day following the last scheduled day of the approved agreement in good condition, less normal wear and tear, (as judged by the principal and the District's designee). If facilities have not been restored to original condition by the day following the last scheduled activity, the District shall restore the facilities, and the cost of such restoration shall become the financial obligation of the lessee. Should said obligation exceed the deposit on file with the District, the balance thereof will be billed to the organization and must be paid within the time period set forth in the invoice from the District. Failure to meet this payment obligation within a reasonable amount of time shall constitute proper reason for disallowing further use of the facilities by the lessee.

- The principal of the school involved and the District designee shall judge jointly whether proper care and policing of the facilities are being carried out during the period of use.
- That preparation of the ground for the lessee's program shall not interfere in any way with the school program at any site. Lessees may not work on grounds' preparation during school hours.
- To furnish all needed materials for the operation of the lessee's program without cost or obligation to the District.
- That no modification of the school premises for the lessee's activities shall be made without approval by the District's designee.
- That a concession stand shall be opened for operation only with prior approval by the designee, and only on dates when games are regularly scheduled.
- To be responsible for the upkeep of the playing fields.
- That glass containers and other breakable articles shall not be distributed by the concession stands.
- That public address systems, when used, shall be operated with a volume setting low enough to avoid disturbance of households in areas adjacent to the schools. Excessive loudness, unnecessary announcements, and extraneous comments are to be avoided.
- That no team practice or regularly scheduled game shall begin at such time as to interfere with the school program at any site.
- That field lights shall not be turned on for any purpose other than for sessions as provided for in the agreement/invoice.
- That no facilities shall be erected without the prior written consent of the District.
- That the lessee shall exercise no control or jurisdiction over the property of the District, the improvements, or the premises except to have policing privileges of the grounds during the time that the lessee's activities are being conducted, and except as otherwise provided herein.

The District furthermore reserves the right to consider rescheduling of any or all facilities upon the request of additional groups for the use of such facilities. If a rescheduling is effected, the District agrees to give one week's notice in writing to the lessee involved.

School functions and activities may take precedence in some cases, in such cases the District agrees to provide a minimum of twenty-four (24) hours notice to the lessee and to provide the lessee with alternative arrangements.

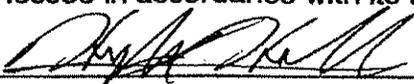
The failure of District to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies provided by this Agreement, or lessee's delay in the exercise of any such rights or remedies shall not release lessee from any of its responsibilities or obligations imposed by this Agreement and shall not be deemed a waiver of any right of District to insist upon strict performance of this Agreement.

In the event of a dispute hereunder, the parties agree to use arbitration insofar as required by Sections 12-1518 and 12-133, Arizona Revised Statutes, and rules promulgated thereunder.

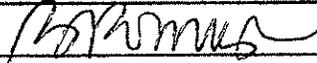
This Agreement constitutes the entire agreement and understanding between the parties concerning the matters addressed herein, may not be modified orally, and supersedes any and all previous agreements or understandings, whether written or oral, between or among the parties relating to such matters.

Both parties agree to not discriminate against any person on the basis of race, color, sex, religion, national origin, age or handicap.

The individual signing below on behalf of the lessee hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the lessee and that this Agreement is binding upon the lessee in accordance with its terms.

Signature of the User's Authorized Representative: 

Name of Organization: City of Tempe Mayor Hugh Hallman

Signature of the District representative: 

All fees associated with the use are due 10 business days prior to the date of approved use.

USE AGREEMENT ADDENDUM BETWEEN
THE KYRENE SCHOOL DISTRICT AND THE CITY OF TEMPE

This Addendum to the Kyrene School District No. 28's Community Use of School Facilities Contract ("Contract") between the City of Tempe, for its Kid Zone Enrichment Program ("Kid Zone" or "lessee" or "the City"), and the Kyrene School District No. 28 ("the District" or "KSD" or "Kyrene") shall be effective as of the 1st day of July, 2008.

RECITALS

WHEREAS the City is leasing District property during the 2008-2009 fiscal year pursuant to A.R.S. Section 15-1105 to provide childcare programs; and

WHEREAS the City wishes to clarify and/or amend certain terms and conditions of the District's Contract; and

WHEREAS the District is willing to make such clarifications and/or amendments to its Contract;

THEREFORE, the City and the District agree to the following amended terms and conditions of the Contract, which are hereby incorporated by this reference into the Contract:

1. **Mandatory Insurance Requirement.** Add the following language. The District acknowledges that the City of Tempe Self-Insured program complies with the insurance requirements outlined in the "Mandatory Insurance Requirement. The City will provide the District with a copy of their insurance coverage.

2. **Permits and Licenses.** Add the following language. The District will provide the necessary information needed by the City from the District for Kid Zone programs to be properly licensed by the Arizona Department of Health Services, i.e. copies of Fire Marshal reports, capacity, and other required information.

3. **Add:** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

4. **Add:** Each party represents that the signatory noted below is authorized by the appropriate governing body to sign on that party's behalf.

5. **Add:** The parties may cancel this Agreement under A.R.S. § 38-511 for any violation of that statute.

City of Tempe

KYRENE SCHOOL DISTRICT NO. 28

