

**LAKE HAVASU CITY
LEASE AGREEMENT
HAVASU COMMUNITY HEALTH FOUNDATION
Food Bank**

This Lease Agreement ("Agreement") is entered into by and between Lake Havasu City, an Arizona municipal corporation ("City" or "Lessor") and Havasu Community Health Foundation, a 501(c)(3) corporation ("Lessee"), both individually referenced as the "Party" and collectively referenced as the "Parties." The Parties agree as follows:

1. Property:

City is the owner in fee simple of certain real property located at 1980 North Kiowa Boulevard, Lake Havasu City, Arizona, and legally described as Tract 2307, Block 3, Lot 3, SEC 34 T14N R20W, Parcel No. 10632010, and all improvement thereon ("Property"). City agrees to lease the Property to Lessee as set forth in this Agreement.

2. Use:

- 2.1 City agrees that Lessee may use the Property for the purpose of operating a food bank in accordance with this Agreement. Lessee shall maintain and keep the building, parking area, and common facilities of the Property in good order condition and repair.
- 2.2 Lessee shall be responsible for all utilities to and all maintenance and repair of the Property. Lessee is solely responsible for its telephone expenses and for any costs of displaying its signage on the Property. Signage must be approved by City in writing prior to displaying.
- 2.3 Lessee shall not construct any permanent improvements to the Property without the prior written consent of City. At the end of the Agreement the title to any improvements automatically vests with City. Lessee agrees to keep the Property free and clear of any liens for services, construction, or otherwise.
- 2.4 If requested by City, any improvements installed by Lessee not wanted by the City shall be removed by Lessee upon evacuation of the Property. City shall inspect the Property after evacuation of Lessee to insure that the Property has been returned to as good as, or better, condition than existing at the time of execution of this Agreement.
- 2.5 Lessee acknowledges that it has inspected the Property, is familiar with the condition of the Property and accepts Property "as is" in its present condition, with no representation by, or, or from City. City disclaims any warranty, expressed or implied, regarding the condition, use, or fitness of the Property. City makes no guarantee of the security of Lessee's property.

3. Term:

This Agreement shall commence on July 24, 2018, and end July 31, 2023, subject to termination as set forth in this Agreement. This Agreement may be renewed for an additional five-year term upon the agreement of both parties in a written amendment.

4. Payments:

4.1 Lessee agrees to remit to City a monthly rent of \$687.50¹ payable in advance and due on the first day of each month commencing August 1, 2019. The rental rate is based on Lessee's agreement to make certain permanent improvements to the Property valuing at least \$40,000.00 during the first twelve months of this Agreement. The collection of rent is suspended until August 1, 2019, and the value of the rent not collected during this time is amortized over the remaining forty-eight months. If this Agreement is renewed, the monthly rent will be \$1,210.00.

A. Lessee agrees to submit to City invoices or other acceptable documentation evidencing the value of the improvements made to the Property during the first twelve months.

4.2 Rent is payable to "Lake Havasu City, Arizona" submitted to Administrative Services Department, 2330 McCulloch Blvd. N., Lake Havasu City, Arizona 86406.

4.3 Delinquent Payment: Payment is delinquent when received ten (10) calendar days or more after the due date. A late fee in the amount of five percent (5%) of the monthly rent will be assessed for each delinquent payment.

4.4 Additional Payments: Lessee shall pay during the term of this Agreement, without notice and without abatement, deduction, or setoff, all sums, impositions, costs, expenses, and other payments and all taxes, including personal property taxes and taxes on tents, leases or occupancy, if any, and government property improvement lease excise tax, assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates, and charges, charges for public utilities, excises, levies, licenses, and permit fees, and other governmental or quasi-governmental charges of any kind related to Lessee's occupancy and use of the Property during the Agreement.

¹ Rent is calculated based on a formula that includes a reduction to the lease rate based on the value of improvements made to the Property by Lessee, as follows:

Lessee improvements [\$40,000] divided by the building square footage [2,200] then divided by the initial term of the Agreement [60 months] equals the Rent Rate Adjustment [\$0.30]. The Market Lease Rate [\$0.55/square foot] minus the Rent Rate Adjustment [\$0.30] equals the Adjusted Rate [\$0.25]. The monthly rent is determined by multiplying the Adjusted Rate [\$0.25] by the building square footage [2,200] then multiplied by the initial term of the Agreement [60 months] and divided by 48 months [\$687.50].

- 4.5 GPLET Notice: In accordance with Arizona Revised Statutes § 42-6206, Lessee is notified of its potential tax liability under the Government Property Lease Excise Tax (GPLET) provisions of state law. Failure of Lessee to pay the tax after notice and opportunity to cure, if applicable, could result in termination of this Agreement.

5. Termination:

- 5.1 Either party may terminate this Agreement upon one hundred and eighty (180) days' written notice to the other party without consequence to either party. Lessee, upon written notice of termination of this Agreement by either party, shall discontinue use of Property at the end of the one hundred and eighty (180) day notice.
- 5.2 Lessee agrees to vacate Property promptly upon termination of this Agreement. If Lessee fails to vacate Property, Lessee authorizes City to remove all personal property from the Property and in this event Lessee waives any and all claims for damages against City. Nothing herein shall be deemed a waiver of any other rights of City to demand and obtain possession of the Property in accordance with the law.

6. Default:

In the event of any breach of this Agreement by Lessee, City shall notify Lessee in writing of the breach, and Lessee shall have thirty (30) days in which to cure the breach. If Lessee fails to cure the breach of default within the time limit, then City, in addition to other rights or remedies, has the immediate right of re-entry and may remove all persons and vehicles from the Property.

7. Regulatory Requirements:

- 7.1 Lessee will promptly observe and comply with all present and future laws, ordinances, requirements, rules, and regulations of all governmental authorities having or claiming jurisdiction over the Property of any part thereof. Lessee will procure every permit, license, certificate, or other authorization required in connection with the lawful and proper use of the Property or required in connection with any building, structure, or improvement erected on the Property.
- 7.2 Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under, or about, or transport to or from the Property any hazardous materials. If any of the above occurs, Lessee covenants and agrees to pay all costs and expenses associated with enforcement, removal, remediation, or other governmental or regulatory actions, agreements, or orders threatened, instituted or completed.

8. Right of Entry Upon Property:

City and its agents and employees shall have the right to enter the Property at all reasonable times to inspect and determine if Lessee is performing the terms and conditions required of Lessee under this Agreement and to post reasonable notices as City may desire to protect its rights.

9. Indemnification:

- 9.1 City shall not at any time be liable for injury or damage occurring to any person, property, or vehicle from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition, or dismantling of the Property.
- 9.2 To the fullest extent permitted by law, Lessee agrees to indemnify, defend, save, and hold harmless the City, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees ("Indemnitee") for, from, and against any and all claims, actions, liabilities, damages, costs, losses, or expenses (including, but not limited to, court costs, attorneys' fees, and costs of claim processing, investigation and litigation) to which any Indemnitee may become subject, under any theory of liability ("Claims") by reason of any of the following: (i) any act or omission by Lessee, or its employees, contractors, subcontractors, agents, or representatives, undertaken in fulfillment of Lessee's obligation under this Agreement; (ii) any use or nonuse of, or any condition created by Lessee on the Property or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Property or any part thereof; (iv) performance of any labor or services of the furnishing of any materials or other property with respect to the Property of any part thereof; (v) any failure on the part of Lessee to comply with the matters set forth in Section 7 of this Agreement, including by not limited to any failure by Lessee to clean up any hazardous materials; and (vi) all Claims relating to or arising from design, construction, and engineering acts or omissions related in any way to, of, or in connection with Lessee's work and improvements to the Property. This Indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation law or arising out of the failure of Lessee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Lessee agrees it will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. The amount and type of insurance coverage requirements of this Agreement will in no way be construed as limiting the scope of the indemnity in this Section. Lessee's obligations under this Section survive expiration or earlier termination of this Agreement.

10. Insurance:

- 10.1 Lessee agrees to procure and maintain, until all obligations under this Agreement are satisfied, insurance against claims for injury to persons or

damage to property, which may arise from or in connection with the use of the Premises. These insurance requirements are minimum requirements and in no way limit the indemnity covenant contained in this Agreement. The City in no way warrants that these minimum limits are sufficient to protect the Lessee from liabilities that might arise out of the performance of the services under this Agreement, and Lessee is free to purchase additional insurance.

10.2 Minimum Scope and Limits of Insurance: Lessee shall provide coverage with limits of liability not less than those stated below.

- A. Commercial General Liability – Occurrence Form
Policy should include bodily injury, property damage, personal injury, and broad form contractual liability:

General Aggregate	\$2,000,000.00
Each Occurrence	\$1,000,000.00

- a. The policy shall be endorsed to include the following additional insured language: “Lake Havasu City, Arizona, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees shall be named as additional insured with respect to liability arising out of the services performed by or on behalf of the Lessee.”
- b. The policy shall contain a waiver of subrogation against the City, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees for losses arising from the services provided by or on behalf of the Lessee.

10.3 Lessee’s insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Lessee shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.4 Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits without ten (10) business days’ written notice from the insurer to the City. Notice shall be mailed directly to City [Lake Havasu City, Attention: Community Investment Department, Procurement Division, 2330 McCulloch Blvd. North, Lake Havasu City, AZ 86403] and shall be sent by certified mail, return receipt requested.

10.5 Insurance coverage must be provided by an insurance company admitted to do business in Arizona and rated A-VII or better by AM Best’s Insurance Rating.

10.6 Lessee shall furnish to City certificates of insurance required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized

by that insurer to bind coverage on its behalf. Certificates shall be mailed directly to City [Lake Havasu City, Attention: Community Investment Department, Procurement Division, 2330 McCulloch Blvd. North, Lake Havasu City, AZ 86403]. If requested, complete copies of insurance policies shall be provided to City. Note Agreement title, date, and purpose on each certificate of insurance. All certificates and endorsements are to be received and approved by the City within ten (10) business days of the effective date of this Agreement. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the Agreement and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement and the City may terminate this Agreement immediately.

10.7 Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City. Such notice shall be sent directly to the address listed in Section 10 "Notice" of this Agreement and shall be sent by certified mail, return receipt requested.

10.8 Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A-VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Lessee from potential insurer insolvency.

10.9 Verification of Coverage: Lessee shall furnish City with certificates of insurance as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before the lease term commences. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the Agreement and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement. All certificates required by this Agreement shall be sent directly to City at the address listed in Section 11 "Notice" of this Agreement. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time.

11. Assignment:

Lessee may not assign or sublease its rights in this Agreement without the prior, written consent of City; and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

12. Notice:

Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

To City/Lessor:

Lake Havasu City
Attn: Office of the City Attorney
2330 McCulloch Blvd. N.
Lake Havasu City, AZ 86403

To Lessee:

Havasu Community Health Foundation
Attn:
94 Acoma Blvd. S. Ste. 101
Lake Havasu City, AZ 86403

The parties may change their designees by providing written notice to the addressees above.

13. Partial Invalidity:

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

14. Integration:

This Agreement and any attachments referenced herein represent the entire Agreement between the parties hereto and supersede any and all prior negotiations or representations, either written or oral. Amendments or modifications to the Agreement shall be in writing, signed by both parties.

15. Governing Law:

The laws of the State of Arizona shall be applied in interpreting and construing this Agreement.

16. Waiver of Performance:

No failure by City or Lessee to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Lessee or acceptance by City of full or partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Agreement, which shall constitute in full force and effect, nor the respective rights of Lessee or City with respect to any other then existing or subsequent breach.

17. No Partnership, No Third Party Rights:

Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Lessee. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party.

18. Section Headings:

The section headings contained in this Agreement are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, plural as the contract may require.

19. Conflict of Interest:

This Agreement may be cancelled in accordance with Arizona Revised Statutes ("ARS") § 38-511.

20. No Boycott of Israel:

Lessee certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in ARS § 35-393.

21. Lawful Presence/Public Benefit:

If applicable, User shall comply with ARS §§ 1-501 and 1-502 with regard to demonstrating lawful presence in the United States when applying to receive a public benefit.

22. Multiple Originals:

This Agreement may be signed in duplicate originals for the purpose of providing each party with a completely executed original.

23. Signatures:

Lake Havasu City:

Mark S. Nexsen, Mayor

APPROVED AS TO FORM:

ATTEST:

Kelly Garry, City Attorney

Kelly Williams, City Clerk

Havasu Community Health Foundation:

By: _____

Its: _____

STATE OF ARIZONA)

COUNTY OF MOHAVE)

This instrument was acknowledged before me this ____ day of _____, 2018, by ____
_____ of Havasu Community Health Foundation.

(Notary Seal)

Notary Public