Council Meeting of October 14, 2015

Agenda Item No. 8b

REQUEST FOR COUNCIL ACTION

SUBJECT: Lease Agreement between the City of West Jordan and South Valley Sanctuary, Inc.

SUMMARY: Consider a Lease Agreement between the City of West Jordan and South Valley Sanctuary, Inc. for approximately 300 square feet of office space on the first floor of West Jordan City Hall. Consider a nonmonetary contribution of $5,100.00 to the South Valley Sanctuary, Inc., a nonprofit corporation.

FISCAL: IMPACT: Nonmonetary contribution of office space within the West Jordan City Hall valued in the amount of $5,100.00.

STAFF RECOMMENDATION:

Staff recommends consideration of the Lease Agreement and nonmonetary contribution to South Valley Sanctuary, Inc.

MOTION RECOMMENDED:

"I move to approve a nonmonetary contribution of $5,100.00 to the South Valley Sanctuary, Inc., and to approve and authorize the Mayor to execute the Lease Agreement with South Valley Sanctuary, Inc."

Prepared by:

Darien Alcorn
Interim City Attorney

Recommended by:

Mark R. Palesh
City Manager

BACKGROUND DISCUSSION:

Pursuant to City Code Section 3-4-1, the City Council may waive fees otherwise due to the City and may otherwise provide nonfinancial support to a nonprofit entity providing services to the citizens of the City if the City complies with section 10-8-2 of the Utah Code. Section 10-8-2 limits the charitable contribution to a nonmonetary contribution such as fee waivers and City services. It also limits the total charitable contributions for the fiscal year to 1% of the City's budget for that fiscal year and requires a public hearing prior to approval.

South Valley Sanctuary, Inc. is a nonprofit corporation, and the requested nonmonetary contribution for approximately 300 square feet of office space on the first floor of West Jordan City Hall is valued at $5,100.00 calculated at a rate of $425.00 per month.

The proposed Lease Agreement between West Jordan and South Valley Sanctuary, Inc. identifies the location of the office space and sets forth the terms and conditions of the Lease. It is proposed that the lease period be from July 1, 2015 to June 30, 2016 in order to continue occupancy when the current Lease ends and match the City's fiscal year. If the lease term is changed the amount of the charitable contribution needs to be prorated accordingly.

There are no proposed changes from the current Lease

The South Valley Sanctuary has a history of being a good tenant in City Hall. The City and South Valley Sanctuary have had no problems or concerns. City staff supports the issuance of a new Lease.

Attached: Lease Agreement
Resolution

Melanie S. Briggs, MMC
City Clerk
8000 South Redwood Road
West Jordan, Utah 84088
(801) 569-5117
Fax (801) 563-4716

THE CITY OF WEST JORDAN, UTAH
NOTICE OF PUBLIC HEARING

A Public Hearing will be held before the City of West Jordan City Council on Wednesday, October 14, 2015, at the hour of 6:00 p.m., in the City Council Chambers at 8000 South Redwood Road, Third Floor, West Jordan, Utah, to receive public comment prior to considering approving a contribution of rental fees for South Valley Sanctuary, a nonprofit entity valued at $5,100.

Published this 4th day of October 2015
Melanie S. Briggs, MMC
City Clerk

THE CITY OF WEST JORDAN, UTAH
NOTICE OF PUBLIC HEARING

A Public Hearing will be held before the City of West Jordan City Council on Wednesday, October 14, 2015, at the hour of 6:00 p.m., in the City Council Chambers at 8000 South Redwood Road, Third Floor, West Jordan, Utah, to receive public comment prior to considering approving a contribution of police services and an encroachment permit for Joyful Welcome, a nonprofit entity valued at $1,460.

Published this 4th day of October 2015
Melanie S. Briggs, MMC
City Clerk

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-193

A RESOLUTION AUTHORIZING THE PROVISION OF CITY OFFICE SPACE FOR A NONPROFIT ENTITY PURSUANT TO CITY CODE SECTION 3-4-1 AND AUTHORIZING THE MAYOR TO EXECUTE THE LEASE AGREEMENT WITH SOUTH VALLEY SANCTUARY, INC.

Whereas, the City Council of the City of West Jordan has reviewed the facts and circumstances regarding the South Valley Sanctuary request to lease approximately 300 square feet of office space on the first floor of West Jordan City Hall; and

Whereas, the City Council has determined, after holding a public hearing pursuant to Utah Code Ann. §10-8-2, to provide nonmonetary assistance to the South Valley Sanctuary, Inc., a nonprofit entity, in the form of rental fee waiver in the amount of $5,100.00; and

Whereas, the City Council has determined the value of the nonmonetary assistance, combined with other nonmonetary assistance provided during the applicable fiscal year will not exceed 1% of the budget for the fiscal year; and

Whereas, the City Council has further determined that it is in the best interest of the City to enter into the Lease Agreement to lease approximately 300 square feet of office space to South Valley Sanctuary, Inc.

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

Section 1. Nonmonetary assistance to South Valley Sanctuary, Inc. is approved in an amount not to exceed $5,100.00.

Section 2. After approval as to legal form the Mayor is authorized and directed to execute the Lease Agreement between the City of West Jordan and South Valley Sanctuary, Inc.

Section 3. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah this 14th day of October, 2015.

CITY OF WEST JORDAN

ATTEST:

By: _____
Mayor Kim V. Rolfe

_____
MELANIE BRIGGS, City Clerk

Res. 15-193

Voting by the City Council	"AYE"	"NAY"
Council Member Jeff Haaga	_____	_____
Council Member Judy Hansen	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Chad Nichols	_____	_____
Council Member Sophie Rice	_____	_____
Council Member Ben Southworth	_____	_____
Mayor Kim V. Rolfe	_____	_____

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this 1st day of July, 2015, by and between The City of West Jordan, a municipal corporation of the State of Utah, ("Landlord"), and South Valley Sanctuary, Inc., a Utah corporation, ("Tenant"). Landlord and Tenant are sometimes jointly referred to as the "Parties."

WITNESSETH:

In consideration of the payments to be made, the mutual promises, covenants and conditions set forth herein, the parties agree as follows:

1. Leased Premises. Landlord does hereby lease to the Tenant approximately three hundred square feet (300 s.f.) of office space (the "Leased Premises") on the main floor of the West Jordan City Center (the "City Center"), together with non-exclusive access to the public restrooms and non-exclusive use of the City Center parking lot as specifically described hereinafter, at 8000 South Redwood Road, West Jordan, Utah, as shown on "Exhibit A," attached hereto and made a part hereof. In addition to occupation of the Leased Premises, Tenant may also reserve other rooms within the City Center, provided the room is available, without additional fees or rental payments.

2. Use and Hours of Operation. The Leased Premises shall be occupied exclusively by the Tenant and used as office space. The Leased Premises may be occupied by employees and invitees of Tenant when City Center is open ("Hours of Operation"), typically Monday through Friday 8:00 am to 5:00 pm.

The Leased Premises may be occupied by employees of Tenant when the City Center is closed. When accompanied by employees of Tenant, Tenant's invitees may occupy the Leased Premises when the City Center is closed.

City Center will be closed as follows:

(a) Before 8:00 am and after 5:00 pm every Monday through Friday; and

(b) Every Saturday and Sunday; and

(c) On various weekdays for the following City holidays: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Fourth of July (Independence Day), Pioneer Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve Day and Christmas Day; and

(d) For any unforeseen circumstances that, in the reasonable judgment of the City Manager, require the City Center to be vacated or remain unoccupied to protect the health, safety and welfare of occupants and potential entrants.

It is anticipated that employees and invitees of Tenant will occupy City Center rooms including the Community Room, City Council Chambers and Schorr Gallery for classes such as the Healthy Relationship class and other similar uses. Tenant may reserve rooms without additional charge; reservations are on a first-come, first-served basis and will be subject to availability. The parties agree to discuss and attempt to reach a mutually acceptable resolution of concerns or problems that arise, if any, from reserved uses. Concerns and problems are not expected or anticipated, but may include, without limitation, damages, clean-up, availability of rooms and reservation procedures.

3. Term. This Agreement shall be effective upon execution, and the Term of the Lease shall commence on July 1, 2015, and continue through June 30, 2016.

4. Consideration. Tenant shall not pay rent, subject to approval by the West Jordan City Council of a charitable contribution in the amount of $5,100.00 (approximately $425.00 per month for twelve months) pursuant to Utah Code Ann. Section 10-8-2.

5. Ingress and Egress. All Tenant's employees and invitees shall enter and depart the Leased Premises through the door located at the northeast corner of the main floor foyer of the City Center (the "Foyer"), as shown in "Exhibit A," as Tenant's sole entry point. Tenant's employees and invitees shall be permitted non-exclusive access into and through the Foyer during the hours described above. The exterior east and west doors to the Foyer may be locked when the City Center is closed, and the Leased Premises will only be accessible with use of a key card issued to employees of Tenants. Only the Tenant employee to whom the key card is issued may use it. Any Tenant employee who intentionally allows someone other than himself/herself to use the key card may lose the privilege to enter the City Center when it is closed. Tenant's employees and invitees shall have non-exclusive access to and use of the public restrooms and drinking fountain located in the Foyer. To protect the Landlord's quiet enjoyment of the City Center, Tenant will not occupy or use the Foyer for any purpose other than ingress, egress and access to the public restrooms and drinking fountain; except that Tenant may use the Foyer for other purposes with express permission or reservation from Landlord.

6. Parking. Except reserved stalls, including but not limited to stalls reserved for "visitor," Tenant's employees and invitees shall have non-exclusive access to and use of the parking lot located immediately to the west of the City Center. Tenant shall use the parking lot only for parking, ingress and egress to and from the City Center and for no other purpose. Vehicles may be self-parked by Tenant's employees and invitees; provided that: (a) Tenant shall not charge its employees or invitees to park; (b) Tenant shall not provide valet parking service;

(c) only one unreserved, unmarked or handicapped parking stall shall be occupied by each vehicle; and (d) no more than five (5) total parking stalls shall be occupied by Tenant's employees and invitees at any time. Temporary parking for deliveries shall only be for the time necessary to complete the delivery, and shall only be in areas designated by Landlord for deliveries.

7. Tenant Improvements. Tenant shall not make any improvements or alterations to the Leased Premises without first obtaining Landlord's written approval. All improvements or alterations made by Tenant shall be permanent in character and shall become Landlord's property at the end of the term without any compensation to Tenant. Tenant shall pay promptly the cost of its improvements so that the Leased Premises are free of liens for services performed, labor and material supplied or claimed to have been supplied. Tenant's ingress and egress for making Landlord-approved improvements shall be through the door located at the northeast corner of the Foyer. Tenant shall be responsible for any and all damage to the Leased Premises or the City Center caused by Tenant or its contractors, subcontractors or suppliers in making Landlord-approved improvements.

8. Surrender. Upon the expiration of this Lease, or upon termination as provided for in paragraphs 12 and 21, Tenant will yield and deliver up the Leased Premises to Landlord in as good order and condition as when the same were entered upon by Tenant, with exception of reasonable use, wear and tear and damage by fire or casualty not the fault of the Tenant for which insurance is not provided. If Tenant is not then in default, Tenant shall have the option to remove any and all of Tenant's movable electrical equipment and furniture upon expiration or termination of this Lease. Tenant shall repair any damage to the Leased Premises caused by any removal permitted under this paragraph.

9. Maintenance. Responsibility for the maintenance shall be as indicated: Landlord responsible for (L), and Tenant responsible for (T): Roof (L), Exterior Walls (L), Interior Walls of the Leased Premises (T), Structural Repair (L), Exterior Painting (L), Yard Surfacing (L), Plumbing Equipment (L), occasional maintenance of Plumbing fixtures such as unclogging of drains & replacement of faucet washers, (L), Heating and Air Conditioning Equipment (L), Building Electrical Equipment (L), Electrical and computer equipment installed by Tenant (T), Replacement of Light Globes and Tubes (T), Glass Breakage not the fault of Tenant (L), Trash Removal (L), Snow Removal (L), Janitor (L), Yard maintenance (L).

10. Utilities, Taxes and Insurance. Responsibility for utilities, taxes and insurance shall be as indicated: Power (L), Heat (L), Water (L), Sewer (L), Telephone (T), Real Property Tax (N/A), Fire and Casualty Insurance on Building (L), Renter's Insurance or Equivalent (T).

11. Landlord Representation. Landlord hereby warrants that it is the fee simple owner with the legal right to lease said Leased Premises. Landlord and Tenant agree to comply with all codes, local ordinances and state statutes applicable to the use or ownership and operation of the Leased Premises at their sole expense.

12. Default.

(a) Landlord Default. In the event of a failure by Landlord to provide any services, maintenance or repairs required under this lease and said failure goes uncorrected for twenty (20) business days after written notice to Landlord, Tenant shall have the right to secure said services, maintenance or repairs, and to charge the cost to the Landlord.

(b) Tenant Default. In the event Tenant fails to make any payment of rent or any other charge payable hereunder, or is in default of any other provision of this lease for a period of twenty (20) business days after written notice from Landlord, Tenant shall be in breach of this Lease, and Landlord shall have all rights or remedies as may be provided at law, in equity, or otherwise, including termination of this Lease without penalty.

13. Assignment or Sublet. Tenant may not sublet the Leased Premises or any part thereof or assign this Lease without the prior written consent of Landlord.

14. Attornment. If Landlord's interest in the property is transferred in any manner, Tenant shall attorn to the transferee of or successor to Landlord's interest in the property and recognize such transferee or successor as landlord under this Lease. In the event of such a transfer by the Landlord, Landlord shall be released of any further obligations under this Lease.

15. Quiet Enjoyment. Landlord covenants with Tenant that upon fully complying with and properly performing all of the terms, conditions and covenants of this Agreement to be performed by the Tenant, Tenant shall have and quietly enjoy the Leased Premises for the term set forth.

16. Entry by Landlord. Landlord may enter the Leased Premises at reasonable hours to (a) inspect the same, (b) determine whether Tenant is complying with all of Tenant's obligations under the Lease, (c) provide maintenance required of Landlord under the Lease, or (d) make repairs required of Landlord under the Lease, repairs to adjoining space or utility service, or make repairs, alterations or improvements to the City Center, provided that all such work shall be done as promptly as possible and with as little interference to Tenant as reasonably

possible. Landlord or its agents may enter the Leased Premises after standard business hours to perform janitorial services. Tenant hereby waives any claim for damages for any inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Leased Premises occasioned by such entries.

17. Emergency Entry. In the event of an emergency, Landlord shall have the right but not the obligation to use any and all means which Landlord may deem proper to enter the Leased Premises, without notice, for the limited purpose of abating as quickly as possible any such emergency. Such emergency entrance shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Leased Premises or an eviction, actual or constructive, of Tenant from the Leased Premises or any portion of the Leased Premises. Landlord shall have and retain a key and have entry access to any electronic building access system on or about the Leased Premises for purposes of the entry provided in this section.

18. Insurance.

(a) Landlord will maintain commercial general liability and fire and other casualty insurance coverage as Landlord may desire or require with respect to the City Center and Landlord's personal property, equipment, furniture, fixtures, and inventory, and Tenant shall have no obligation with respect to such insurance. Landlord shall indemnify Tenant against and hold it harmless from any claims arising out of loss or damage to the City Center and Landlord's personal property, equipment, furniture, fixtures, and inventory, unless such loss or damage is due to any intentional or negligent act or omission of Tenant.

(b) At Tenant's sole cost and expense, Tenant shall provide and maintain in full force during the Term of this Lease the following insurance coverage and documents:

(1) Commercial general liability insurance covering all Liabilities for personal injury and property damage arising in connection with this Lease, with limits of liability of $3,000,000 for each occurrence and in the aggregate. For purposes of this Lease Agreement, the term "Liabilities" shall mean claims, causes of action, losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees, by reason of liability imposed or claimed to be imposed by law on Landlord arising out of or in any manner connected with the use or occupancy by Tenant of the Leased Premises, or any condition created or caused by Tenant, including without limitation, liability claims for: (i) damage because of illness or bodily injuries, including death at any time resulting therefrom, sustained by any person or persons, including Tenant's employees, contractors or subcontractors; (ii)

damage to property sustained by any person or persons; (iii) any other loss or damage suffered or incurred by Landlord or any employees or agents or by any third party, whether or not such liabilities arise or are claimed to have arisen in whole or in part out of the negligence of Tenant or any of the grounds of legal liability, including violation of any duty imposed by statute, ordinance or regulation on the part of Tenant, Landlord, any agents, employees, invitees, subtenants, contractors or subcontractors of Tenant or Landlord, or any third parties, but excluding any liabilities caused by the sole negligence or the willful misconduct of Landlord, its agents, employees, licensees, or invitees;

(2) For commercial general liability insurance, Tenant shall provide the following coverage endorsements: an endorsement that Landlord shall be additional insured; and an endorsement waiving all express or implied rights of subrogation against Landlord.

(3) Workers' compensation insurance in compliance with applicable laws;

(4) Automobile insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of liability of $1,000,000 for each occurrence and in the aggregate;

(5) Such fire and casualty insurance coverage as Tenant may desire or require with respect to Tenant's personal property, equipment, furniture, fixtures, and inventory. All property kept or stored on the Leased Premises by Tenant or with Tenant's permission shall be done at Tenant's sole risk, and Tenant shall indemnify Landlord against and hold it harmless from any claims arising out of loss or damage to the same, unless such loss or damage is due to any intentional or negligent act or omission to act of Landlord.

19. Indemnification.

(a) Landlord's Indemnification. Tenant shall indemnify and hold Landlord harmless from and against any and all Liabilities arising out of, or caused by the acts or omissions of Tenant or its directors, officers, employees, representatives, agents or contractors. Tenant shall within ten (10) business days repair or replace, at its cost and expense, any property or facilities of Landlord or its other tenants, invitees, agents, or licensees damaged or injured by the acts or omissions of Tenant and its agents in using and occupying the Leased Premises.

(b) Tenant's Indemnification. Landlord shall indemnify and hold Tenant harmless from and against all damages, claims, injuries or causes of action resulting from the negligent

acts or omissions of Landlord or its directors, officers, employees, representatives, agents or contractors. Landlord does not waive any rights, defenses or limitations available under the Governmental Immunity Act, Title 63, Chapter 30, U.C.A. (1953, as amended).

20. Waiver. It is agreed that the waiving of any of the covenants of this lease by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provision herein contained.

21. Destruction or Damage. If the Leased Premises are partially damaged by fire or other insured casualty, and if in Landlord's reasonable opinion the Leased Premises can be repaired within ninety (90) days after the fire or casualty, the Lease shall remain in full force and effect. In that event, rents shall be partially abated from the date of the fire or casualty until the completion of repair. The amount of the rent abatement shall be calculated by multiplying the monthly rental amount by an equation, the numerator being the square footage of which Tenant is deprived during the period of repair and the denominator being the total square footage of the Leased Premises, or three hundred (300) square feet.

If in Landlord's reasonable opinion, the Leased Premises are totally or substantially destroyed by fire or other casualty and cannot be repaired or replaced within ninety (90) days, the Lease shall terminate upon notice by Landlord.

22. Signs. Landlord, at Landlord's sole cost and expense, shall place a sign near the Tenant's entry door to identify the Tenant's Office as being on the Leased Premises. No additional signs will be permitted unless approved in writing by the Landlord prior to installation. Tenant shall remove any additional City-approved signs at its sole cost and expense and repair any damage caused by such removal upon the expiration or termination of this lease. Maintenance and repair of all signage, including but not limited to the sign installed by Landlord, is the responsibility of the Tenant.

23. Names and Logos. Landlord and Tenant shall not use the other's name or logo in any manner that represents or implies any affiliation or relationship other than Landlord and Tenant.

24. Miscellaneous.

(a) The covenants and agreements contained in this Lease shall apply to, inure to the benefit of and be binding upon the Parties, their heirs, distributees, executors, administrators, legal representatives, assigns and upon their respective successors in interest except as otherwise expressly provided in this Lease.

(b) All notices or other communications hereunder shall be in writing and must be given by delivery in person or by mail, addressed to the Parties as follows:

If to Tenant:

South Valley Sanctuary, Inc.
P.O. Box 1028
West Jordan, UT 84084

If to Landlord:

City of West Jordan
Attn: Melanie Briggs, City Clerk
8000 South Redwood Road
West Jordan, UT 84088

and

City of West Jordan
Attn: David Clemence, Real Estate Services Manager
8000 South Redwood Road
West Jordan, UT 84088

(c) This agreement constitutes the entire agreement between the Parties. Any prior understandings or representations of any kind preceding the date of this agreement shall not be binding upon either party.

(d) This agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. This agreement is the result of arms-length negotiations between the parties, and both Landlord and Tenant have had substantive input regarding the various provisions of this agreement. Accordingly, each of the parties affirms its desire that this agreement be interpreted in an absolutely neutral fashion with no regard to any rule of interpretation (or the like) requiring that the provisions of this agreement be construed to favor one party (such as, for example, the party that did not draft this agreement) over the other.

[signatures on following page]

IN WITNESS WHEREOF, the parties have signed this lease or caused it to be signed by their duly authorized officers the day and year first hereinabove set forth.

TENANT: SOUTH VALLEY SANCTUARY, INC.

By: _____

Name: _____

Title: _____

STATE OF UTAH)

: ss.

County of Salt Lake)

On this _____ day of _____ 2015, personally appeared before me _____ _____, who being duly sworn, did say that s/he is the _____ of South Valley Sanctuary, Inc., a Utah corporation and that the foregoing instrument was signed on behalf of South Valley Sanctuary, Inc., by authority.

_____

NOTARY PUBLIC

Residing in Salt Lake County, Utah

LANDLORD: CITY OF WEST JORDAN

By: _____

Mayor Kim V. Rolfe

ATTEST:

_____

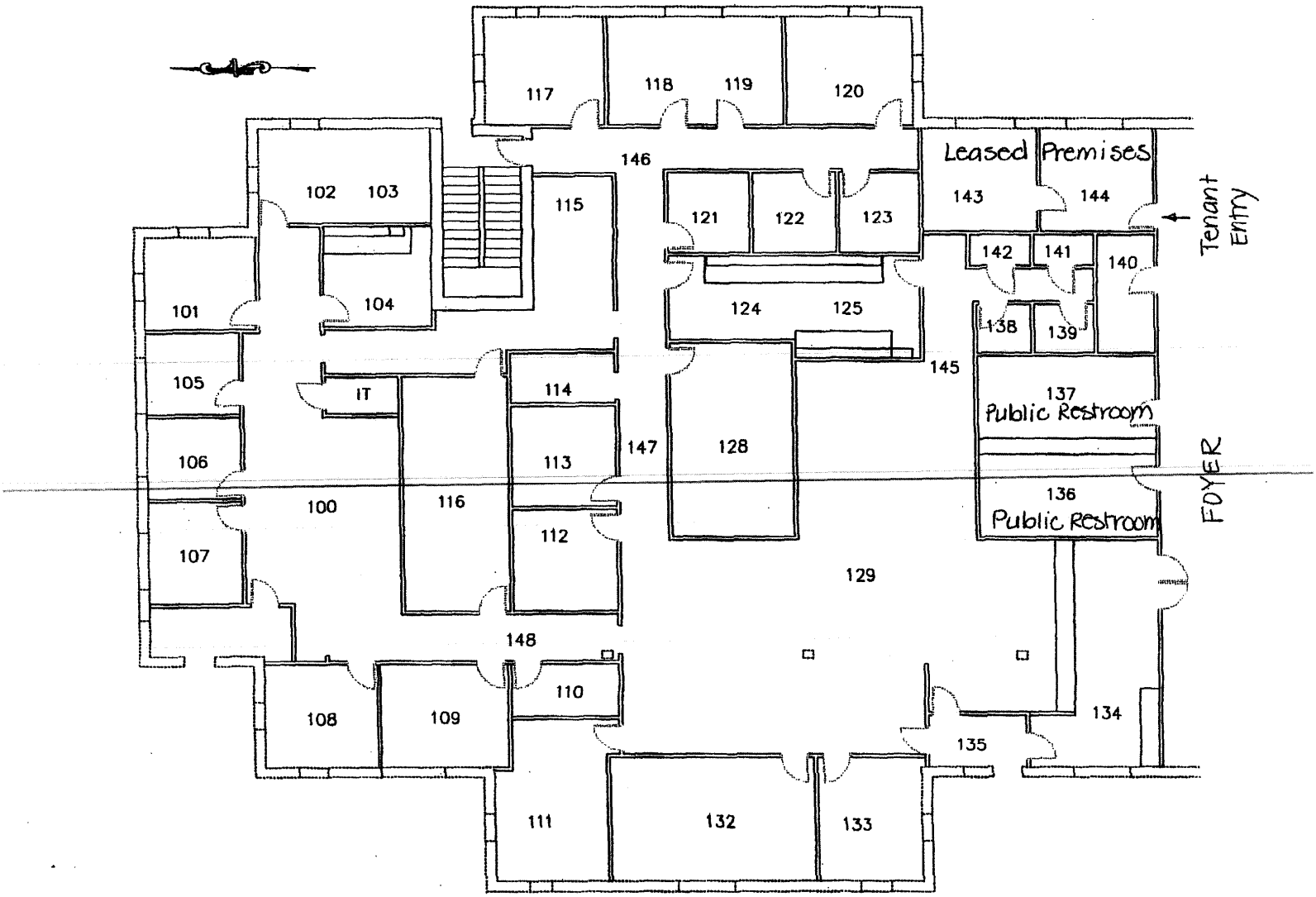
City Recorder

Approved as to legal form:

West Jordan City Attorney

EXHIBIT "A"

Description of the Leased Premises and Ingress/Egress


117
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146
Leased Premises
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Tenant Entry
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104
124
125
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139
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105
IT
114
137
Public Restroom
106
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147
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FOYER
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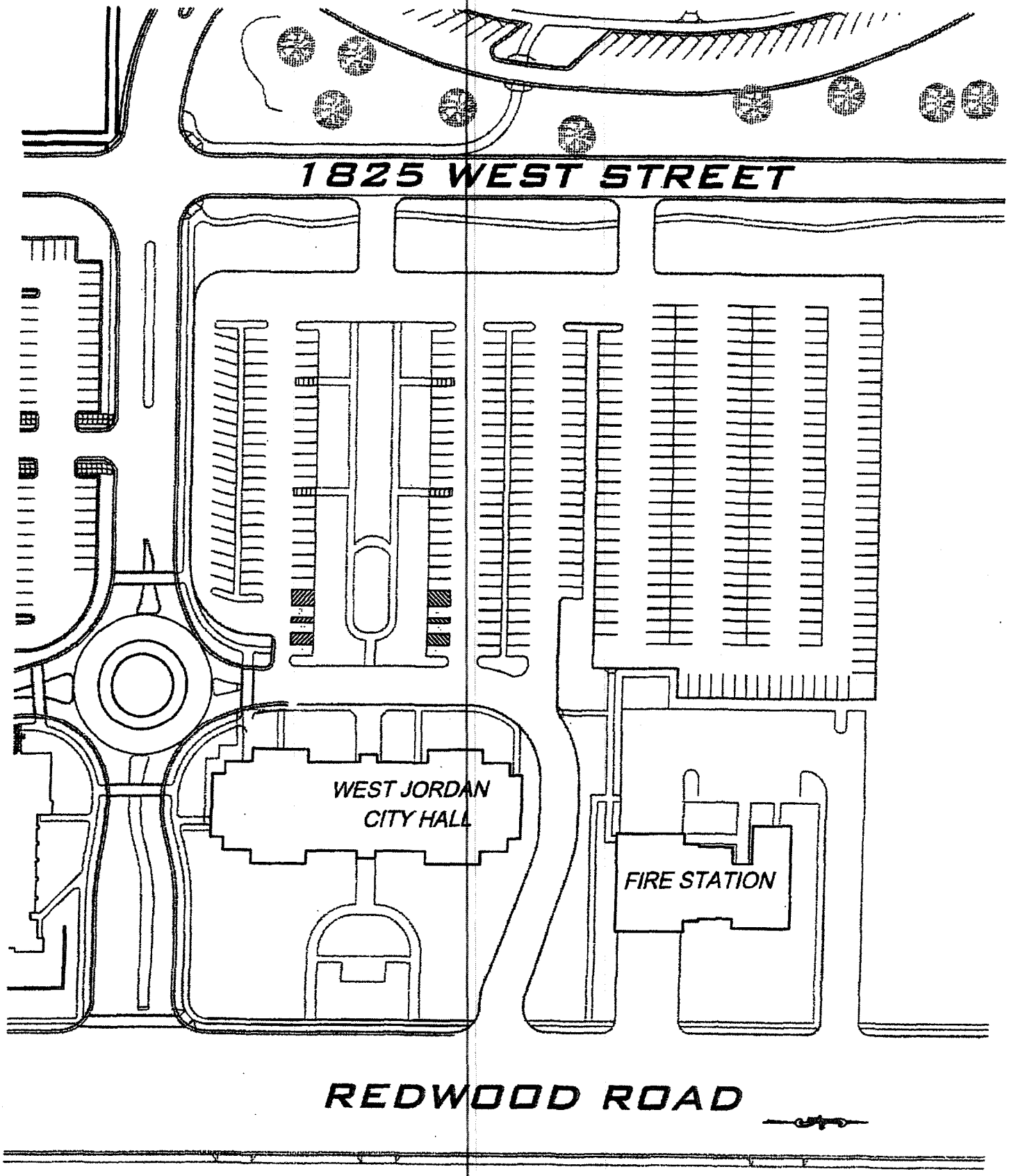
1825 WEST STREET
WEST JORDAN
CITY HALL
FIRE STATION
REDWOOD ROAD