



## STAFF REPORT

DATE: DECEMBER 6, 2011  
TO: MAYOR AND CITY COUNCIL MEMBERS  
FROM: ROD FOSTER, CITY MANAGER  
PREPARED BY: BILL SMITH, DIRECTOR OF COMMUNITY SERVICES  
SUBJECT: FIRST AMENDMENT – SIERRA VISTA CHURCH LEASE

A handwritten signature in blue ink, likely of Bill Smith, the Director of Community Services.

### RECOMMENDED ACTION

It is recommended that the City Council approve the first amendment to the existing lease agreement with Sierra Vista Baptist Church for the State Preschool Program in the Human Services Division of the Community Services Department.

### GOAL STATEMENT

The proposed action will support the City's goal to continue to provide excellence in early childhood education to preschool age children throughout Colton.

### BACKGROUND

In 2009, the City entered into the current lease agreement with Sierra Vista Baptist Church, for usage of classroom space to facilitate a State Preschool Program, administered by the Human Services Division of the Community Services Department. This lease agreement, which was approved by City Council on July 21, 2009, provides for a \$1,500 per month rent payment to the church for the 10 months per year that the preschool program operates. Rent is an allowable expense under the terms of the State grant which funds the program, and the current rent payment to the church is entirely funded by the grant.

In March 2010, the Human Services Division secured an expansion grant from the Department of Education to increase the amount of families served by the preschool program from 48 to 120 daily. As a result of this expansion, more classroom space was needed to accommodate the program, and such space has been made available by the church. Given this increased usage by the City, the church has requested an increase in rent from the City.

The new negotiated rent payment is \$2,100 per month for each of the 10-month program year, and \$500 for the remaining 2 months, to compensate the church for storage of program equipment and supplies. The total yearly expense shall not exceed \$21,500.

## **ISSUES/ANALYSIS**

Staff considers this rent increase justifiable, given the increased impact to church space due to the expansion of the City's preschool program. This entire expense will continue to be funded by the State grant.

## **FISCAL IMPACTS**

There is no general fund impact as a result of this action. This increase was anticipated by staff, and budgeted-for in the approved Childcare Fund (206) budget for the current fiscal year. Rent is an allowable expense under the terms of the Department of Education grant which funds the program. This expense is accounted for in expenditure account 206-7200-7203-2421.

## **ALTERNATIVES**

1. Provide alternative direction to staff.

## **ATTACHMENTS**

1. First Amendment to the current Lease Agreement with Sierra Vista Baptist Church
2. Current Lease Agreement with Sierra Vista Baptist Church

# ATTACHMENT 1

First Amendment to the current Lease Agreement with  
Sierra Vista Baptist Church

**FIRST AMENDMENT TO  
LEASE AGREEMENT FOR REAL PROPERTY  
WITH SIERRA VISTA BAPTIST CHURCH**

THIS FIRST AMENDMENT TO THE EXISTING AGREEMENT REGARDING LEASE OF PROPERTY AT SIERRA VISTA BAPTIST CHURCH ("**First Amendment**") is made this **sixth** day of **December**, 2011, by and between the CITY OF COLTON, a California municipal corporation ("**City**"), and SIERRA VISTA BAPTIST CHURCH ("**Lessor**"), with its principal place of business at 2300 North Rancho Avenue, Colton, CA 92324 ("**Premises**"). Lessor and City are sometimes individually referred to as "Party" and collectively as "Parties" throughout this First Amendment.

**RECITALS**

A. City and Lessor entered into an Agreement Regarding Lease of property dated July 21, 2009 (the "**Original Lease**") for use of property located on the Lessor's Premises.

B. The Original Lease, together with this First Amendment and all exhibits or schedules attached thereto, shall constitute the "**Lease**".

C. Pursuant to the Lease, City leases space from the Lessor for the purposes of operating a State of California Preschool Program ("**Preschool**").

D. Since the time that the Original Lease was executed, the City has expanded the Preschool, and as a result, City and Lessor desire to amend the Original Lease pertaining to Section 3.4 – Consideration.

E. The City and Lessor also wish to clarify certain terms regarding use and maintenance of Premises.

THE PARTIES AGREE AS FOLLOWS:

**TERMS**

NOW THEREFORE, in consideration of the foregoing Recitals which are incorporated herein by this reference, and in consideration of the terms and conditions herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. Section 3.4 of the Original Lease is hereby amended and restated in its entirety as follows:

**"3.4 Consideration.** The Premises are leased to the City for the sum of two thousand one hundred dollars (\$2,100) per month during the months of operation of the Preschool. This amount shall be paid for ten (10) months during each calendar year. During the two (2) months of each calendar year when the Preschool is not conducted, the City shall pay

Lessor the sum of five hundred dollars (\$500), for the purposes of storing Preschool supplies at the Premises. The yearly Consideration, pursuant to this section, shall not exceed twenty one thousand five hundred dollars (\$21,500).”

2. Section 3.5 of the Original Lease is hereby amended and restated in its entirety as follows:

“**3.5 Use.** The Premises are leased to City for the purpose of a State of California funded preschool program and for any and all other purposes incidental thereto. The City shall not use, or permit the Premises or any part of them to be used, for any other purpose without the prior written approval of Lessor. Lessor reserves the right to use said leased Premises on occasion for special events. In this event, Lessor shall provide City notice of such intent not less than two (2) weeks prior to such intended use.”

3. Section 3.14 of the Original Lease is hereby amended and restated in its entirety as follows:

“**3.14 Maintenance and Repair.** Lessor shall maintain in good repair the heating, ventilation and cooling system, plumbing and electrical systems, fire alarm and extinguishing systems, exterior walls, windows, roof, sidewalks, common areas and other like portions of the Premises and Lessor property. Lessor shall keep all restrooms cleaned and stocked with all necessary items. The City shall not go onto, and shall not authorize any person to go onto, the roof without the prior written consent of Lessor. Lessor shall not be required to repair any of the above items unless and until City has notified Lessor in writing of the need for such repairs or replacement. Once notified, Lessor shall complete any and all needed repairs and replacements within a reasonable period of time at no cost or expense to the City. City agrees to restore classrooms to their original setting after use, on days and times as requested by Lessor. City agrees to leave all classrooms and restrooms in a clean, orderly fashion.”

4. **Effective Date.** This First Amendment is authorized as of December 6, 2011 and is effective when both parties have executed this First Amendment (the “**Effective Date**”).

5. **Entire Agreement.** This First Amendment, the Original Lease, as amended by this First Amendment, and the Exhibits thereto contain the entire agreement of the Parties with respect to the subject matter hereof and the transactions contemplated hereby.

6. **Counterparts.** This First Amendment may be executed in any number of identical counterparts which, when fully executed by all of the Parties hereto, shall constitute an original and all of which together shall be deemed to be one and the same instrument.

7. **Amendments.** This First Amendment modifies, amends and supplements the terms of the Lease and, to the extent of any conflict between the terms of this First Amendment and the terms of the Lease, the terms of this First Amendment shall control. However, except as

specifically modified, amended and/or supplemented by this First Amendment, the terms of the Lease shall remain in full force and effect.

8. **Affirmation.** Except as otherwise provided in this First Amendment, the terms and conditions of the Lease are hereby ratified and confirmed.

9. **Conflicts.** In the event of any conflict or inconsistency between the Original Lease, the Schedules, Exhibits and Attachments thereto and this Amendment, the terms of this First Amendment shall control.

10. **Construction.**

(a) **Generally.** This First Amendment shall not be construed more strictly against Lessor merely by virtue of the fact that the same has been prepared by Lessor or its counsel, it being recognized that Lessor and Lessee have contributed substantially and materially to the preparation of this First Amendment, and Lessor and Lessee each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by any of the other Parties hereto in entering into this First Amendment.

(b) **Voluntary Agreement.** Each Party represents and warrants to each other that it is represented by legal counsel of its choice, that it has consulted with counsel regarding this First Amendment that it is fully aware of the terms contained herein and that it has voluntarily and without coercion or duress of any kind entered into this First Amendment.

(SIGNATURE PAGE TO FOLLOW)

**SIGNATURES**

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment on the day and year first set forth above.

**“LESSOR”**

**SIERRA VISTA BAPTIST CHURCH**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print

Title: \_\_\_\_\_

**“CITY”**

**CITY OF COLTON**

By: \_\_\_\_\_  
Sarah S. Zamora  
Mayor

Attest: \_\_\_\_\_  
Eileen C. Gomez  
City Clerk

Approved as to Form: \_\_\_\_\_  
Dean Derleth  
City Attorney

## ATTACHMENT 2

Current Lease Agreement with Sierra Baptist Church.



**CITY OF COLTON**  
**FIRST AMENDED LEASE AGREEMENT FOR REAL PROPERTY**  
**WITH SIERRA BAPTIST CHURCH**

**1. PARTIES AND DATE.**

This First Amended Lease Agreement ("Lease") is made and entered into this 21st day of July, 2009 by and between the CITY OF COLTON (hereinafter referred to as "City"), a municipal corporation organized under the laws of the state of California with its principal place of business at 650 North La Cadena Drive, Colton, California 92324 and SIERRA VISTA BAPTIST CHURCH (hereinafter referred to as "Lessor"), with its principal place of business at 2300 North Rancho Avenue, Colton, CA 92324. The City and Lessor are sometimes collectively referred to herein as the "Parties."

**2. RECITALS.**

**2.1 Lessor Property.**

Lessor is the owner of real property generally located at 2300 North Rancho Avenue in the City of Colton ("Lessor Property").

**2.2 Purpose of Lease.**

Lessor desires to lease to the City and the City desires to lease from Lessor all or a portion of the Lessor Property for due and adequate consideration, the receipt and sufficiency of which are acknowledged by the Parties and further described and set forth in this Lease, for the purpose of a State of California Preschool Program.

**3. TERMS.**

**3.1 Description of Property.**

Lessor hereby leases to the City and the City leases from Lessor, on the terms and conditions set forth in this Lease, the building space particularly described as areas 1-5 in Exhibit "A" which is attached hereto and incorporated herein by reference, and with a common legal address of 2300 North Rancho Avenue, Colton, California. (Hereinafter referred to as the "Premises").

**3.2 Term; Termination.**

The term of this Lease shall be for a one (1) year increment, beginning July 1, 2009 and ending June 30, 2010; provided, however, that the term also shall be subject to renewal as provided for in Section 3.3 below. The City may terminate this Lease at any time, for any or no reason, upon thirty (30) days advance written notice to Lessor.

### **3.3 Renewal.**

Lessor grants the City an option to renew this Lease for successive additional one (1) year periods, on the same terms and conditions as this Lease. The Lease will renew automatically, unless the City provides notice of termination of this Lease pursuant to Section 3.2 above.

### **3.4 Consideration.**

The Premises are leased to the City for the sum of one thousand five hundred dollars (\$1,500) per month during the months of operation of the State Preschool Program ("SPP") (hereinafter referred to as the "Lease Payment"). The SPP program runs ten (10) months per year, August through May. When the SPP is not conducted (June and July), the Premises are leased to the City at no cost per month. In addition, for 2009, Lessor is waiving the City's Lease Payment for August and September, so such payments will begin in October of 2009.

### **3.5 Use.**

The Premises are leased to City for the purpose of a State of California funded preschool program and for any and all other purposes incidental thereto. The City shall not use, or permit the Premises or any part of them to be used, for any other purpose without the prior written approval of Lessor.

### **3.6 Payment of Taxes.**

Lessor shall pay all real and personal property taxes with respect to the Premises.

### **3.7 Utilities.**

Lessor shall pay all charges for electricity, gas, water, refuse disposal, janitorial, building and property maintenance for the Premises, as well as alarm and any other related expenses, together with any taxes thereon, necessary to operate the SPP program upon the Premises.

### **3.8 Signage.**

The City shall provide, at its own cost and expense, signage in a manner consistent with all applicable local laws, rules and regulations. The form and substance of the signage shall be subject the City's sole discretion and shall represent joint use of the Premises.

### **3.9 Secular Use of the Premises.**

The Premises are being leased to the City for the purpose of providing a preschool program. The use of the Premises by the City shall not violate the Establishment Clause of the United States Constitution. To this end, the following conditions must be met: (1) the activities and curriculum of the preschool shall be subject to the sole and absolute discretion of the City; (2) no religious teachings, symbols or emblems shall be incorporated into any advertisements, other written materials, activities or curriculum for the preschool; (3) the City must post a sign at the entrance to the Premises to identify the distinct nature and identity of the preschool; (4) all

religious emblems or symbols in the Premises should be removed or covered during the hours of operation for the preschool; (5) officials of the Lessor should not wear religious clothing or other religious garb around those persons participating in the preschool; (6) joint use of the Premises shall not be allowed during the hours of operation of the preschool; (7) any and all equipment or other City personal property shall remain in the sole possession of the City, and shall not be used by Lessor except as authorized pursuant to this Lease; (8) persons participating in the activities of the preschool shall not be allowed in areas where religious activities are occurring or where religious symbols or emblems are present; and (9) all Lessor employees and members of its congregation shall have the ability to utilize the preschool to the same extent as any other member of the public, with no special privileges or exceptions.

### **3.10 Parking and Common Area Facilities.**

Lessor covenants that all common areas, including the parking areas, of the Lessor Property shall be available for the non-exclusive use of the City during the full term of this Lease or any extension thereof at no cost to the City. Lessor reserves the right to change the entrances, exits, traffic lanes, boundaries and locations of the parking area. The City agrees to comply with any reasonable rules and regulations as the Lessor may adopt from time to time for the orderly and proper operation of common and parking areas. Lessor shall provide the City with a copy of such rules and any amendments thereto.

### **3.11 Abandonment.**

The City shall not vacate or abandon the Premises at any time during the term of this Lease without thirty (30) days prior written notification to Lessor.

### **3.12 Acceptance; Surrender.**

The City accepts the Premises as being in good condition for the above-stated use. The City shall, upon the termination or expiration of the Lease term provided hereunder, surrender the Premises in good condition, reasonable use and wear excepted.

### **3.13 Alterations and Additions.**

The City shall not, without the prior written consent of Lessor, make any alterations, improvements or additions in or about the Premises. All personal property of City, as well as all improvements or additions made to the Premises by City, shall remain the property of the City at the expiration of the Lease, other than that which is affixed to the premises so that it cannot be removed without material or structural damage.

### **3.14 Maintenance and Repair.**

Lessor shall maintain in good repair the heating, ventilation and cooling system, plumbing and electrical systems, exterior walls, windows, roof, sidewalks, common areas and other like portions of the Premises and Lessor Property. Lessor shall keep all restrooms cleaned and stocked with all necessary items. The City shall not go onto, and shall not authorize any person to go onto, the roof without the prior written consent of Lessor. Lessor shall not be required to repair any of the above items unless and until City has notified Lessor in writing of

the need for such repairs or replacement. Once notified, Lessor shall complete any and all needed repairs and replacements within a reasonable period of time at no cost or expense to the City.

### **3.15 Waste and Covenant of Quiet Enjoyment.**

City shall not commit, or allow to be committed, any waste upon the Premises, or any nuisance or other act which may disturb the quiet enjoyment of any other tenant of the Lessor Property. City may perform light cleaning and housekeeping of the Premises at the end of each day of operation.

### **3.16 Insurance.**

Lessor shall maintain fire and general liability insurance upon the Premises at its sole cost and expense throughout the term of this Lease. The amount of such insurance coverage shall equal at least ninety percent (90%) of the replacement value of the structure located on the Premises. This insurance shall be in addition to any other insurance as may be required by Lessor's lender or by law. City shall provide its own insurance on City's equipment and employees/participants. The parties agree that the City shall not provide any insurance on the Premises, the structure or any equipment/ property not owned by the City.

### **3.17 Compliance With Law.**

The Parties shall comply with all local, state and federal laws, rules and regulations pertaining to the use and maintenance of the Premises and the Lessor Property.

### **3.18 Indemnification.**

Lessor agrees to defend, indemnify and hold City, its elected officials, officers, members, agents, servants, employees, successors and assigns, free and harmless from and against any and all claims, demands, liabilities, costs, damages or expenses, including wrongful death and attorney's fees and costs of suit, resulting from or incident to any and all acts or omissions of Lessor or any of Lessor's agents, servants, employees, officers, successors and assigns or other representatives arising from or incident to any and all actions taken at the Premises or Lessor Property, including but not limited to, the operation or use of any equipment or machinery, or in any way caused by or incident to Lessor's ownership or management of the Premises or Lessor Property.

City agrees to defend, indemnify and hold Lessor, its agents, servants, employees, officers, successors and assigns or other representatives, free and harmless from and against any and all claims, demands, liabilities, costs, damages, expenses, including wrongful death and attorney's fees and costs of suit, resulting from or incident to any and all acts or omissions of City or any of its elected officials, officers, members, agents, servants, employees, successors and assigns, arising from the use of the Premises by City.

The provisions of this Section shall survive the expiration or termination of this Lease.

### **3.19 Force Majeure.**

If either party shall be delayed or prevented from the performance of any act required herein by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive laws or regulations or other causes without fault and beyond the control of the party obligated, performance of such act shall be excused for the period of the delay. In such cases, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

### **3.20 Damage or Destruction**

If the Premises are damaged or destroyed by fire or other casualty so that the Leased Premises are unusable for City's intended purposes under this Lease, Lessor shall, within ten (10) days, determine if Lessor's insurance will cover the damage or destruction, and shall estimate the time necessary to repair such damage or destruction. If Lessor's insurance is insufficient to cover repair of the Premises and/or if repair of the Premises will require more than sixty (60) days, City shall be entitled to terminate this Lease immediately without incurring any costs and without liability.

### **3.21 Claims or Liens.**

City shall not suffer or permit any liens to be made or filed against the Premises by reason of labor forces, services or materials supplied (or claimed to have been supplied) to City, and City agrees to indemnify and hold harmless the Lessor and the Premises against any such liens. If any such lien shall at any time be filed against the Premises, City shall, within thirty (30) days after notice to Lessor of the filing thereof, cause the same to be discharged of record; provided, however, that City shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings. In the event of such protest, City shall first notify the Lessor and, if requested by the Lessor, City shall promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California. City shall prosecute the contest of such proceedings with due diligence and at no cost or expense to the Lessor.

### **3.22 Assignment.**

The City shall not assign this Lease, or any interest in it or portion thereof, without the prior written consent of Lessor.

### **3.23 Default; Eviction by Lessor.**

In the event of a substantial breach of any term or condition of this Lease by City, Lessor shall give written notice to City and allow the City ten (10) days to cure such breach. In the event the City does not cure, or undertake a reasonable good faith effort to cure, such breach within the ten (10) days, Lessor may commence legal proceedings to remove the City from the Premises.

In the event of a substantial breach of any term or condition of this Lease by Lessor, City shall give written notice to Lessor and allow Lessor ten (10) days to cure such breach. In the

event Lessor does not cure, or undertake a reasonable good faith effort to cure, such breach within the ten (10) days, City may terminate this Lease and vacate the Premises, with no further obligation to Lessor, except as otherwise provided herein.

**3.24 Eminent Domain.**

In the event that a whole or any substantial part of the Premises is acquired or condemned by eminent domain for a public or quasi-public use or purpose, City may terminate this Lease immediately without incurring any costs and without liability. A condemnation that renders the Premises unusable by City for City's intended purposes under this Lease, as determined in City's reasonable discretion, shall be considered condemnation of a "substantial part of the Premises," and shall entitle City to terminate this Lease as provided in this Section.

**3.25 Severability.**

If any term, covenant, condition or provision of this Lease 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 shall not be affected, impaired or invalidated thereby.

**3.26 Attorney's Fees.**

In case either party brings an action to enforce any term or condition of this Lease, the prevailing party shall be entitled to its reasonable attorney's fees as determined by the court, and all other costs and expenses related to such action.

**3.27 Waiver.**

The waiver by either Party of the breach of any provision of this Lease shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

**3.28 Binding on Successors.**

This Lease shall apply to and be binding upon the heirs, successors, executors, administrators, and assigns of the Parties hereto.

**3.29 Captions.**

The various headings contained herein and the grouping of the provisions of this Lease into separate paragraphs are for the purpose of convenience only, and shall not be considered in interpreting the provisions of this Lease.

**3.30 Notices.**

Any and all notices which are required under the terms and conditions of this Lease or which either Lessor or City desire to serve upon the other, shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage prepaid, return receipt requested, addressed as follows:

**LESSOR:**

Sierra Baptist Church  
2300 North Rancho  
Avenue, Colton, CA 92324  
Attn: Pastor

**CITY:**

City of Colton – Early Childhood Education  
660 Colton Avenue  
Colton, CA 92324  
Attn: Childcare Manager

Any notice so given shall be considered served on the other party three (3) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

**3.31 Entire Agreement.**

This Lease, along with any exhibits and attachments attached hereto and incorporated herein by reference, constitutes the entire agreement between the Lessor and the City relative to the Premises, and may only be modified by mutual consent of the parties in writing.

IN WITNESS WHEREOF, the parties hereby execute this Lease effective upon the day and year first above written.

**[SIGNATURES ON FOLLOWING PAGES]**

CITY'S SIGNATURE PAGE

CITY OF COLTON

By: Kelly J. Chestain Date: 7/21/09  
Kelly J. Chestain  
Mayor

Attest:

Olivia R. Flores CMC Chief Deputy Date: 7/21/09  
Eileen C. Gomez  
City Clerk

Approved as to Form:

[Signature] Date: July 27, 2009  
Best Best & Krieger  
City Attorney

LESSOR'S SIGNATURE PAGE

SIERRA BAPTIST CHURCH

By: Alfonso Montiel  
Signature

7-15-09

Alfonso Montiel  
Name (Print)

Pastor  
Title (Print)

By: W.E. Trimble  
Signature

W.E. Trimble  
Name (Print)

Trustee  
Title (Print)

**EXHIBIT "A"**  
**DESCRIPTION OF PREMISES**

