City of Tempe

COMMUNITY ROOM PREMISES USE AGREEMENT

This Agreement is	made and enter	red into this
day of,	20	$_$, between the City
of Tempe ("City"), an Arizor	na municipal co	rporation and
		("User")
whose address is		

The parties agree as follows:

City has control of the following described premises ("Premises"):

Name: Location: Don Cassano Community Room

Tempe Transportation Center,

200 East Fifth St

Tempe, Arizona 85281

User wishes to use the Premises for the purpose of ______.

City is willing to permit User to use the Premises upon the terms and conditions of this Agreement.

1. **Use of Premises.** User may use the Premises for the purpose(s) set forth in this Agreement on the following date(s) during the following time(s):

Date:

Time:

City reserves the right to reassign this reservation to similar facilities or cancel this reservation if the needs of the City require.

- Compensation. User agrees to pay the City the sum of
 _____ for the rights granted under this Agreement,
 whether the Premises are actually used by User for the full
 time granted or not.
- 3. General Conditions of Use. User agrees as follows:
 - a. User, its employees, agents and invitees are responsible for the proper use and care of any City property. The User will be liable for the replacement cost of any City property which is damaged, destroyed or lost as a result of use of this Premises.
 - b. User agrees to clean-up or restore the Premises immediately after usage to the same condition provided to User prior to its use of the Premises. Costs will be assessed for clean-up by the City if user's clean-up is not satisfactory.

- c. User acknowledges that it has inspected the Premises and that it is satisfied that the Premises have the capacity and capability to accommodate the use contemplated under this Agreement. User shall abide by all governmental rules and regulations in its use of the Premises.
- d. User agrees to perform its promotional and all activities related to its use of the Premises in the least intrusive manner so as not to disturb the atmosphere of the area surrounding the Premises and City activities.
- e. User agrees that there will by no pyrotechnics, stunts, or other dangerous or hazardous activities undertaken in or about the Premises.
- f. User agrees to comply with all City parking rules and regulations.
- g. User agrees to comply with all items in the attached Premises Checklist which is incorporated into this Agreement.
- h. User agrees to abide by the principles set forth in the Community Room Release and Indemnification Agreement.
- 4. Security. User is solely responsible for the security of its equipment and that of its personnel and invitees on City property. In the event that the user desires special security services or measures, the provision of services or measures shall be determined between the User and the City Police Department. The User is responsible for costs of such special security. City reserves the right, due to the nature or extent of User's activities, to require the User to hire off-duty City Police Officer's to insure, among other things, the orderly flow of pedestrians and traffic around the site.
- 5. Insurance. User shall provide City with proof of insurance sufficient to cover the operations and activities to be carried out on the Premises. Throughout the term of the Agreement, User shall maintain, at its sole expense, the following minimum insurance coverage:
 - a. Commercial general liability insurance with minimum limits of:
 - i.\$1,000,000 per occurrence or as required by the Special Events Taskforce whichever is higher.
 - ii.\$2,000,000 general aggregate or as required by the Special Events Taskforce whichever is higher.
 - b. Commercial Auto Liability insurance providing \$1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.

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- c. Workers compensation insurance as required by all applicable workers compensations laws, for User's protection and the protection of the City.
- d. The certificate shall indicate that the policy carries an endorsement which names the City of Tempe, its officers, employees and agents as additional insureds. The User's policy shall be primary and shall be issued in a form acceptable to the City. Any insurance carried by the City shall be noncontributing. The certificate shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification to the City at least **thirty** days prior to the effective date of cancellation.
 - i.User shall furnish to City proof of coverage no less than **fourteen** days prior to use of the Premises date(s).
 - ii.User shall immediately notify the City if the User's Commercial General Liability insurance contains any restrictive endorsements other than those restrictive endorsements normally included on standard ISO Commercial General Liability occurrence or claims made forms. The absence of a demand for any type of insurance certificates or policy shall be not be construed as a waiver of the User's obligations to carry and maintain the appropriate insurances at limits that are appropriate to the liability exposure associated with this Agreement, and to ensure that its agents maintain appropriate insurance at all times.
 - iii.User accepts the Premises "as is." User shall assume all risk and responsibility for the actions of its agents and/or invitees on the Premises.
 - iv. The City does not represent that coverage and the limits specified in this Agreement will be adequate to cover User's liability.
- e. **Waiver of Subrogation**. City and User waive any right of recovery against the other as a result of loss or damage to the property of either the City or User when such loss or damage arises out of an act of God.
- 6. Indemnification. User shall release, indemnify, defend, and save harmless the City, and its officers, employees and agents from and against all claims, suits, actions, damages, or causes of action for any personal injury, loss of life of damage to property sustained by reason or as a result of the use of the Premises for which the Agreement is entered into and from and against any orders, judgments or decrees which may be entered thereto, and from and against all costs, attorney's fees, expenses, and liabilities incurred in or by reason of the defense for any such claim, suit or action and the investigation thereof. Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of the City, its officers, employees and agents as are provided for by law. This provision shall survive the termination of this Agreement.
- 7. **No Joint Venture.** It is expressly understood that by making the Premises available, the City is not entering into any type of joint venture with User, nor is it acting as an TCAO premise use agreement 2009-2010

- agent of or for User nor is User acting as an agent of or for the City. The relationship between User and the City is not that between a landlord and tenant as defined by Arizona law
- 8. Termination. If User fails to fulfill any obligation specified in this Agreement, or the intended use or activity to be conducted is not as described in this Agreement, the City may cancel this Agreement upon notice to User. The City shall have no liability for such a cancellation. The City may also cancel this Agreement without cause upon thirty days written notice to User.
- 9. Force Majeure. The City does not guarantee the uninterrupted use of the Premises as its use may be suspended or delayed by reason of fire, storm, explosion, strike, lockout, labor dispute, casualty, accident or by reason of any other cause beyond the City's control.

10. Miscellaneous.

- a. **No Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, which may be withheld by the other party in its sole discretion.
- b. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement.
- c. **Severability.** If any Agreement provision or application of this Agreement to any circumstance is held to be invalid or unenforceable, such provision shall be ineffective and the remainder of this Agreement shall remain valid and enforceable.
- d. **Governing Law.** This Agreement is governed by the laws of the State of Arizona. Exclusive jurisdiction and venue of any actions arising out of this Agreement shall be in Maricopa County, Arizona.
- e. **Waiver.** The waiver by either party of a breach or a violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of this Agreement.
- f. **Survival.** Any provision of this Agreement providing for performance by either party after this Agreement terminates shall survive such termination and continue to be effective and enforceable.
- g. **Compliance with Applicable Laws.** The parties shall comply with all federal, state and local laws in performing the Agreement terms.
- h. **Entire Agreement.** The Agreement, the Premises Release and Indemnification Agreement, the Premises Checklist and supplemental Exhibits added and incorporated hereto by the City constitute the entire agreement between the parties, and supersedes any prior understandings. This Agreement may be amended only by written amendments duly executed by the parties.

City of Tempe

<u>Community Room</u> Release and Indemnification Agreement

The City's permission to use the Don Cassano Community Room (the "Premises") is made on the express condition that User and any organization, group, attendee or invitee (invited or uninvited) or persons using the Premises (cumulatively referred to as the "User") under User's application to use the Premises, waive and release the City from all liability or loss by reason of injury or damage to person (including, but not limited to, the User) or property, real or personal, from whatever cause arising out of, from or in connection with the User's use of the Premises. User covenants and agrees to indemnify, defend and hold harmless the City, its officers, employees and agents from and against any claim, demand or judgment arising out of, from or in connection with the User's use of the Premises including, without limitation, any claimed injury to, or death of, any person including, but not limited to, the User and/or damage to property, personal or real. Furthermore, the User and Organization agree to indemnify, defend and hold harmless the City, its officers, employees and agents from and against any claim, demand or judgment, including without limitation, any claimed injury to or death of, any person (including, but not limited to, the User) and/or damage to property, real or personal, arising out of, from or in connection with said use of the Premises facilities including but not limited to the failure of the City to keep the Premises facilities in good condition and repair.

User and the City have inspected and do accept the Premises facilities in their present condition, and without any representation or warranty by the City as to the condition of such facilities, or as to the use or occupancy which may be made thereof. The right to use the Premises is granted on an "AS IS" and "WHERE IS" basis only. The City shall not be responsible for any latent defects or change in their condition, or for any damage occurring thereto, or because of the existence of any violation of any state, county, or municipal law.

Date	
Name of User (please print)	Name of Representative of User (please print)
Signature of User	Signature of Representative of User
	Name of Organization
	Title of Representative

City Attorney approved as to form October 2009

City of Tempe Premises Checklist

Please read the checklist below carefully and initial each item. These are some of the requirements of the City of Tempe Premises Policy. As the individual signing the Agreement, it is important that you read, understand and share with members of the User's organization and participants of the event all of the requirements listed below. Failure to comply with these requirements may result in denial of future use of the Premises for the individual and the organization.

INITIAL	
	Publicity Disclaimer: Any publicity distributed for this event must include a statement worded as follows: "This activity is not sponsored by the City of Tempe or the Tempe Transportation Center.
	All groups must handle their own set-up and clean-up for the event. This time should be included in the time reserved.
	The Premises must be left in the same condition as it was found. All furniture and equipment that belongs to the City must be returned to its original location.
	All spills must be cleaned immediately and reported to the administrative or security staff on duty.
	No admission, registration or membership fee can be charged unless prior agreement is made with the Public Works Department.
	No alcohol may be served or sold at any time.
	The individual initialing this list is responsible for knowing the rules governing the facility and for communicating those rules to the User's group.
	All participants of the event and sponsoring organization must leave the building at the time designated on the Agreement.
	Any violation of this policy may result in denial of the individual's and/or organization's future use of the Premises.
	To avoid possible cleaning or damage charges, the individual initialing this form should, during normal business hours, contact Dana Janofsky, Management Assistant, Public Works on duty after clean-up of the Premises is completed and request an inspection of the Premises and verification of the condition by signing the bottom of the clean-up instructions. The City contact person on duty will forward a copy of the signed form to the proper City administrative authority and return the original to the User. After normal business hours, City staff will inspect the Premises before opening Premises to the public and notify the User of any problems that may exist.

The undersigned agrees that the individual/organization named as User will leave the Premises and furnishings in the condition in which they were found. User further agrees to accept liability for any damage to the Premises, its furniture or equipment caused by the invited or uninvited participants of the event or the organization's occupancy of the Premises and to report any such damage immediately to the City contact person on duty. User understands that the City will issue an invoice for any damage for the Premises or furnishings and that the User will be denied future use of the Premises until such bill for damages has been paid in full. Repeated damage to the Premises for furnishings may result in the loss of all future use by the individual and/or the organization.

Date	
Name of User (please print)	Name of Representative of User (please print)
Signature of User	Signature of Representative of User