

When recorded return to:

City Clerk
CITY OF GLENDALE
5850 West Glendale Avenue
Glendale, Arizona 85301

Food Bank Lease Agreement

This Food Bank Lease Agreement (“Lease”) is executed to be effective January 7, 2022, between the City of Glendale, an Arizona municipal corporation (“City”), and Phoenix Gospel Mission DBA Phoenix Rescue Mission, an Arizona non-profit corporation (“Lessee”).

RECITALS

- A. The City is the owner of the real property, at 4,700 square foot building and certain equipment, located at 5605 North 55th Avenue, Glendale, Arizona 85301, as described in **Exhibit A** (“Premises”);
- B. Lessee desires to enter into a Lease with the City for the Premises; and
- C. The City recognizes the importance of the use of the Premises for the distribution of food to low and moderate income persons as described in **Exhibit A**.

AGREEMENT

In consideration of the following mutual covenants and conditions, the parties agree as follows:

- 1. **Leases; Privileges; Restrictions.** The Premises will be used by the Lessee for the operation of a food bank distribution center and referral office for social service activities to low and moderate income persons residing in the City, which purposes are consistent with the nature of the facility and its location.
- 2. **Term.** The term of the Lease shall be for a period of five (5) years commencing January 7, 2022 and expiring January 6, 2027, unless terminated sooner under these Lease provisions.
- 3. **Rent.** The Lessee shall pay the City rent in the amount of one dollar and no cents (\$1.00) per year during the term of this Lease for the Premises. Lessee shall pay rent due on a yearly basis in advance of the Lease commencement date and each annual anniversary thereafter. Payments should be remitted to the City’s finance and accounting office at 5850 West Glendale Avenue, Glendale, Arizona 85301.
- 4. **Utilities.** The Lessee shall pay, before delinquency, all charges for water, sewer, gas, electric, telephone, and any other utility service used on or serving the Premises during the Lease term. The failure to maintain all utilities on the Premises shall constitute a breach of the Lease and will place Lessee in default.
- 5. **Operation.** The Lessee agrees to provide and pay for all the operation of the Premises, including all programs, supervision, supplies, maintenance, and insurance.
- 6. **Services to Be Rendered; Additional Lessee Obligations.**

- 6.1 Management: The Lessee agrees to operate and manage the services provided on the Premises effectively and efficiently and agrees to provide adequate supervision during open hours.
- 6.2 Hours of Operation: The Lessee agrees to conduct activities on the Premises to conform with the hours and days of operation identified in **Exhibit A**. The hours may be modified with prior notice to the City. Any reduction in total hours per week must be approved by the City.
- 6.3 Employees of Lessee: The Lessee will ensure that its officers, agents, employees, staff, volunteers and invitees shall conduct themselves in a professional manner. Upon objection from the City concerning the conduct or demeanor of any such person, Lessee shall immediately take all lawful steps necessary to remove the cause of the objection. The Lessee shall make every effort to maintain staffing adequate to administer the operations specified above and to provide adequate supervision for all activities that take place on the Premises. The lessee will ensure that the Premises is adequately staffed to provide on-site referral services to any first-time clients who come to the Premises without a referral.
- 6.4 Continue Occupancy: The Lessee agrees to continuously and uninterruptedly, during the terms of the Lease, occupy and use the Premises for the purposes specified above, unless the Premises are untenable by reason of fire, flood, or unavoidable casualty.
- 6.5 Inspections; Right of Entry: The City may at all reasonable times enter upon the Premises for any lawful purpose if the action does not unreasonably interfere with Lessee's use, occupancy or security of the Premises. The City may also enter upon the Premises at any reasonable time for the purpose of making any inspection it may deem appropriate for the proper enforcement of any of the covenants or conditions of this Lease. City reserves the right to make inspections of the Premises. Except in unusual circumstances, these inspections will be made after notification and during normal business hours.
- 6.6 Use Restriction: Without the prior approval of City, Lessee shall not use the Premises for any use other than for the purposes described in **Exhibit A**.
- 6.7 Establishing Rules: Except for enforcement authority vested in the Glendale Police Department or other governmental authority, Lessee shall have the right to set and enforce appropriate rules and guidelines for use of the Premises during the Term.
- 6.8 Damage, Destruction or Interference: The City has no obligation to reimburse the Lessee for the loss of or damage to fixtures, equipment or other personal property of the Lessee. Lessee will not commit nor permit to be done anything which may result in the commission of a nuisance, waste or injury on the Premises. Further, Lessee will not, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system and fire hydrants, if any, installed or located on the Premises.

7. Insurance.

- 7.1 Lessee shall procure and at all times maintain the following types and minimum insurance requirements for its operations on the Premises. The insurance requirements contained herein are minimum requirements and in no way limit the indemnity covenants contained in the Lease. The City in no way warrants that

the minimums are sufficient to protect Lessee as they are free to purchase additional insurance as they deem necessary.

Minimum Insurance Requirements:

- a. Commercial General Liability Insurance on an occurrence basis that includes property damage, fire damage legal liability, bodily injury, personal and advertising injury, products and completed operations and contractual liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate and \$100,000 fire damage liability.
 - b. Workers' Compensation Insurance as required by the State of Arizona with Statutory Limits. This policy shall include Employer's Liability insurance with limits no less than \$1,000,000 per accident for bodily injury or disease.
 - c. Insurance must be in a form satisfactory to and from a company acceptable to the City's Risk Manager, name the City as an additional insured and require thirty (30) days written notice to the City before modification or termination. The insurance must also include contractual liability coverage for the obligation of indemnity assumed in this Lease.
 - d. Property coverage for all improvement and fixtures on the Premises in an amount not less than the full replacement value thereof, to the extent such coverage is available to Lessee.
 - e. Automobile Liability Insurance that includes bodily injury and property damage for any owned, hired and non-owned vehicles with a combined single limit not less than \$1,000,000.
- 7.2 Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona with an AM Best rating not less than A-, VII.
- 7.3 The General and Automobile liability policies shall contain or be endorsed to contain the City of Glendale, its officers, officials, and employees as additional insureds with respect to liability arising out of Lessee's Permitted Use and Improvements and any other work or operations in the Premises.
- 7.4 Lessee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, or employees shall be excess of the Lessee's insurance and shall not contribute with it.
- 7.5 As commercially reasonable and at any time, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Lessee's operations.
- 7.6 Notice of Cancellation. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.
- 7.7 Waiver of Subrogation. Lessee hereby grants to City a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City by virtue of the payment of any loss under such insurance. Lessee agrees to make reasonable efforts to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- 7.8 Lessee and any and all Contractors shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the required insurance coverage. All certificates and endorsements are to be received by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's

obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

8. **Quiet Enjoyment.** So long as Lessee timely pays the rent required under this Lease and perform all other obligations under this Lease, Lessee may peaceably have and enjoy the exclusive use of the Premises and all the privileges granted under this Lease.
9. **Repairs and Maintenance.**
 - 9.1 Lessee shall maintain the Premises and keep it at all times, in a clean, orderly and safe condition and appearance, including any personal property or fixtures of the Lessee. Lessee is responsible for regular and routine janitorial and landscaping services on the Premises.
 - 9.2 The City agrees to maintain and repair all major exterior or external portions and systems of the Premises, including the roof, electrical service panel, any external electrical system issues, HVAC units and systems, evaporative cooler, and plumbing. Upon request, the City agrees to respond to any problems within two (2) working days. The Lessee agrees to maintain and repair all other portions and systems in the Premises, including plumbing, heating, and air conditioning ducts, walls, windows, doors, floors, and cabinets. The Lessee also agrees to maintain exterior walls, trim and paint, sidewalks, exterior landscaping, and will also maintain the refrigeration and freezer units. More specifically, the Lessee agrees to paint and to replace broken glass within forty-eight hours after receipt of notice of each occurrence in order to maintain an attractive Premises.
 - 9.2 Except as herein provided, the Lessee acknowledges that it is leasing the Premises and equipment solely in reliance on its own investigation thereof, that no representations, warranties, or statements have been made by the City concerning the condition or fitness thereof, and that by taking possession of the Premises and equipment, the Lessee accepts the same in their present conditions "as is."
 - 9.3 Should the Lessee fail to make repairs to keep facility in a clean, sanitary and safe condition, the City reserved the right to enter the Premises for the purpose of making emergency repairs and to charge the cost of repairs to the Lessee.
10. **Additions and Alterations.** The Lessee shall not permit or install any sign on the Premises without prior written approval of the City. The Lessee shall not make additions or alternations to the Premises without prior written approval of the City. Any alternations which become a fixed part of the Premises will be considered part of the real property and shall not be removed when the Lease is terminated, unless prior written approval is received from the City. Such permanent alternations would include, but not be limited to, attached recreational equipment, carpeting, wall-hung cabinets, draperies, porches, and awnings.
11. **Lease Expiration.** Within thirty (30) days of expiration of the term of this Lease, the Lessee will transfer to the City all real property in the same condition as it was received, excepting normal wear and tear.

12. **Termination for Convenience.** City may terminate this Lease for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

13. **Termination for Default.** If the Lessee fails to perform any act required herein, the Lessee shall have a period of fifteen (15) days after receipt of notice thereof from the City to cure such default, provided that if the nature of the nonmonetary default is such that it can be fully cured within said fifteen (15) days period. Lessee shall request in writing such additional time as may be reasonably necessary to cure such default and the City may honor such request so long as the Lessee proceeds promptly after service of the City notice and proceeds diligently at all times to complete said cure. If the Lessee fails to comply with any provisions of this Lease, Lessee shall be deemed to be in breach of this Lease with or without further notice or demand of any kind and City may terminate the Lessee's right to the possession of the Premises because of such breach and recover from the Lessee all damages which may have accrued to the Premises. Notice of default shall be deemed received by the Lessee when actually received or three (3) days after such notice is mailed to the Lessee, whichever occurs first.

14. **Notice.**

14.1 All rents or other sums, notices, demands, or requests required or permitted to be given under this Lease may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY: City of Glendale, Community Revitalization
Attention: Administrator
5850 West Glendale Avenue, Suite 107
Glendale, Arizona 85301
(623)930-3670

WITH A COPY TO: City of Glendale
Attention: City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

City of Glendale, Field Operations
Attention: Administrator Dept Support Services
5850 West Glendale Avenue
Glendale, Arizona 85301

TO THE LESSEE: Phoenix Gospel Mission, DBA Phoenix Rescue Mission
Attention: Ben Parker, Chief Operating Officer
1540 West Van Buren Street
Phoenix, Arizona 85007
Phone: (602)346-3346
Email: Bparker@phxmission.org

14.2 Each party shall have the right from time to time to designate a different address by notice given in conformity with this section.

15. **Severability.** If any provision of this lease is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to respective rights and obligations.
16. **Litigation.** This Lease is governed by the laws of the state of Arizona. If litigation or arbitration between the City and Lessee arises under this Lease, the successful party is entitled to recover its reasonable attorney's fees and expert witness fees and other costs incurred in connection with any claim, litigation, arbitration, or mediation. Both parties waive any right to a jury trial and consent to a trial to the court.
17. **Alcoholic Beverages.** The Lessee shall not provide, or allow to be provided, any alcoholic beverages on this facility throughout the course of this Lease.
18. **Discrimination.** The Lessee shall not discriminate against any employee, volunteer, applicant for employment, or applicant for service because of race, color, national origin, sex, sexual orientation, marital status, familial status, U.S. military veteran status, religion, age, or any disability.
19. **Requirements Made by the U.S. Department of Housing and Urban Development ("HUD").** The Premises has been rehabilitated with Community Development Block Grant funds from HUD. Lessee agrees to comply with any requirements made by HUD to the City concerning the Premises.
20. **Assignment.** Lessee may not assign or sublease any of its interests, rights, or obligations under this Lease, nor permit any other person to occupy the Premises, without the prior written consent of the City. Any attempted assignment, delegation, or transfer without the necessary consent will be void.
21. **Conflicts.** This Lease is subject to cancellation for conflicts of interest under the provisions of A.R.S. §38-511.
22. **E-Verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, Lessee warrants its compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Lessee's breach of this warranty shall be deemed a material breach of the Lease and may result in the termination of the Lease by the City. The City retains the legal right to randomly inspect the papers and records of the Lessee to ensure that the Lessee is complying with the above-mentioned warranty. The Lessee warrants to keep its respective papers and records open for random inspection during normal business hours by the other party. The Lessee shall cooperate with the City's random inspections, including granting the City entry rights onto their respective properties to perform the random inspections and waiving its respective rights to keep such papers and records confidential.
23. **No Boycott of Israel.** The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.
24. **Sale of Premises by City.** In the event of any sale of the Premises, the building or the land, or any assignment of this Lease by City (or a successor in title), if the assignee or purchaser

assumes the obligations of City herein in writing, City (or such successor) shall automatically be entirely freed and relieved of all liability under any and all of City's covenants and obligations contained in or derived from this Lease or arising out of any act, occurrence, or omission occurring after such sale or assignment; and the assignee or purchaser shall be deemed, without any further agreement between the parties, to have assumed and agreed to carry out any and all of the covenants and obligations of City under this Lease, and shall be substituted as City for all purposes from and after the sale or assignment.

25. **Indemnity.** Lessee shall indemnify, defend and hold City harmless from and against any and all claims, suits, actions, proceedings, liability, damages, costs or expenses, including attorneys' and experts' fees and court costs arising (a) from any act, omission, or negligence of Lessee or its officers, contractors, licensees, agents, employees, guests, invitees, or visitors in or about the Premises, (b) from Lessee's use or occupancy of the Premises or the business conducted by Lessee therein; (c) from any breach or default under this Lease by Lessee, or (d) from or relating to the enforcement by City of the provision of this Lease as against Lessee. This provision shall not be construed to make Lessee responsible for loss, damage, liability or expense resulting from the injuries to third parties caused solely and directly by the negligence, acts or omissions of City or its officers, contractors, licensees, agents, employees or invitees. The provisions of this section shall survive the expiration or termination of this Lease.
26. **Miscellaneous.** This Lease constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between the parties concerning the matters. This Lease shall be interpreted, applied and enforced according to the fair meaning of its terms and not construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Lease may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Lease are binding upon and inure to the benefit of the parties' successors and assigns.

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EXECUTED to be effective as of the date stated above.

CITY OF GLENDALE,
An Arizona municipal corporation

By: Kevin Phelps
Its: City Manager

ATTEST:

Julie Bowers, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael Bailey, City Attorney

Phoenix Gospel Mission DBA Phoenix Rescue Mission,
An Arizona non-profit corporation

By: Ben Parker
Its: Chief Operating Officer

State of Arizona)
) ss.
County of Maricopa)

On this the ____ day of _____, 202_ , before me, the undersigned Notary Public, personally appeared Ben Parker, who acknowledged himself to be the Chief Operating Officer of Phoenix Gospel Mission DBA Phoenix Rescue Mission, and that he as such official, being authorized to do so, executed the foregoing Lease for and on behalf of said corporation for the purposed and consideration therein expressed.

IN WITNESS WHEREOF, I hereunder to set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT A

Food Bank Facility and Operating Information

1. Facility Information and Description

- 1.1** The City of Glendale (“City”) is the owner of the real property located at 5605 North 55th Avenue, Glendale, Arizona 85301, legally described as the South 320 feet of the West 136.125 feet of the Northwest quarter of the Southwest quarter of the Northeast quarter of Section 17, Township 2 North, Ranch 2 East of the Gila and Salt River Base and Meridian, EXCEPT the East 50 feet of the North 50 feet thereof (“Premises”).

- 1.2** A 4,700 square foot building located on the Premises contains the following rooms”
 - a.** Lobby and reception area, 18’x23’ with a 11’x30” countertop
 - b.** Front office near lobby, 14’x10’ with four desk units
 - c.** Lobby restroom, ADA compliant
 - d.** Administrative/Storage area, 19’x37’, includes a staff kitchen with refrigerator and cabinets, two ADA-compliant restrooms and storage closet
 - e.** Main food storage area, 70’x29’, with five metal shelving units that measure 3’x10’ and bay door truck access
 - f.** Refrigeration room, 22’x12’ with large track door
 - g.** Freezer room, 22’x12’ with large track door
 - h.** Rear storage area, 21’x10’
 - i.** Two rear offices, 12’x7’ each
 - j.** Parking lot is paved and striped

2. Food Bank Facility Operating Information

- 2.1** Phoenix Gospel Mission DBA Phoenix Rescue Mission, an Arizona non-profit corporation (“Lessee”), will be responsible for the operations of the Premises. Initially, only dry foods distribution will be offered at the location. At such time that Lessee has the capacity to handle refrigerated or frozen foods, such food services will be added. As the Lessee for the Premises, Lessee will determine the days and hours of operation for food distribution. At a minimum, Lessee will be open and distribute dry food four (4) days per week during regular working hours, from 8:00am until 12:00pm. Operating hours will be posted on the Premises and on-line as reasonably possible.

- 2.2** In order to ensure the successful distribution of dry food goods, Lessee has partnered with St. Mary’s Food Bank and other food sources in providing food goods needed for distribution. Lessee will offer food distribution based on capacity and available resources to successfully do so. At a minimum, Lessee will provide 200 dry food boxes per week.

- 2.3** Food distribution services at the Premises accept walk-up and external agency referred households. Lessee partners with the Glendale Community Action Program and several organizations to make referrals for individuals in need for food services. Eligibility requirements will be determined by using guidelines from St. Mary’s Food Bank and other USDA affiliated agencies for food services. Lessee will, based on capacity and resources, provide food assistance to all City of Glendale zip codes and City of Peoria zip code- 85345 twice per month, and serve all other zip codes once per month as needed.

- 2.4** Lessee will coordinate all staffing needs for the food bank through volunteers from Lessee, faith-based organizations, and other members and groups in the community.