



## TIGARD SENIOR CENTER LEASE

THIS LEASE is made and entered into this 22nd day of June, 2010-2015, by and between the City of Tigard, an Oregon municipal corporation, hereinafter called City, and ~~Loaves & Fishes Center, Inc.~~ Meals on Wheels People, a private, non-profit Oregon corporation, hereinafter called Lessee.

WITNESSETH: In consideration of the covenants, agreements and stipulations herein contained on the part of Lessee to be paid, kept and faithfully performed, City does hereby lease to Lessee and Lessee hereby leases from the City the premises, including all improvements located thereon, as is, situated in the City of Tigard, County of Washington and State of Oregon, known and described as Tigard Senior Center, 8815 SW O'Mara Street, Tigard, Oregon.

The term of this Lease shall be for a period commencing the 30 day of June, 2010-2015 and ending at midnight on the 30th day of June, 2015-2020 at and for a rental of \$1.00 for each year or portion thereof during the said term payable in lawful money of the United States at the Tigard City Hall, 13125 SW Hall Boulevard, City of Tigard, State of Oregon 97223, initially at signing of this lease and then some time prior to July 1<sup>st</sup> of each year.

The Lessee contracts with Washington County to provide services to senior citizens, and desires to use the Tigard facility. The City desires to locate ~~Loaves & Fishes'~~ Meals on Wheels People services in the Tigard Senior Center facility to provide services, programs and activities to Tigard-area residents. The City has determined that Lessee is qualified and capable of performing the services hereinafter required.

In consideration of the above, each party hereto does hereby covenant and agree as follows:

(1) LESSEE'S ACCEPTANCE OF LEASE

Lessee accepts said letting and agrees to pay to the order of City the rental stated above for the full term of this lease, in the manner aforesaid.

(2) USE OF PREMISES

Lessee shall use said premises for the following use and no other:

- Provision of nutrition and social service programs for ~~the elderly~~ older adults.

Said use may include operation of a nutrition and social service program for ~~the elderly~~ older adults, including, but not limited to, dining room and home-delivered meals, informational, educational, and recreational activities, information and referral, health screening, counseling, and fund-raising activities for the program, provided Lessee obtains proper land use and other approvals as may be required prior to initiating operation of said programs. Lessee may utilize additional nutritional and social service program providers to utilize the premises for programming consistent with Lessee's mission and the terms of this lease agreement.

Lessee and City will jointly continue to develop a method to monitor the performance of ~~Loaves and Fishes~~Meals on Wheels People programs and service delivery through the Tigard Senior Center. Program and service performance measurement reports are to be filed with City after the conclusion of each fiscal year and not later than October 15<sup>th</sup>. Benchmarks are as follows at the signing of this lease:

- Number of participants using nutrition programs
- Number of meals served
- Number of minorities served
- Number of volunteers and number of volunteer hours
- Number of participants using educational/recreational programming.

Lessee shall have use of the facility from Monday at 8:00 A.M. through Friday at 5:00 P.M. Lessee shall have first priority for additional use of the facility outside of the hours noted in this paragraph. Lessee's senior programming will target senior education and socialization opportunities. These groups must always ~~welcome seniors~~be held for the benefit of seniors and promote participation with seniors and their families and be approved or sponsored by the Center's Steering Committee.

City will have the right to use and permit the use by others of the building and the equipment, dishes, utensils, pots, pans, etc. under the following terms and conditions:

- 2.1 Center ~~Manager~~Director or designated representative will schedule all use of the facility between Mondays at 8:00 AM to Fridays at 5:00 PM. The City shall assign a designated person to schedule use of the facility for all time except between Monday at 8:00 AM through Friday at 5:00 PM. Such use shall not interfere with the daily use by Lessee or the facility for the operation of a nutrition and social service program for ~~the elderly~~older adult;
- 2.2 Lessee shall assure equipment, dishes, and utensils are left in a sanitary and safe condition;
- 2.3 City shall be responsible for use by such other users authorized by the City. City shall require such other users wishing to use the kitchen to meet with the Center ~~Manager~~Director or designated representative prior to use for kitchen use training. Costs incurred by Lessee resulting from other use will be reimbursed by the City;
- 2.4 City shall be responsible for the replacement of any equipment, plates, glasses, cutlery, or utensils lost or damaged by such users as the Lessee/City shall discover in its use or supervision of such other use of the facility; and
- 2.5 City shall be responsible for replacement of food, cleaning compounds, paper, and the supplies owned by Lessee and used by such other users.

Lessee will not make any unlawful, improper or offensive use of the premises; remove any portion of the structure or fixtures, nor suffer waste thereof. Lessee will not permit anything to be done upon or about said premises in any way tending to create a nuisance, be that at common law or by ordinance or by statute.

Lessee shall not store gasoline or other highly combustible materials on said premises at any time nor use said premises in such a way or for such purposes that the fire insurance rate is thereby increased or that would prevent City from taking advantage of reduced premium rates for long term fire insurance policies.

Lessee shall comply, at Lessee's own expense, with all laws and regulations of any municipal, county, state, federal or other public authority respecting the use of said premises.

Lessee shall regularly occupy and use the premises for the conduct of Lessee's business, and shall not abandon or vacate the premises for more than ten (10) days without written approval of City except when required for major structure maintenance or remodel, which would require relocation of Lessee's business for safety/health reasons.

(3) FURNISHINGS AND EQUIPMENT

In the event of termination of this agreement, all such furnishings, equipment, and decorations, which are permanently attached to the facility, shall remain in the facility in good repair, with allowance for wear and tear, occasioned by normal use. Each of the parties hereto including the City shall retain ownership of any non-fixture equipment, pots, pans, dishes, utensils, and other personal property acquired by its own funds, by funds received from grants and donations to such party for acquiring such personal property, or such personal property as may be donated to such party. [Both parties will periodically update an ownership inventory of furnishings and equipment.](#)

(4) UTILITIES/MAINTENANCE

City shall pay for all heat, light, water, sewerage and storm drainage fees, power, sanitary services, and other utilities used in the above premises during the term of this lease except for telephone, [internet and cable services](#). Lessee will pay for all telephone utilities. City shall be responsible for janitorial and regular maintenance of the building.

Lessee will keep the kitchen clean, in such a way as to meet the standards of [the Washington County Health and Human Services and the Oregon State Health ~~Division~~ Authority](#) for daily cleanliness. Repairs, equipment maintenance, and seasonal cleaning are the responsibility of the City.

(5) TAXES

Lessee agrees to pay all taxes and assessments which during the term of the Lease may become due, become a lien or which may be levied by the state, county, city, or any other tax-levying body upon the premises. Furthermore, Lessee agrees to pay all taxes and assessments on any taxable interest obtained by Lessee through this Agreement or on any taxable possessory interest, which Lessee may have in or to the premises by reason of its occupancy. Furthermore, Lessee agrees to pay all taxes on all taxable property, real or personal, owned by it in or about the premises. Upon making such payments, Lessee shall give the City a copy of the receipts and vouchers showing payment.

Lessee understands that City property is exempt from property taxation until leased to a taxable entity. Should Lessee be a non-taxable entity, Lessee will be responsible for making application to Washington County for exempt status from property taxation. Upon being granted exempt status on the property, Lessee will file a copy of said exemption with the City.

In the event that the term of the Lease extends beyond June 30 of any year, Lessee shall be responsible for payment of all property taxes for the entire tax year without pro-ration, or, in the event of any change in property tax law, for any taxes due under such law.

(6) REPAIRS AND IMPROVEMENTS

City hereby agrees to maintain and keep said premises (including all interior and exterior doors, heating, ventilating and cooling systems, interior wiring, plumbing and drain pipes to sewers), in good order and repair during the entire term of this lease at City's own cost and expense. Lessee further agrees they will make no alteration, addition or improvements to or upon said premises without the prior written consent of the City.

The City will provide light bulbs and fluorescent tubes, toilet tissue, paper towels, toilet soap and such other supplies needed for daily operation in the restrooms and sink areas outside of the kitchen area.

City agrees to maintain the exterior walls, roof, gutters, downspouts and foundations of the building and the sidewalks thereabouts. It is understood and agreed that City reserves to itself (and to at any and all times shall have) the right to alter, repair or improve said premises, or to add thereto and for that purpose at any time may erect scaffolding and all other necessary structures about and upon the premises, and City and City's representatives, contractors and their respective employees and agents for that purpose may enter in or about the said premises with such materials as may be necessary, and Lessee waives any claim to damages resulting there from.

(7) CITY'S RIGHT OF ENTRY

It shall be lawful for City, its agents and representatives, at any reasonable time to enter into or upon the premises for the purpose of examining into the condition and use.

(8) TERMINATION OF LEASE

Failure to provide services in accordance with the contract to the satisfaction of the City, or its designee, shall result in written notification. Such notification shall be addressed to the ~~Loaves & Fishes~~ Meals on Wheels People Center Director and shall delineate the inadequacies and provide specific remedies stipulating a deadline for resolution not less than 60 days from the date notification is received by the Director. Failure to remedy shall result in termination of the contract by the City.

(9) LIENS

Lessee will not permit any lien of any kind, type or description to be placed or imposed upon the building in which said leased premises are situated, or any part thereof, or the real estate on which it stands.

(10) ICE, SNOW, DEBRIS

City shall at all times keep the sidewalks in front of the premises free and clear of ice, snow, rubbish, debris and obstruction, and will not permit rubbish, debris, ice or snow to accumulate on the roof of the building so as to stop up or obstruct gutters or down spouts or cause damage to said roof.

(11) OVERLOADING OF FLOORS

Lessee will not overload the floors of said premises in such a way as to cause any undue or serious stress or strain upon the building, and City shall have the right, at any time, to call upon any competent engineer or architect whom City may choose, to decide whether or not the floors of said premises are being properly used. The decision of said engineer or architect shall be final and binding upon Lessee; and in the event that the engineer or architect decides that the stress or strain is such as to imperil said building in whole or in part, Lessee agrees to immediately relieve said stress or strain in a manner satisfactory to City.

(12) NO USE OF HAZARDOUS SUBSTANCES

No handling, storage, generation, creation, disposal, transportation or discharge of any Hazardous Substances shall be permitted on or about the premises by Lessee, its employees, agents, customers or contractors. This restriction does not apply to ordinary office and janitorial supplies available over the counter for common use by members of the general public. Nor shall this prohibition apply to substances fully contained inside of motor vehicles if they are used in accordance with all applicable legal requirements. As used in this section, "Hazardous Substances" shall mean any substance, material or product defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes by any federal, state or local regulatory agency.

(13) SIGNS

Lessee may alter the existing free-standing sign structure upon receipt of a sign permit from the City of Tigard, but shall not, without prior written consent of the City, use the outside walls of said premises, or allow signs or devices of any kind to be attached thereto or suspended there from.

(14) FIXTURES

All partitions, plumbing, electrical wiring, additions to or improvements upon said leased premises, whether installed by City or Lessee, shall be and become a part of the building as soon as installed and the property of City unless otherwise herein provided.

(15) LIGHT AND AIR

This lease does not grant any rights of access to light and air over the property.

(16) DAMAGE BY FIRE OR OTHER CASUALTY

In the event of any damage to the property by fire or other casualty, either party hereto may terminate this lease as of the date of said fire or casualty.

(17) GRIEVANCES

The resolution of any grievances between the parties shall first be attempted between the City ~~Facilities Supervisor~~ Central Services Director and ~~Loaves & Fishes~~ Meals on Wheels People Center Manager Director. Grievance resolution second step will be between the City Manager, or designee, and ~~Loaves and Fishes~~ Meals on Wheels People Executive Director or designee.

(18) INDEMNIFICATION

Lessee agrees to fully indemnify, hold harmless and defend the City, its City Council, officers and employees from and against all losses, expenses, claims, damages, judgments or other costs or expenses and actions (including all expenses incidental to the investigation and defense thereof at both trial and appeal level, whether or not a trial or appeal ever takes place) of any kind or nature including, but not limited to, claims or actions based upon or arising out of damages or injuries to third persons or their property, proximately caused (or allegedly caused) through the fault of Lessee, its employees or agents in the use and/or occupancy of the premises except for liability arising out of the negligence of the City and its employees. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

The City shall give Lessee prompt and reasonable notice of any such claims or actions known to the City, and Lessee shall have the obligation to investigate, compromise and defend same, provided such claim is not caused by the negligence of the City, its employees or agents.

In the event that there is any bodily injury at, or property damage to, any portion of the premises caused by Lessee or any third party, Lessee shall immediately notify the City's Risk Management representative and cooperate in the City's investigation of said incident. Lessee shall make all reports or documents concerning the incident, whether in their possession or the possession of their insurance carrier available to the City and cooperate with the City in investigating, compromising or litigating the claim against those parties.

For any property damage done to or caused by the fault of Lessee, Lessee shall be given the option of repairing the damage or having the City repair the damage at Lessee's expense. The City shall give written notification to Lessee of any damage requiring repair and give Lessee thirty (30) days to commence repair. If within that period, or such other period as may be

mutually agreed upon, no effort has been made to effect repairs, then the repairs will be performed by the City and billed to Lessee.

For damage done to or at the property or premises by third parties for which Lessee is not responsible, the City shall bear the initial cost of investigating, compromising or litigating the claim, but may recover such costs if otherwise permitted by law or this Agreement.

(19) INSURANCE REQUIREMENT

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage the City will accept to help insure full performance of all terms and conditions of this Agreement. All insurance required by Lessee under this Agreement shall meet the following minimum requirements:

- (19.1) Certificates: Notice of Cancellation. On or before the Effective Date, Lessee shall provide the City with certificates of insurance establishing the existence of all insurance policies required under this Section. Thereafter, the City must receive notice of the expiration or renewal of any policy ~~at least thirty (30) days~~ prior to the expiration or cancellation of any insurance policy. No insurance policy may be canceled, revised, terminated or allowed to lapse without ~~at least thirty (30) days~~ prior written notice being given to the City. Insurance must be maintained without any lapse in coverage during the entire initial Term and any extension thereof. Insurance canceled without City consent shall be deemed an immediate Event of Default under this Agreement. The City shall also be given certified copies of Lessee's policies of insurance, upon request.
- (19.2) Additional Insured. The City, its officers, employees, agents and volunteers shall be named as an additional insured in each required policy, other than Workers' Compensation, and, for purposes of damage to the Premises, as a loss payee. Such insurance shall not be invalidated by any act, neglect or breach of contract by Lessee.
- (19.3) Primary Coverage. The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or carried by the City.
- (19.4) Company Ratings. All policies of insurance other than Workers' Compensation must be written by companies having an A.M. Best rating of "A-VII" or better, or equivalent. The City may, upon thirty (30) days written notice to Lessee, require Lessee to change any carrier whose rating drops below an A-VII rating. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

(19.5) Required Insurance. At all times during this Agreement, Lessee shall provide and maintain the following types of coverage:

19.5.1 General Liability Insurance. Lessee shall maintain an occurrence form commercial general liability policy, personal injury liability, for the protection of Lessee and the City, insuring Lessee and the City against liability for damages because of personal injury, bodily injury, death, or damage to property (including the loss of use thereto and occurring on or in any way related to the premises or occasioned by reason of the operations of Lessee. Such coverage shall name the City as an additional insured. Coverage shall be in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage for all coverage specified herein. The required two million dollars of coverage can be provided on a primary coverage bases or on a primary/excess combination bases. City will also provide the same coverage, naming ~~Loaves and Fishes~~ Lessee as an additional insured.

19.5.2 Fire Legal Liability Insurance. The City shall insure the building space and all improvements affixed thereto considered to be part of premises, being managed by Lessee. Lessee is responsible to insure all of its own personal property, which items shall not be covered by City insurance. Furthermore, Lessee must at all times carry Fire Legal Liability insurance coverage in an amount not less than One ~~Hundred Thousand~~ Million Dollars (~~\$100,000~~1,000,000). Such coverage shall name the City as an additional insured.

19.5.3 Workers' Compensation Insurance. Lessee shall maintain in force Workers' Compensation insurance for all of its employees. In lieu of such insurance, Lessee may maintain a self-insurance program meeting the requirements of the State of Oregon. Coverage shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

19.5.4 Commercial Automobile Insurance. Lessee shall maintain in force Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles on an "occurrence" form. The Combined Single Limit per occurrence shall not be less than \$2,000,000. The required two million dollars of coverage can be provided on a primary coverage bases or on a primary/excess combination bases.

(19.6) Periodic Review. The City shall have the right to periodically review the types, limits and terms of insurance coverage. In the event the City determines that such types, limits, and/or terms should be changed, the City will give Lessee a minimum of thirty (30) ~~days notice~~ days' notice of such determination and Lessee shall modify its coverage to comply with the new insurance requirements of the

City. Lessee shall also provide the City with proof of such compliance by giving the City an updated certificate of insurance within fifteen (15) days [of compliance](#).

(19.7) Subrogation. Except as limited by this subsection, the parties hereto waive any right of action that they might have against the other for loss or damage, to the extent that such loss or damage is covered by any insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the parties claiming the loss or damage. This waiver of subrogation shall not extend to any applicable deductibles under such policy or policies.

(20) DELIVERING UP PREMISES ON TERMINATION

At the expiration of said term or upon any sooner termination, Lessee will quit and deliver up said leased premises and all future erections or additions to or upon the same to City or those having City's estate in the premises, peaceably, quietly, and in as good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty and the elements alone excepted, as the same are now in or hereafter may be put in by City.

(21) BREACH OF LEASE TERMS

If Lessee fails to keep, perform or observe any of the terms and/or conditions imposed on it by this Lease for a period of thirty (30) or more days after written notice of said failure by the City, or Lessee fails to surrender possession of the premises at the Lease's conclusion, then, and in either event the City may terminate the Lease at any time thereafter without further notice or demand on Lessee, enter the premises and lawfully repossess it, expel Lessee (as well as any others claiming through Lessee) and remove/store Lessee's effects (all at Lessee's expense) without prejudice to any other remedy, action or suit which the City may be entitled to for arrearage, damages to the property or its interests and/or breach of this lease.

PROVIDED, ALWAYS, and these presents are upon these conditions, that (1) if Lessee shall fail or neglect to do, keep, perform or observe any of the covenants and agreements contained herein on Lessee's part to be done, kept, performed and observed and such default shall continue for thirty (30) days or more after written notice of such failure or neglect shall be given to Lessee, or (2) if on the expiration of this lease Lessee fails to surrender possession of said leased premises, then and in either or any of said cases or events, City may terminate this lease and at time thereafter, without further demand or notice, may enter said premises and repossess the same, and expel said Lessee and those claiming by, through and under Lessee and remove Lessee's effects at Lessee's expense, and store the same, all without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or preceding breach of covenant.

Neither the termination of this lease by forfeiture nor the taking or recovery of possession of the premises shall deprive City of any other action, right, or remedy against Lessee for possession or damages, nor shall any omission by City to enforce any forfeiture, right or remedy to which City may be entitled be deemed a waiver by City of the right to enforce the performance of all terms and conditions of this lease by Lessee.

(22) HOLDING OVER

In the event Lessee for any reason shall hold over after the expiration of this lease, such holding over shall not be deemed to operate as a renewal or extension of this lease, but shall only create a tenancy from month to month which may be terminated at will at any time by City.

(23) NOTICES

Any notice required by the terms of this lease to be given by one party hereto to the other or desired so to be given, shall be sufficient if in writing contained in a sealed envelope, deposited in the U.S. Registered Mails with postage fully prepaid, and if intended for City herein then if addressed to said Lessor, in care of the ~~Facilities Supervisor~~ Central Services Director, at Tigard City Hall, 13125 SW Hall, Tigard, Oregon 97223 and if intended for Lessee then ~~if is~~ addressed to Lessee, in care of the Center Director, at 8815 SW O'Mara Street, Tigard, Oregon 97223. Any such notice shall be deemed conclusively to have been delivered to the addressee thereof forty-eight (48) hours after the deposit thereof in said U. S. Registered Mails.

(24) HEIRS AND ASSIGNS

All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall extend to, inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, successors and, so far as this lease is assignable by the term hereof, to the assigns of such parties.

(25) ASSIGNMENT

No part of this Agreement may be assigned, nor may a right of use to any portion of the premises or property be conferred on any third person by any other means, without the prior written consent of City. Any assignment or attempted assignment without the City's prior written consent shall be void.

(26) CONDEMNATION

If the premises or any interest therein is taken as a result of the exercise of the right of eminent domain, this Agreement shall terminate as to such portion as may be taken.

(27) NON-WAIVER

Waiver by either party of strict performance of any provision of this Agreement shall not be a ~~wavier~~ waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

(28) ADHERENCE TO LAW

Lessee shall adhere to all applicable federal, state and local laws, rules, regulations and ordinances, including laws governing its relationship with its employees, including but not limited to, laws, rules, regulations and policies concerning Workers' Compensation, minimum and prevailing wage requirements and occupational safety and health requirements.

(29) TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

(30) WARRANTIES/GUARANTEES

Except for those warranties specifically set forth herein, the City makes no warranty, guarantee or averment of any nature whatsoever concerning the physical condition of premises, and it is agreed that the City will not be responsible for any loss, damage or costs, which may be incurred by Lessee by reason of any such physical condition.

(31) HEADINGS

The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

(32) CONSENT OF CITY

Whenever consent approval or direction by the City is required under the terms contained herein, all such consent, approval or direction shall be received in writing from the City Manager [or designee](#).

(33) MODIFICATION

Any modification of this Agreement shall be mutually agreed upon and reduced to writing, and to the extent it does not affect a major business term of the Agreement, may be done for the City, by its City Manager [or designee](#).

(34) GOOD FAITH

The terms and conditions set forth in this Agreement are for the benefit of both parties. The parties further agree and understand that time is of the essence. In the performance of the duties and obligations set forth herein, there is an obligation and duty of reasonable diligence and good faith imposed on the parties to fulfill the terms, conditions and covenants in this Agreement.

(35) ATTORNEY FEES

In the event of a dispute between the parties as to the interpretation or applicability of any of the provisions of the Agreement and the parties are unable to resolve the matters through mediation within thirty (30) days of notice of the dispute, and thereafter a suit or action is instituted in connection therewith, the prevailing party shall be entitled to recover in addition to costs and disbursements (including experts fees and all costs associated with discovery), such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal, such fees as may be as allowed by the appellate court. Washington County District Court shall be the venue for an action or suit concerning the terms of this Agreement.

(36) ENTIRE AGREEMENT

It is understood and agreed that this instrument contains the entire Agreement between the parties. It is further understood and agreed by Lessee that the City and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth.

(37) WARRANT OF AUTHORITY

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

IN WITNESS WHEREOF, the respective parties have executed this instrument in duplicate on this, the day and year first hereinabove written, any corporation signature being by authority of its Board of Directors or Council.

CITY: CITY OF TIGARD

LESSEE: ~~LOAVES & FISHES CENTERS, INC.~~  
MEALS ON WHEELS PEOPLE

By: \_\_\_\_\_  
~~Craig Dirksen~~ John L. Cook, Mayor

By: \_\_\_\_\_  
~~Joan Smith~~ Suzanne Washington, Executive Director