

RESOLUTION NO. 1730

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A LEASE AGREEMENT WITH YMCA FOR USE OF OFFICE SPACE AT THE CITY CONFERENCE BUILDING (CCB).

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. The YMCA has closed its Gresham office and has moved their staff to the Northeast Portland Family YMCA Office.
2. In January 2005 the YMCA will also close its Northeast Family YMCA Office requiring a second move for YMCA staff serving Troutdale. The closure of the Northeast Family YMCA Office may result in the loss of YMCA services, recreation and community programs for Troutdale residents.
3. There is a vacant office at the Troutdale Conference Building (CCB) that is not needed for public use.
4. The City does not anticipate having a need for the vacant office space during the next two years.
5. The public interest will be furthered served by leasing this office space to the YMCA. Locating the YMCA in this office space will facilitate recreation and community programs in Troutdale and East Multnomah county and will enable the City and YMCA to better serve Troutdale citizens.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The Troutdale City Council authorizes the City Administrator to enter into a lease agreement with the YMCA, with terms that are consistent with the staff report that accompanies this resolution, authorizing the YMCA to use office space at the City Conference Building.

Section 2. This resolution shall be effective immediately upon adoption.

YEAS: 5
NAYS: 0
ABSTAINED: 0



Paul Thalhofer, Mayor
Dated: *December 15, 2004*



Sarah Greif, Office Support Specialist

Adopted: December 14, 2004

TROUTDALE AND YMCA LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), is made between the City of Troutdale ("City"), an Oregon Municipal Corporation, and the Mt. Hood YMCA, a branch of the YMCA of Columbia - Willamette, a non-profit corporation (YMCA"), effective January __, 2005.

GRANT AND ITEM

Section 1. Leased Premises

- a. In consideration of the rents and covenants, City leases to YMCA and YMCA leases from City the property described in Exhibit A, attached hereto and incorporated herein by reference ("Leased Premises").
- b. The parties agree that the Leased Premises is available and ready for occupancy by YMCA without substantial modifications. No modifications shall be made by YMCA to any portion of the Leased Premises without the prior express written consent of City. Any such approved modification shall be made at YMCA's sole expense and shall become property of City.
- c. If YMCA makes any alterations, decorations, additions or improvements to the Leased Premises, YMCA shall promptly pay all contractors and materialmen who have furnished labor or materials to minimize the possibility of a lien attaching to the Leased Premises. YMCA agrees to protect, defend, indemnify, and hold harmless City and the Leased Premises from such a lien or claim. Should such a lien be filed, YMCA shall bond against or discharge the lien within ten days after the lien is filed or attached.

Section 2. Term

- a. The term of the Lease shall be for three years, beginning the date of the signing of the agreement, unless sooner terminated as provided herein.
- b. At the option of City, the Lease may be renewed for subsequent terms of one, two, or three years, subject to conditions to be agreed upon between the parties. The parties shall meet and express intentions to either renew or terminate the Lease no later than six months prior to the expiration of each Lease period. The Lease shall terminate upon the expiration of the term unless a written extension is signed by both parties prior to the expiration of the term, or unless the Lease is terminated prior to the expiration of the term as provided herein.
- c. The parties' obligations under this Lease shall commence upon approval of the Lease or subsequent renewals by the City.

Section 3. Rent

YMCA shall pay one dollar per year as rent, payable at Troutdale City Hall, 104 SE Kibling Avenue, Troutdale, Oregon, 97060. Rent is due on the effective date of this Lease, and on the same day each year thereafter that the Lease remains in effect.

Section 4. YMCA's Acceptance of Lease

- a. *YMCA acknowledges the condition of the Leased Premises as it exists on the effective date of this Lease, and accepts the Leased Premises, as it exists on such date. No representations or warranties as to the condition of the Leased Premises have been made by City or its agent unless stated in this Lease.*
- b. *YMCA shall provide furnishings, appliances, fixtures, improvements, surface covers, decoration, and other contents of the Leased Premises at its own expense. Such items remain the property of YMCA during the term of this Lease and upon the expiration or earlier termination of this Lease, as long as such items are not permanently installed in the Leased Premises.*
- c. *City does have a small inventory of equipment, furnishings and additional meeting rooms in the City Conference Center Building where the Leased Premises is located. This equipment, furnishings, and additional meeting space may be used by YMCA without charge, subject to the City's approval. City may choose to repair or replace or not to repair or replace equipment and furnishings that it allows the YMCA to use.*

Section 5. Use of Premises

- a. *YMCA shall operate and use the Leased Premises and other City premises solely for the purpose of conducting year-round recreational, social, and cultural programs primarily serving East Multnomah County residents and businesses.*
- b. *YMCA acknowledges that there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any action or activity pursuant to this Lease. YMCA acknowledges that all programs and activities are open to the public and membership in any branch or form of the YMCA is not required for participation in any programs or services. YMCA acknowledges that this is a provision of secular recreational, social, and cultural services only. YMCA agrees that in the provision of these services it will not require religious affiliation of any sort, nor shall it provide services with religious connotations.*
- c. *YMCA agrees to offer programs and activities that are affordable to the community, including those from very low incomes. Financial assistance will be available. YMCA will provide City with copies of fee schedules.*

- d. The Leased Premises shall not be used for residential or for-profit purposes without prior written approval of City.
- e. YMCA shall comply with and faithfully observe in the use and occupation of the Leased Premises all rules, laws, regulations, and requirements of the county, municipal, state, federal, and other applicable governmental authorities.
- f. YMCA shall not use the Leased Premises in an unlawful, improper, or offensive manner, damage or waste the Leased Premises, or permit anything to be done upon or about the Leased Premises tending to create a nuisance.
- g. YMCA shall not allow the Leased Premises to fall into a state of disrepair or disorder which causes a fire hazard.
- h. YMCA shall pay all claims as due for work done, services rendered, or material furnished to the Leased Premises at its request and shall keep the Leased Premises free from any liens. If YMCA fails to pay any such claim or to discharge any lien, City may do so and collect all costs of discharge, including its reasonable attorney fees, from YMCA. Such action by City shall not constitute a waiver of any right or remedy City may have on account of YMCA's default. YMCA may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as City's property interests are not jeopardized. If a lien is filed as a result of nonpayment, YMCA shall, within ten days after knowledge of filing, execute a discharge of the lien or deposit with City cash or a sufficient corporate surety bond or other security satisfactory to City in an amount sufficient to discharge the lien plus costs, attorney fees, or other charges that could accrue as a result of a foreclosure sale, lawsuit, or sale under the lien.
- i. YMCA shall not bring, keep or use any Hazardous Materials in or about the Leased Premises by YMCA, YMCA's agents, employees, contractors, or invitees without the prior written consent of City.

As used in this Lease, "*Hazardous Material*" means any hazardous or toxic substance, material or waste, including but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49CFR§172.101), or by the United States Environmental Protection Agency as hazardous substances (40CFR pt 302) petroleum products or other such substances, materials and wastes that are or become regulated under applicable local, state or federal law.

Section 6. Assignment and Sublease

YMCA shall not assign or sublet this Lease in whole or in part, without the prior written consent of City in each instance.

Section 7. Sign, Awnings, Canopies, Representation

- a. YMCA may not place or maintain a sign, awning, canopy, advertising matter, or other the Leased Premises without first obtaining City's written approval. City may place reasonable conditions upon its approval.
- b. YMCA acknowledges that it is a contract provider of recreational, social, and cultural services for the City and will endeavor to ensure that advertising and other materials indicate that the programs and services offered are products of YMCA, not City.

Section 8. Utilities and Garbage Collection

- a. City shall pay promptly when due all charges for janitorial and/or cleaning service, water, sewer, electricity, road maintenance, storm drain, garbage collection, and other utilities of any kind furnished to the Leased Premises. City shall be responsible for any paper products and toilet supplies used on the Leased Premises.
- b. Subject to City approval, YMCA shall install telephone, computer, and other communication lines and cable at the Leased Premises for its business needs at its own expense and shall be responsible for any related expenses.

Section 9. Maintenance of Leased Premises and Common Areas

- a. Subject to budget appropriations, City shall repair and maintain the structural portions of the Leased Premises (including the roof), the lighting, heating, air conditioning, plumbing, water, sewage, gas and electrical systems, fixtures and equipment in good condition and repair. However, if a defect, malfunction, or damage results from YMCA's negligent act or omission, City may charge and collect the cost of such repair from YMCA. In addition, if structural portions of the Leased Premises require repairs that the City determines are too costly to make, the City may, in its sole discretion, decline a request to make the repair. City shall maintain the common areas of Leased Premises (consisting of walks, landscaping, service areas, driveways, automobile parking areas, and any other facilities designed for the common use of all invitees and members of YMCA's organization).
- b. At the expiration of this tenancy, YMCA shall surrender the Leased Premises in the same condition as they were at the beginning of this Lease, except for reasonable wear and tear and damage by unavoidable casualty to the extent that the damage is covered by City's insurance policy. YMCA shall surrender all keys for the Leased Premises to City, inform City of all combinations on locks, if any, and remove any alterations before surrendering the Leased Premises, unless the City agrees to accept the Leased Premises with alterations. YMCA's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease. YMCA shall remove all of its furnishings and trade fixtures that remain its property unless the City agrees to accept ownership and responsibility for the furnishings and trade fixtures. The YMCA shall restore all damage resulting from such removal. Failure to remove shall be an abandonment of the property, and City may dispose of it in any manner without liability.

- c. City has no duty to make repairs under this Lease until YMCA gives written notice to City of the repairs to be made or condition to be corrected. City has no liability for failure to make any repair required of it if the repair is completed within a reasonable time following the notice from YMCA, or if the City notifies the YMCA that it is declining the request to make the repair. If City fails or refuses to make repairs which are required by this section, or in the event of an emergency, the YMCA may take measures to protect its equipment and furnishings and terminate the Lease. The YMCA may request reimbursement from the City for costs it incurs. If the costs were reasonable and necessary to protect the YMCA's equipment and furnishings, the City shall pay the reimbursement request.
- d. The parties agree that the City, city's contractors and workers may, upon reasonable notice to YMCA (except no notice shall be required in an emergency), enter any portion of the Leased Premises at any time and erect all necessary structures to repair, alter or maintain the Leased Premises. YMCA waives any claim to damages resulting from such activities, except those caused by City's negligence.

Section 10. Insurance and Indemnity

a. During the entire term of the Lease, YMCA shall keep in full force and effect a policy of comprehensive general liability, property damage, and personal injury insurance with respect to the Leased Premises and YMCA's business in the Leased Premises in which the limits of liability shall not be less than one million dollars (\$1,000,000) ~~per person and per accident and in which the property damage liability shall not be less than eight hundred thousand dollars (\$800,000)~~. If the limits of liability provided under the Oregon Tort Claims Act, ORS 30.270, or other applicable law should be raised to an amount exceeding those dollar amounts, then YMCA shall provide a policy of insurance that covers such increased amount of liability. The insurance shall be in an insurance company approved by City; a copy of the policy or certificate of insurance shall be delivered to City; the policy shall name City, as well as officers, employees, and agents as additional named insureds; and the policy shall contain a clause that the insurer will not cancel or change the insurance without first giving City prior written notice.

(1) ACW
JED

ACW
JED

YMCA agrees to indemnify, defend and hold harmless City, its officers, agents, and employees from and against all claims, actions, damages, liability, and expense in connection with the loss of life, personal injury, or damage to property arising from or out of the occupancy or use of the Leased Premises by YMCA or occasioned wholly or in part by an act or omission of YMCA, its members, its agents, contractors, employees, or servants. If City, without fault on its part, is made a party to litigation commenced by or against YMCA, then YMCA shall protect and hold City harmless and shall pay all costs, expenses, and reasonable attorney fees incurred or paid by City in connection with such litigation.

(2) ACW
JED

c. City shall indemnify and defend YMCA from any claims, liability, damage or loss occurring on the Leased Premises, arising out of any activity by City, its agents, or invites, or resulting from City's failure to comply with any legal requirement or term of this Lease, together with all costs, expenses and liabilities incurred or in connection with

ACW (1) Bodily Injury and Property Damage
per Occurrence
JED (2) 30 days

each such claim, proceeding or appeal, including without limitation, reasonable attorneys' fees and expenses. YMCA shall not have any liability to City because of loss or damage to City property or for death or bodily injury caused by the acts or omissions of other tenants of the Leased Premises, or by third parties (including criminal acts).

- d. YMCA shall indemnify, defend, and hold City harmless from all claims, judgments, damages, penalties, fines, costs, liability or losses (including without limitation, diminution in value of the Leased Premises, damages for the loss or restriction on use or rent of the Leased Premises, damages arising from adverse impact on marketing of the property, and sums paid in settlement of claims, attorney fees, consultant fees, and expert fees), that arise during or after the Lease term due to contamination by Hazardous Materials as a result of YMCA's, its agents' or contractors', use or activities on the Leased Premises. This indemnification includes without limitation, costs incurred in connection with investigation of site conditions, cleanup, remedial removal or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater or under the Leased Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Leased Premises caused or permitted by YMCA or YMCA's agents or contractors results in contamination of the Leased Premises, YMCA shall promptly take all actions necessary at YMCA's sole expense to return the Leased Premises to the condition existing prior to the release of such Hazardous Materials onto the Leased Premises provided City's approval is first obtained, which shall not be unreasonably withheld, if such action would not potentially have material adverse long or short-term effects on the Leased Premises. This indemnity shall survive the expiration or early termination of this Lease.
- e. If in the reasonable opinion of City the Leased Premises are rendered substantially unfit for the occupancy or use contemplated by casualty or peril, City at its option may promptly and diligently restore the Leased Premises to the condition existing prior to the occurrence of the insured casualty or peril or may terminate the Lease.
- f. YMCA waives all claims for recovery from City for loss or damage to the Leased Premises insured under valid and collectable casualty or fire insurance policies to the extent of any recovery collectable under such insurance.

Section 11. Damage by Casualty or Fire and Duty to Repair

If the Leased Premises are damaged by fire or other casualty to the extent the YMCA or City cannot safely and efficiently use the Leased Premises or building where the Leased Premises is located, the City or YMCA may terminate the Lease unless the City, in its sole discretion, decides to repair and rebuild. The City shall provide written notice of its intent to repair or rebuild within ten (10) days of the fire or casualty. If the City decides to repair or rebuild, City may take possession of and occupy, to the exclusion of YMCA, all or part of the Leased Premises to make the necessary repairs. YMCA agrees to temporarily vacate, upon request, all or any part of the Leased Premises which City may require to make necessary repairs. City will endeavor to minimize disruption associated with repair.

Section 12. Waiver of Subrogation of Rights

- a. City shall not be liable to YMCA, or YMCA to City, for loss arising out of damage to or destruction of the Leased Premises, the building or improvements of which the Leased Premises are a part, the contents of the Leased Premises, when the loss is caused by a peril which is or could be included within or insured against by a standard form of fire insurance with extended coverage, including sprinkler leakage insurance, if any. All such claims for loss, however caused, are waived. This absence of liability shall exist whether or not the damage or destruction is caused by the negligence of City or its agents, servants, or employees.
- b. The parties agree that the rentals reserved by this Lease have been fixed in contemplation that YMCA shall fully provide its own insurance protection at its own expense and that YMCA shall look to its insurance carrier for reimbursement of such loss. The insurance carrier involved shall not be entitled to subrogation under any circumstances unless specifically covered as a joint assured.

Section 13. Performance by City

City shall not be deemed in default for the nonperformance or interruption or delay in performance of any of the terms, covenants, or conditions of this Lease if due to a labor dispute, strike, lockout, civil commotion or like operation, government regulation or controls, inability to obtain labor or materials, or through an act of God or other cause beyond the reasonable of City, if such cause is not due to the willful act or neglect of City.

Section 14. Default

- a. If YMCA fails to perform any of the terms, conditions, or covenants of this Lease to be observed or performed by YMCA for more than 30 days after written notice of such default has been mailed to YMCA (provided that if such noncompliance cannot be cured within the 30-day period, this provision shall be satisfied if YMCA commences correction within such period and thereafter proceeds in good faith and with reasonable diligence to effect compliance as soon as possible), or if YMCA shall abandon or fail to occupy the Leased Premises without the written consent of City, then besides other rights or remedies it may have, City shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises and store such property in a public warehouse or elsewhere at the cost of YMCA, without service of notice or resort to legal process and without being guilty of trespass or becoming liable for loss or damage which may be occasioned by removal or storage.
- b. Following re-entry, City shall have the right to recover from YMCA the following damages:
 1. All costs incurred in the cost of clean-up and repair and preparation for a new use including the cost of correcting any defaults or restoring unauthorized alterations;

2. Reasonable attorney fees incurred in connection with the default, whether or not any litigation has commenced;
3. City may institute actions to recover such amounts as they accrue and no one action for accrued damages shall bar a later action for damages subsequently accruing;
4. This remedy shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law.

Section 15. Delivering Up Leased Premises on Termination

- a. Both parties agree that time is of the essence. At the expiration of the Lease, YMCA will quit and deliver up the Leased Premises in accordance with Section 9.b.
- b. If an action is brought for an unlawful detainer of the Leased Premises or for breach, YMCA shall pay to City reasonable attorney fees which shall be fixed by the court, including attorney fees on appeal.

Section 16. Miscellaneous

- a. Annual Meeting
City and YMCA staffs agree to conduct an annual meeting on or near the anniversary date of the execution of this Lease to review the program and other issues as may be necessary.
- b. Quarterly and Annual Reports
YMCA will provide quarterly and annual reports summarizing the activities, attendance, fee schedules, revenues and expenditures, accidents, participant evaluations and surveys, staffing changes, marketing efforts, building custodial and maintenance concerns, for City and school facilities and other relevant issues for its Troutdale programs.
- c. Waiver
The waiver by City of any breach of any term, covenant, or condition in this Lease shall not be a waiver of subsequent breach of such term, covenant, or condition. No covenant, term, or condition of this Lease shall be deemed waived by City, unless the waiver is in writing and approved by City.
- d. Entire Agreement
This Lease sets forth all the covenants, promises, agreements, conditions, and understandings between City and YMCA concerning the Leased Premises. No subsequent alteration, amendment, change, or addition to this Lease shall be binding upon City or YMCA unless reduced to writing and signed by the parties.
- e. No Partnership
City is not in any way or for any purpose a partner of YMCA in the conduct of its business or otherwise.

f. Notices and Designee

Notice or demand required or permitted under this Lease is given only when the notice or demand is written, deposited in the United States mail, with postage prepaid, to be forwarded by certified mail with return receipt requested and addressed as follows:

to City at: Troutdale City Hall
104 SE Kibling Avenue
Troutdale, OR 97060

to YMCA at: YMCA of Columbia-Willamette
9500 SW Barbur Blvd. #200
Portland, OR 97219

or at such other address as may be designated by either party by giving notice of such change of address in the manner above provided.

g. Representation

City's representative in this agreement is John K. Anderson, City Administrator, or his designee. YMCA's representative in this agreement is Robert G. Hall, Chief Executive Officer, YMCA, or his designee.

h. Partial Invalidity

If any term, covenant, or condition of this Lease or its application to any person or circumstance shall be invalid or unenforceable, the remainder of this Lease shall be valid and in force to the fullest extent permitted by law.

i. Tax Exempt Status

YMCA shall provide to the City proof of filing for property tax exemption with the Multnomah County Assessors Office. YMCA shall apply for this exemption in a timely manner. Application fees shall be the expense of the YMCA. Any fees associated with a late filing shall be paid by the YMCA. If YMCA fails to file for such exemption, YMCA shall be responsible for all real property taxes assessed to the City for the Leased Premises.

Section 17. Termination

This Lease shall terminate by its own terms on the expiration of the primary term of the Lease, or upon the occurrence of any event that calls for termination as described in this lease. Either party may also terminate this Lease upon giving to the other party 30 days prior written notice.

IN WITNESS WHEREOF, City and YMCA have executed this Lease as of the date indicated below.

CITY OF TROUTDALE, OREGON

By: *John K. Anderson*
John K. Anderson, City Administrator

1-11-05
Date

STATE OF OREGON)
County of Multnomah) ss.



Personally appeared the above named, John Anderson, City Administrator, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me: *Teresa Ann Hall*

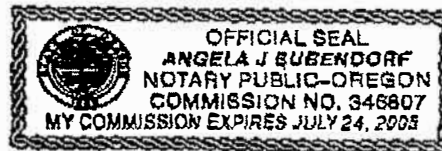
Notary Public For Oregon
My Commission Expires: 9-12-2007

YMCA OF COLUMBIA-WILLAMETTE

By: *Robert G. Hall*
Robert G. Hall, Chief Executive Officer

2-16-05
Date

STATE OF OREGON)
County of Multnomah) ss.



Personally appeared the above named, Robert G. Hall, Chief Executive Officer, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me: *Angela J Bubendorf*

Notary Public For Oregon
My Commission Expires: 7/24/05

EXHIBIT A LEASED PREMISES

Noting E23 Burton

