

Staff Summary Report



Council Meeting Date: 07/22/08

Agenda Item Number: _____

SUBJECT: Request approval for the Renewal of the Facility Use Agreement between Tempe Elementary School District #3 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 August 1, 2008 to July 31, 2009.

DOCUMENT NAME: 20080722cskb04 **COMMUNITY SERVICES ADM (0701-01)**

SUPPORTING DOCS: Yes

COMMENTS: Total cost shall not exceed \$31,192.

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 Renewal of the Facility Use Agreement between the Tempe Elementary School District #3 and the City of Tempe Kid Zone Enrichment Program.

ADDITIONAL INFO: The Kid Zone Enrichment Program serves more than 2,200 children, attending 14 Tempe elementary schools, 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 FACILITY USE AGREEMENT BETWEEN
TEMPE ELEMENTARY SCHOOL DISTRICT #3 AND THE CITY
OF TEMPE KID ZONE ENRICHMENT PROGRAM**

C2008-

THIS RENEWAL OF THE FACILITY USE AGREEMENT BETWEEN TEMPE ELEMENTARY SCHOOL DISTRICT #3 AND THE CITY OF TEMPE KID ZONE ENRICHMENT PROGRAM (herein after the "**Renewal**") is entered into by and between the CITY OF TEMPE, a municipal corporation (hereinafter "**City**"), and TEMPE ELEMENTARY SCHOOL DISTRICT #3 (hereinafter the "**District**") this _____ day of _____, 2008.

RECITALS

- A. **WHEREAS**, the City and the District are parties to that certain Facility Use Agreement, dated August 15, 2007, and that certain Use Agreement Addendum Between the Tempe School District No. 3 and the City of Tempe, effective August 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 Exhibit A, the same be and is hereby adopted and incorporated by this Renewal except as amended as follows:

5. **Term.** The term of this Agreement shall commence on August 1, 2008 and terminate on July 31, 2009, and shall automatically expire unless extended in writing by the District, at its sole discretion.

CITY OF TEMPE

TEMPE ELEMENTARY SCHOOL
DISTRICT NO. 3

Hugh Hallman, Mayor

Cindy Denton

Date

6/27/08
Date

ATTEST:

City Clerk

Approved as to form:

City Attorney

EXHIBIT A

**FACILITY USE AGREEMENT
BETWEEN**

Tempe Elementary School District #3

and

City of Tempe Kid Zone Enrichment Program

C2006-236A

1. PARTIES

The parties to this Contract are Tempe Elementary School District #3, hereinafter referred to as "DISTRICT", and City of Tempe Kid Zone Enrichment Program, hereinafter referred to as "OCCUPANT".

2. RECITALS

This agreement is made with reference to the following facts:

2.1 DISTRICT has offered to make available the following sites (Aguilar, Arredondo, Broadmor, Bustoz, Carminati, Curry, Evans, Fuller, Holdeman, Hudson, Meyer, Rover, Ward, Wood) and sites to be named later for fall, winter and spring camps, and the 2008 summer program to be used by the OCCUPANT for occasional use as a/an child care program.

2.2 OCCUPANT represents that the FACILITY will only be used for the purpose so stated.

3. USE

When using the FACILITY or any portion thereof, OCCUPANT 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. OCCUPANT 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 OCCUPANT's use thereof. OCCUPANT shall not use or allow any portion of the FACILITY to be used for any unlawful purpose. OCCUPANT 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. OCCUPANT 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. OCCUPANT shall not permit any food, drink or smoking in any portion of the FACILITY without the prior written consent of the DISTRICT.

4. SCHEDULING

OCCUPANT shall schedule by written application to the DISTRICT to the principal/site administrator of the facility being requested. Said written notice will state the exact times during the term hereof that it desires to use any portion of the FACILITY. Said written notice shall occur at least fourteen (14) days prior to such intended use.

5. **TERM**

The term of this agreement shall commence on August 1, 2007 and end on July 31, 2008 at which time OCCUPANT's rights to use the FACILITY under this Agreement shall automatically expire unless extended in writing by the DISTRICT, at its sole discretion.

6. **COMPENSATION**

Base charge	\$ 29,784.00
Additional Charge (custodial fees for winter/spring camps)	\$ 1,408.00
Total due	\$ 31,192.00 (2007-2008)

OCCUPANT will compensate DISTRICT for use of the FACILITY as follows (insert terms of compensation):

7. **INSURANCE**

Pursuant to A.R.S. §15-1105 et seq., OCCUPANT, agrees to procure, at its expense, and maintain during the term hereof, a policy of general liability insurance, against claims for bodily injury, death and property damage occurring in connection with OCCUPANT's use of any portion of the FACILITY, which insurance shall include the DISTRICT as an additional insured and be primary and non-contributing to any coverage maintained by the DISTRICT. OCCUPANT shall provide the DISTRICT with a certificate evidencing such insurance coverage in effect. Said insurance shall have policy limits no less than one million dollars (\$1,000,000) bodily injury coverage, and property damage covering no less than one million dollars (1,000,000). The certificate must provide that the DISTRICT be given no less than ten (10) days' advance written notice in the event of material change in coverage, cancellation, or non renewal.

8. **LIABILITY AND INDEMNITY**

OCCUPANT agrees to conduct its activities in the FACILITY in a careful and safe manner. As a material part of the consideration to the DISTRICT, OCCUPANT hereby assumes all risk of damage to and loss or theft of property, and injury or death to persons related to OCCUPANT's use or occupancy of any portion of the FACILITY from any cause whatsoever, and OCCUPANT hereby waives all claims in respect thereof against DISTRICT. OCCUPANT shall indemnify, defend and save harmless DISTRICT and all of its employees, agents, and representatives from any and all claims, 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 or damages to any property and for injuries to or death of any person arising out of any act or omission by OCCUPANT, its employees, agents, representatives, or subcontractors, or arising out of its use of the FACILITY, or arising out of workers' compensation claims or unemployment disability compensation claims of employees of OCCUPANT or out of claims under similar such laws. OCCUPANT's obligation under this Section 8 shall not extend to any liability caused by the sole negligence of DISTRICT, or its employees. Where both DISTRICT and OCCUPANT, including their employees, agents or representatives participated in the liability causing event, each party shall contribute to the common liability a pro rata based upon its relative degree of fault as established by compromise, arbitration or litigation.

9. **ENTIRE CONTRACT**

This Agreement embodies the entire contract between OCCUPANT and DISTRICT. The parties shall not be bound by or be liable for any statement or representation of any nature not set forth in this Agreement. Changes of any of the provisions of this Contract shall not be valid unless reduced to writing and signed by both parties.

10. SUSPENSION AND TERMINATION

DISTRICT may, by written notice, direct OCCUPANT to suspend its use of the FACILITY for such period of time as maybe determined by DISTRICT to be necessary or desirable. Upon receipt of such termination notice, OCCUPANT 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 OCCUPANT in a fair and reasonable manner, but shall exclude any allowance for unperformed use or anticipated profits thereon.

11. WAIVER

The failure of DISTRICT to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies shall not release OCCUPANT from any of its responsibilities or obligations imposed by this Agreement and shall not be deemed a waiver of any rights of DISTRICT to insist upon strict performance of this Agreement.

12. ASSIGNMENTS AND SUBLETTING

OCCUPANT shall not have the right to assign this Agreement or allow any other person or entity to use or occupy any or all of the FACILITY without the prior written consent of the DISTRICT, which consent may be granted or withheld at the DISTRICT's sole discretion.

13. DEFAULT

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

14. ARBITRATION

In the event of a dispute hereunder, the parties agree to use arbitration insofar as required by A.R.S. §12-1518 and §12-133, and rules promulgated thereunder.

15. CONFLICT OF INTEREST

The parties understand that this Agreement is subject to cancellation pursuant to A.R.S. §38-511 of the Arizona Revised Statutes, 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 the OCCUPANT, in any capacity, or a consultant to the OCCUPANT, with respect to the subject matter of this Agreement.

16. GOVERNING LAW

The laws of the State of Arizona shall govern this Agreement, the courts of which state shall have jurisdiction of the subject matter hereof.

17. RELATIONSHIP

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

18. AUTHORITY

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

19. EXECUTION DATE

The parties have caused this Agreement to be executed by their duly authorized representatives, this 15th day of August, 2007.

"DISTRICT"

"OCCUPANT"

NAME: Cindy Denton

CITY OF TEMPE

SIGNATURE: C. Denton

Hugh Hallman
Hugh Hallman, Mayor

TITLE: Director of
School Leadership

ATTEST:

Jan Holt
City Clerk

APPROVED AS TO FORM:

Andrew B. King
City Attorney

EXHIBIT B

**USE AGREEMENT ADDENDUM BETWEEN
TEMPE SCHOOL DISTRICT NO. 3 AND THE CITY OF TEMPE**

This Addendum to the Tempe School District No. 3's Community Use of School Facilities Agreement ("Agreement") between the City of Tempe, for its Kid Zone Enrichment Program ("Kid Zone" or "the City"), and Tempe School District No. 3 ("the District") shall be effective as of the first day of August, 2007.

RECITALS

WHEREAS, the City is leasing District property during the 2007-2008 school year pursuant to A.R.S. § 15-1105 to provide childcare programs;

WHEREAS, the City wishes to clarify certain terms and conditions of the District's Facility Use Agreement; and

WHEREAS, the District is willing to make such clarification(s) to the Agreement;

THEREFORE, the City and the District agree to the following clarification of the Insurance Section of the Agreement, which is hereby incorporated by this reference into the Agreement.

7. Insurance. Add the following language to this section: "The District acknowledges that the City of Tempe self-insured program complies with the insurance requirements outlined in "7. Insurance". The City is self-insured up to its self-retained limits. The City has purchased insurance for claims over its self-retained limits. The city's self-insurance and insurance covers public liability and property damage. The City will provide the District a certificate of insurance naming the District as an additional insured, as it relates to this Agreement, on its insurance coverage.

CITY OF TEMPE



Hugh Hallman, Mayor

July 19, 2007

Date

ATTEST:



City Clerk

TEMPE SCHOOL DISTRICT NO. 3

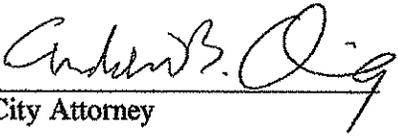


~~Susan Holt Maas, Ed.D.~~ *Cindy Denton*
~~Executive Director of Exceptional~~ *Director of*
~~Internal Customer Service~~ *School Leadership.*

8/15/07

Date

Approved as to form:


City Attorney