

**City Council
Agenda Memo**



TO: Larry D. Gilley, City Manager

**City Council
Meeting Date:**

FROM: Administration

April 10, 2014

SUBJECT: Lease Agreement for New Horizons Ranch and Center, Inc.

GENERAL INFORMATION

The City of Abilene owns the building and adjoining property at 294 Medical Drive, which it has leased to the Presbyterian Medical Care Mission since 10/28/1998 at the rate of \$1.00 per year for operation of a dental clinic in support of their indigent health care program. The Presbyterian Medical Care Mission has notified the City that it wishes to terminate their lease of this building, and New Horizons Ranch and Center, Inc. would like to lease the building for location of their administrative offices as part of their operations at 700 Medical Drive. The lease term will be five years commencing May 1, 2014, with an option to renew the lease for successive five year terms. The lease payment will be \$1.00 per year with New Horizons responsible for all utilities and routine maintenance on the building, in addition to providing grounds maintenance on the leased area.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

N/A

STAFF RECOMMENDATION

Staff recommends approval of this lease agreement and requests that the City Council authorize the City Manager to execute the lease agreement for New Horizons Ranch and Center, Inc. as detailed above.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS

Resolution, Lease Agreement, Exhibit "A"/Aerial Map of Leased Area

Prepared by:

Name Travis McClure

Title Land Agent

Item No. 6.3

Disposition by City Council

- Approved Ord/Res# _____
- Denied _____
- Other _____

City Secretary

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY OF ABILENE TO LEASE PROPERTY TO NEW HORIZONS
RANCH AND CENTER, INC.**

WHEREAS, since 1998, the City has leased the property located at 294 Medical Drive to the Presbyterian Medical Care Mission (PMCM), and PMCM has given notice of lease termination, effective May 1, 2014; and

WHEREAS, New Horizons Ranch and Center, Inc. seeks to locate its administrative offices at 294 Medical Drive; and

WHEREAS, New Horizons Ranch and Center, Inc.'s residential treatment facility, the Audrey Grace House, is located on Medical Drive; and

WHEREAS, the New Horizons Ranch and Center, Inc. assists children and families throughout Texas through residential treatment, providing therapeutic foster homes and youth and family counseling;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
ABILENE, TAYLOR COUNTY, TEXAS:**

PART 1. The City of Abilene finds that leasing property located at 294 Medical Drive to New Horizons Ranch and Center, Inc. will serve a public purpose by benefiting the City of Abilene, the citizens who reside within Abilene, and families who receive treatment at the facility.

PART 2. The City Manager is authorized to execute all necessary documents to facilitate the lease of the property located at 294 Medical Drive to New Horizons Ranch and Center, Inc.

ADOPTED this 10th day of April, 2014.

ATTEST:

Danette Dunlap, City Secretary

Norman Archibald, Mayor

APPROVED:

City Attorney

LEASE AGREEMENT

NEW HORIZONS RANCH AND CENTER, INC.

THIS AGREEMENT, made this _____ day of April, 2014, by and between the City of Abilene, (hereinafter referred to as "Lessor"), and New Horizons Ranch and Center, Inc., (hereinafter referred to as "Lessee").

The terms "Lessor" and "Lessee" shall be construed in the singular or plural, as they may respectively represent one or more parties.

WITNESSETH:

That for and in consideration of the covenants, promises, and agreements herein set forth, it is mutually agreed as follows:

ARTICLE I

PREMISES, PURPOSE, AND RESTRICTIONS

A. DESCRIPTION OF PREMISES LEASED

Lessor hereby leases and demises unto the Lessee the following described property, to-wit:

That part of Lot 3 lying north of Medical Drive and all of Lot 4, Block A, Continuation 3, Section 3, Radford Hills Addition to the City of Abilene, Taylor County, Texas, also known as 294 Medical Drive and as shown on Exhibit "A" attached.

B. PURPOSE OF LEASE AND RESTRICTIONS

The premises herein leased shall be used solely for the purpose of administrative offices for Lessee.

C. IMPROVEMENTS

Lessee shall not construct any improvements upon the leased premises without the prior written approval of Lessor. Any plans or specifications for any improvements to be constructed upon the leased premises shall be submitted to Lessor for its written approval not less than thirty (30) days prior to the beginning of such construction, and said construction shall not begin unless and until Lessor's written approval is obtained.

D. SIGNS

Lessee shall not place any signs at, on, or about the premises except as and where first approved in writing by the Lessor.

**ARTICLE II
OBLIGATIONS OF LESSEE**

A. MAINTENANCE

Lessee shall, at its sole cost and expense, and throughout the term of this Lease, maintain the lease premises, maintain the grounds, improvements and the appurtenances thereto in good condition and repair and in a safe and presentable condition. Lessee shall repair any damages to the lease premises and shall maintain and repair all improvements and equipment thereon. Lessee shall allow the Lessor access to inspect the buildings and property. All maintenance, repairs and replacement shall be of quality equal to the original in materials and workmanship. Upon the termination or expiration of this Lease, all of the improvements upon the premises shall revert to and become the property of Lessor and shall be surrendered with the premises as a part thereof.

B. UTILITIES

Lessee hereby covenants to be responsible for and to pay for all utilities used in the leased premises and to be responsible for their proper care.

C. INDEMNITY AND INSURANCE

1. INDEMNITY

It is agreed for all purposes hereunder, Lessee shall not, with respect to its acts or omissions, be deemed an agent or employee of the Lessor.

Lessee agrees to indemnify, hold harmless and defend Lessor, its officers, agents and employees, from and against all liability for all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including court costs and attorneys' fees and other reasonable costs) occasioned by the Lessee's occupancy or use of the leased premises and/or activities conducted in connection with or incidental to this Agreement and arising out of or resulting from the intentional acts or negligence, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of

Lessee, including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

Lessee further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, customers, visitors, licensees, invitees and other persons, as well as their property, while in or on the leased premises. It is expressly understood and agreed that Lessor shall not be liable or responsible for the negligence of Lessee, including but not limited to its officers, agents, servants, employees, customers, visitors, licensees, invitees and other persons.

Further, Lessor assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by Lessee.

Lessee understands and agrees that this indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such premise defects or conditions, including but not limited to any such claim asserted by or on behalf of Lessee, including but not limited to any of its officers, members, agents, employees, customers, visitors, licensees, invitees or other persons.

It is further agreed with respect to the above indemnity, that Lessor and Lessee will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or Lessor, and Lessor shall have the right to compromise and defend the same to the extent of its own interests.

It is the expressed intention of the parties hereto, both Lessor and Lessee, that the indemnity provided for in this agreement is indemnity by Lessee to indemnify and protect the Lessor from the consequences of the Lessor's own negligence while Lessor is participating in this agreement/contract where that negligence is a concurring cause of the injury, death, or damage. Furthermore, the indemnity provided for in this agreement shall have no application to any claim, loss, damage, cause of action, suit, and liability where the injury, death or damage results from the sole negligence of the Lessor, unmixed with the fault of any other person or entity.

2. INSURANCE

LESSEE agrees to provide and maintain the following types and amounts of insurance, for the term of this Lease:

	<u>TYPE</u>	<u>AMOUNT</u>
1.	<u>Worker's Compensation (where required by State Law) and accident Employer's Liability</u>	Statutory - <u>\$100,000</u> each
2.	<u>Comprehensive General (Public) Liability</u> - to include (but not limited to) the following:	
	A. Premises/Operation	Combined Single Limit for Bodily Injury and Property Damage: <u>\$500,000</u> - per Occurrence
	B. Independent Contractors	
	C. Personal Injury	
	D. Products/Completed Operations	
	E. Contractual Liability (to include the indemnity provision herein)	
3.	<u>Property Damage Insurance</u> - physical damage coverage for the perils of Fire and Extended Coverage on said premises (including improvements and betterments)	<u>Coverage for a minimum of Ninety Percent (90%) of the actual cash value of property.</u>

The preceding amounts **notwithstanding**, Lessor reserves the right to increase the minimum required insurance to be effective thirty (30) days after notice is sent to the address provided herein.

D. OTHER INSURANCE REQUIREMENTS

Lessee understands that it is its sole responsibility to provide the required Certificates and that failure to timely comply with the requirements of this article shall be a cause for termination of this Agreement.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and **approval** by the City's Office of Risk Management office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Lease for the Lessor as additional insured shall be primary insurance and not contributing with any other insurance available to Lessor, under any third party liability policy.

Lessee shall provide updated certificates of insurance to the City Land Agent each year prior to the anniversary of the date of this contract in the event the contract is renewed.

Lessee further agrees that with respect to the above required insurances, the Lessor shall:

1. Be named as additional insured/or an insured, as their interest may appear.
2. Be provided with a waiver of subrogation.
(Liability Insurance Only.)
3. Be provided with thirty (30) days advance notice, in writing, of cancellation or material change.
4. Prior to execution of this Agreement, be provided through the office of the City Secretary with Certificates of Insurance evidencing the above requirements. Thereafter new certificates shall be furnished prior to the expiration date of any prior certificate.

E. COMPLIANCE WITH LAWS

Lessee shall observe and obey all federal, state, and local laws and regulations and shall further not permit the violations of such laws by persons upon the said premises.

**ARTICLE III
ASSIGNMENT AND TERMINATION**

A. ASSIGNMENT, TRANSFER

The Lessee shall not assign or transfer this Agreement or any interest therein nor sublet the said premises or any part thereof without the prior written consent of the Lessor.

B. TERMINATION

Upon the violation of any of the foregoing terms, or conditions, to this agreement which shall continue for twenty (20) successive days following notice of said violation from Lessor to Lessee, the Lessor may declare this Lease forfeited at its discretion without further notice and its agents or attorney

shall have the power to enter and hold, occupy and repossess the entire premises hereinbefore described, as before the execution of this Agreement.

ARTICLE IV GENERAL PROVISIONS

A. DAMAGE OR DESTRUCTION OF PREMISES.

In the event the Leased Premises shall be totally destroyed or sustain substantial damage by fire, storm, explosion, earthquake, or any other peril or casualty, then either Lessor or Lessee may cancel this Lease, provided written notice of such cancellation is given one to the other, within thirty (30) days, from the date of said destruction or damage. If neither party serves notice of cancellation on the other within said time, then Lessee shall rebuild the Leased Premises and put them in as good a condition as they were in prior to such casualty within a reasonable time after such destruction. In no event will Lessee be required to spend more in rebuilding the building than the total of the insurance proceeds received or the appraised value of the building. In no event shall Lessor be obligated to provide or reimburse Lessee for temporary facilities.

B. TERM OF LEASE

The term of this lease shall be five (5) years, beginning May 1, 2014 and ending at midnight April 30, 2019. Lessee may renew this Lease for successive five (5) year terms by giving Lessor written notice of option to renew at least 60 days prior to the termination date of this initial term or any successive terms. Lessor has the right to reject Lessee's option to renew the Lease by giving Lessee written notice of rejection within 30 days of receiving Lessee's written notice of option to renew.

C. AGENT

The agent for Lessor shall be the City of Abilene Land Agent. The agent for Lessee shall be the Executive Director of New Horizons Ranch and Center, Inc.

D. PAYMENT

Lessee agrees to pay to Lessor the sum of One Dollar (\$1.00) annually and other good and valuable consideration for this Lease.

E. BANKRUPTCY

In the event that Lessee shall become bankrupt, or shall make a voluntary assignment for the benefit of creditors, or in the event that a receiver of the Lessee shall be appointed, then at the option of the Lessor and upon written notice to the Lessee of the exercise of such option, this Lease shall be automatically terminated.

F. VENUE

Venue for any action arising under this Lease Agreement shall be in Abilene, Taylor County, Texas.

G. NOTICE

All notices required to be given hereunder shall be in writing, mailed by Certified Mail Return Receipt Requested, and addressed as follows:

To Lessee:

New Horizons Ranch and Center, Inc.
294 Medical Drive
Abilene, TX 79601

To Lessor:

Attn: Land Agent
City of Abilene
555 Walnut
Abilene, TX 79604

H. AMENDMENT

This Agreement may not be amended except in writing, executed by the parties hereto.

Executed this _____ day of _____, 2014.

LESSOR:

CITY OF ABILENE

.

By: _____
City Manager

LESSEE:

NEW HORIZONS RANCH AND CENTER, INC.

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
City Secretary

APPROVED:

By: _____
Risk Manager

By: _____
City Attorney

EXHIBIT "A"

*City of Abilene property
(green)*

**294 Medical Drive & area
leased to New Horizons Ranch
(yellow)**

