

Staff Summary Report



Council Meeting Date: June 11, 2009

Agenda Item Number: _____

SUBJECT: Request approval of a Lease Agreement between the City of Tempe and Catholic Charities Community Services, East Valley for the property located at 2237 E. Maryland Drive for one year.

DOCUMENT NAME: 20090611cskb01 CATHOLIC SERVICES (0109-25)

SUPPORTING DOCS: Yes

COMMENTS: N/A

PREPARED BY: Kathy Berzins, Deputy Community Services Manager, (Ext. 5464)

REVIEWED BY: Tom Canasi, Community Services Department Manager, (Ext. 5305)

LEGAL REVIEW BY: David Park, Assistant City Attorney, (Ext. 8907)

DEPT APPROVAL: Tom Canasi, Community Services Manager, (Ext. 5305)

FISCAL NOTE: Lessee pays to the City the sum of one dollar per year as well as utility costs.

RECOMMENDATION: Staff recommends approval of the Lease Agreement.

ADDITIONAL INFO: This is a continuation of a lease agreement between the City of Tempe and Catholic Charities. The property is utilized for transitional housing services for women and children recovering from domestic violence.

The lease agreement is through June 30, 2010 and permits with written City approval by the City Manager or his designee two lease extensions for three years each term. The extensions would expire on June 30, 2013 and on June 30, 2016. The current lease agreement with Catholic Charities Community Services, East Valley expires on June 30, 2009.

LEASE
C2009-

THIS LEASE made and entered into this _____ day of _____, 2009, by and between the City of Tempe, Arizona, a municipal corporation, hereinafter referred to as Lessor, and Catholic Charities Community Services hereinafter called Lessee;

WITNESSETH

1. Leased Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, a certain building and property located at 2237 East Maryland Drive, Tempe, Arizona 85281 and located on Assessor's Parcel No. 135-40-36E in Tempe, Arizona.

2. Term. The term of this lease shall expire on June 30, 2010. Provided that the Lessee is not in default hereunder and has performed in a manner reasonably satisfactory to the City of Tempe, the Lessee by written notice to the City six (6) months prior of the expiration date of any term hereof and upon written approval of the City, this lease may be extended for two (2) additional terms of three (3) years for each term with the extensions expiring on June 30, 2013 and on June 30, 2016. Any such extensions may be granted upon terms and conditions which are substantially similar to the terms and conditions hereof and mutually agreeable to the parties hereto. The written approval of the City may be given by the City Manager or his designee. Should the Lessee hold over beyond any express term provided by this agreement with the consent, express or implied, of Lessor, such holding shall be for month-to-month only, subject to the terms, conditions and payments required by this agreement, and shall not be considered a renewal of this Lease for any other term.

3. Rent. Lessee shall pay to Lessor as rent for the leased Premises the sum of ONE DOLLAR (\$1) per year. The first payment shall be payable in advance on the first day of the term of this Lease, and subsequent payments shall be payable in advance on the same day of each consecutive year thereafter during the term of this Lease. The rent shall be paid without notice, demand, deduction or any set-off whatsoever, at the address of the Lessor, City of Tempe, Community Services, Social Services, 3500 S. Rural Road, Tempe, Arizona, 85282, or to any other place designated by Lessor in writing.

4. Use. Lessee shall use the Leased Premises only for the purpose of operating Transitional Housing pursuant to and in conformity with the rules, regulations and by-laws of Catholic Charities Community Services dba Catholic Charities Community Services, East Valley. The Leased Premises shall not be used for any purposes in violation of any zoning or other laws or of any regulation of any governmental body having jurisdiction over the Leased Premises.

5. Utilities. Lessee shall pay all utilities, including water, sewer, refuse, electric, gas, and telephone. The Lessee shall obtain separate metering for all such utility charges and shall, at its own expense, see that such separate meters are installed on the Leased Premises. The Lessee shall keep the Leased Premises free of any liens created by the Lessee's failure to make such utility payments.

6. Insurance. (a) During the term of this Lease, Lessee at Lessee's expense shall procure and maintain insurance against claims for injury to persons, wrongful death, and damages to property occurring upon, in, about, or to the Leased Premises which may arise from or in connection with

leasing the premises hereunder by the Lessee, his agents, representatives, employees, or subcontractors.

(b) Such insurance will be obtained and evidence thereof delivered to Lessor prior to any occupancy of the Leased Premises by Lessee or upon the commencement of the Lease term, whichever shall first occur, and Lessee shall pay the renewal premiums on such insurance not less than ten (10) days prior to expiration of such insurance and shall deliver evidence of such renewal to Lessor.

(c) Lessee shall maintain limits no less than:

(1) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.

(2) Workers' Compensation and Employers Liability: Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona.

(3) Property Insurance: Property Insurance against all risks of loss to the Leased Premises, including any tenant improvements or betterments, with full replacement cost with no coinsurance penalty provision. Coverage shall be extended to include 12 months loss of rental coverage

(d) Lessee shall not commit or permit any acts or failure to act in or about the Leased Premises which may in any way impair or invalidate such policy or policies of insurance for the building. Lessee shall cooperate with Lessor in connection with the collection of any insurance monies that may be due in the event of loss and shall execute and deliver to Lessor such proofs of loss and other instruments as may be required for the purpose of facilitating the recovery of any such insurance monies that may be due in the event of loss and shall execute and deliver to Lessor such proofs of loss and other instrument.

(e) If the Leased Premises are wholly or partially destroyed by fire or other casualty, Lessee shall give immediate notice thereof in writing to Lessor, and shall notify Lessee's Insurance Carrier with full details and submit a notice of claim. Lessee shall fully cooperate with Lessor in filing all necessary proofs of claim with insurance companies. The proceeds of such insurance applicable to the Leased Premises shall be paid to Lessor, and Lessor shall rebuild, repair or restore the Leased Premises to their condition at the time immediately preceding the loss or damage; provided, however, that Lessor may elect to retain such insurance proceeds other than proceeds relating to the Lessee's personal property and shall not be required to rebuild, repair or restore the Leased Premises. This lease shall be terminated if such damage or destruction occurs within the last twelve (12) months of the term of this lease, or if more than one-third (1/3) of the Leased Premises is damaged or destroyed. In the event of total destruction of the Leased Premises, the rent shall abate during the period of rebuilding, repair or restoration by Lessor or in the event of partial destruction of the Leased Premises, the rent shall abate pro rate based upon the portion of the Leased Premises rendered unusable during the period if rebuilding, repair, or restoration by Lessor.

(f) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared and approved by the City, but in no instance shall exceed \$25,000. At the option of the City, either

the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, and volunteers, or the lessee shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

(g) Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability Coverage

1.a. The City, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of ownership, maintenance, or use of that part of the premises leased to the Lessee.

1.b. The Lessee's insurance coverage shall be primary as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

1.c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.

(2) Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Lessee.

(3) Property Insurance

The City is to be named as Loss Payee with respect to building coverage and loss of rental coverage.

(4) All Coverages

Each insurance policy required by this contract shall be endorsed to state the coverage shall not be suspended, voided, and/or cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City's Risk Manager.

(h) Insurance Related Requirements: Lessee shall:

(1) Prior to commencement of the Lease, furnish the City with original certificates of insurance, in form and with insurers acceptable to the City's Risk Manager (or designee) which shall clearly evidence all insurance required in this contract and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage except after 30 days prior written notice has been given by certified mail, return receipt requested to the City.

(2) Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.

(3) Replace certificates, policies, and endorsements for any such insurance expiring prior to lease term expiration.

(4) Maintain such insurance from the time Lease commences until termination of the Lease. If insurance is not reinstated, City may at its sole option, purchase insurance for the Lessee and invoice Lessee for the cost of the insurance.

(5) Should any of the required insurance be provided under a claims-made form, maintain such coverage continuously throughout the term of this Lease and without lapse for a period of five years beyond the Lease expiration, to the extent that should occurrences during the Lease term give rise to the claims made after expiration of the Lease, such claims shall be covered by such claims-made policies.

(i) Subcontractors

(1) Lessee shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein for the Lessee.

7. Liability and Indemnification. Lessee shall defend indemnify and hold Lessor harmless from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges, and expenses, including reasonable attorney's fees, which may be imposed upon or incurred by or asserted against Lessor arising from any use, nonuse, or condition of the Leased premises and the appurtenances thereto created by or attributable to Lessee or Lessee's employees, customers, agents, invitees, licensees, guests, or lessees unless due to Lessor's negligence or intentional misconduct. In the event that any action or proceeding shall be brought against Lessor by reason of any claim referred to in this Article, Lessee, upon written notice from Lessor, shall at Lessee's sole cost and expense, resist or defend the same through counsel selected by Lessor. Lessor shall not be liable for any damage to or theft of any personal property owned by Lessee left in or about the Leased Premises.

8. Repairs and Maintenance.

(a) Lessor shall make all necessary repairs to the building exterior that includes walls, doors, windows, roof, and exterior paint.

(b) Lessor shall make all necessary repairs to the electrical system supplying the electrical devices, not to include outlets, switches, lighting fixtures or exhaust fans that shall be repaired by the Lessee.

(c) Lessor shall make all necessary repairs to the hot water heater and the plumbing system not readily accessible for normal maintenance (i.e., under concrete or behind walls). All accessible plumbing problems shall be the sole responsibility of the Lessee including leaking faucets, clearing of drains, and toilets not functioning properly).

(d) Lessor shall make all necessary repairs and provide parts and preventive measures to the evaporative coolers and other HVAC systems. Access will be necessary to change filters on a monthly basis during normal working hours.

(e) Lessor shall repair/replace the following items on a scheduled basis that should be representative of normal use and wear and not due to negligence or damage: carpet and floor tile.

(f) Any requests for repair or maintenance service by the Lessee shall be directed to the City of Tempe Community Services -- Social Services at (480) 350-5400 during normal working hours. After hour and weekend emergencies shall be directed to the Tempe Police Department at (480) 350-8311. A follow-up telephone call shall be made to Community Services -- Social Services on the next business day at (480) 350-5400.

(g) Lessee shall be responsible for all appliances, window coverings, light bulb replacement, security systems, communication systems, TV video systems, all accessible plumbing as described in Paragraph 8.(c), electrical repairs as described in Paragraph 8.(b), interior painting, and normal periodic preventive maintenance necessary to the interior of the building.

(h) Lessee shall be responsible for any damage caused or permitted by Lessee or Lessee's employees, agent, members, licensees, or invitees to the Leased Premises. Lessee shall make any necessary repairs by a qualified contractor or at Lessor's election, Lessor may repair such damage at the expense of Lessee and Lessee shall reimburse Lessor for such expense upon Lessor's demand.

(i) Lessor shall provide regular landscape maintenance and replacement of plant materials.

(j) Lessee shall pick-up and sweep exterior areas of building daily or as needed.

(k) Lessee shall operate and maintain the Leased Premises and provide all furnishings and equipment necessary to the operation not provided by the Lessor. Lessee agrees to keep the building interior in a good state to repair and provide daily janitorial service. Lessee shall keep all areas of the interior of the building in a clean and orderly condition.

9. Lessee's Improvements. Lessee at Lessee's expense may make such alterations and improvements to the interior of the Leased Premises as may be necessary or desirable for the conduct of business of Lessee; provided, however, that Lessee shall make no alterations or improvements which may impair the structural strength of the building of which the Leased Premises are a part or which may conflict with any existing provisions of any mortgages on or against the Leased Premises; and provided, further, that Lessee shall first obtain Lessor's written consent for such alterations and improvements, which consent shall not be unreasonably withheld. Lessor may require, as a condition to consenting to such alterations or improvements, that the work therefore be done by Lessor's own employees or under Lessor's direction, but at the expense of the Lessee. Lessor also may require that Lessee give security that the work will be completed free and clear of liens and in a manner satisfactory to Lessor. Any alteration or improvement made by Lessee shall be completed expeditiously, subject to any delays beyond the control of Lessee, and in compliance with all laws and ordinances and all rules and regulations of any and all governmental authorities having jurisdiction of or over the Leased Premises. All such alterations and improvements shall be and remain the property of Lessee and shall be removed by Lessee at the termination of the Lease. Lessee at its expense shall repair all damages to the Leased Premises which shall have been occasioned by

the installation or removal of lessee's improvements or alterations. Lessor shall not be responsible or liable for any loss of or damage to Lessee's improvements or alterations.

10. Safety. The Lessee shall be solely and completely responsible for conditions of the leased premises, including safety of all persons (including employees) and property during the lease. This requirement shall apply continuously. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Lessee's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations set forth therein.

11. Liens. Lessee shall not permit any liens to be placed on property, but if the Leased Premises or any part thereof, or Lessee's leasehold interest therein, shall at any time during the term of this Lease become subject to any vendor's mechanic's, laborer's, or materialmen's lien based upon the furnishing of material or labor to Lessee, Lessee shall cause the same, at Lessee's expense, to be discharged within forty-five (45) days after notice thereof, unless the lien and the claim occasioning it is litigated in good faith by the Lessee.

12. Nuisance. Notwithstanding anything in this Lease to the contrary, including without limitation the use by Lessee of the Leased Premises in accordance with Paragraph 4 hereunder, Lessee shall not commit or permit any nuisance or other act, whether noise, odor, smoke, sewage, chemical wastes, or otherwise, which may disturb the quiet enjoyment of any other tenants or owners of property in the area. Lessee shall not obstruct or cause to be obstructed any public or private roadways. In the event the Lessee commits or permits any nuisance or act set forth in this Article, the same shall be a material breach of this Lease.

13. Condition of Premises. Lessee shall take the Leased Premises "as is" and in such physical condition as they are upon the commencement of the term of this Lease. Lessor shall not be liable for any damage or injury to either persons or property sustained by Lessee, its agents, employees, guests, invitees, members, licensees, any subtenant, or any other person or entity whatsoever, due in any way to the condition of the Leased Premises, including without limitation damage or loss caused by water, sewage, sewer, leaking of pipes or plumbing works, or by robbery or theft, whether such damage or loss be caused or occasioned by any thing or circumstances, whether of a like nature or of a wholly different nature unless due to Lessor's negligence or intentional misconduct. Lessee shall indemnify and hold Lessor harmless from any liability therefore or expenses incurred in defending any claim made against Lessor on account thereof.

14. Assignment: Subletting. Lessee shall not assign this Lease or sublet the Leased Premises, or any part thereof.

15. Legal Expenses. In the event of any suit instituted by either Lessor or Lessee against the other in any way connected with this Lease, or for the recovery of rent or possession of the Leased Premises, the successful party to any such action shall recover from the other party reasonable attorneys' fees and court costs in connection with said suit.

16. Signs. No signs, advertisements or notice shall be placed by Lessee on any part of the outside of the building of which the Leased Premises are a part, whether walls, roofs, windows, doors, or otherwise, except such as shall be approved by Lessor. If such approval by Lessor is given, such signs,

advertisements or notices shall be installed and maintained at lessee's expense and shall conform to all applicable governmental laws, rules and regulations.

17. Right of Entry. Lessor may, during the term of this Lease, at all reasonable times and during usual business hours, enter upon the Leased Premises for the purpose of inspecting the same, and in addition may, at any time within the last six (6) months of the term of this Lease, show the Leased Premises to prospective lessees or prospective purchasers after 48 hours notice to Lessee.

18. Surrender. Upon the expiration of the term of this Lease, or upon the earlier termination of this Lease, Lessee shall surrender peaceable possession of the Leased Premises in the same condition as the Leased Premises were in at the commencement of this Lease, reasonable wear and tear and acts of God excepted.

19. Notices. Any notice required or permitted to be given or served by either party to this Lease shall be deemed to have been given or served when made in writing, by certified or registered mail, addressed as follows:

Lessor: City of Tempe
Community Services, Social Services
3500 S. Rural Road
Tempe, AZ 85282

Lessee: Catholic Charities Community Services
4747 N. 7th Avenue
Phoenix, Arizona 85013

All rental payments shall be made to the Lessor at the above address. The addresses may be changed from time to time by either party by serving notices as above provided.

20. Default Remedies.

(20.1) Grace Periods. Lessee shall be deemed in default under this Agreement upon the occurrence of any of the following events:

- A. The failure to pay any amount due under this Agreement and failure to cure such non-performance within ten (10) days after written notice from Lessor; or
- B. The failure to keep effective and in place the insurance required by paragraph 6. Lessor may terminate this lease immediately or upon a stated time period to cure this default as set forth in a written notice by Lessor.
- C. The failure to perform any other term or condition of this Agreement and the failure to cure such non-performance within thirty (30) days after receipt of notice thereof from Lessor; or
- D. If such non-performance cannot reasonably be cured within such 30-day period, Lessee fails to commence to cure the same within such 30-day period and thereafter

fails to diligently pursue and complete the cure as soon as reasonably possible thereafter.

20.2 Remedies. Upon the occurrence of any default, in addition to any other rights and remedies arising by operation of law, Lessor shall have the right to terminate all rights of Lessee under this Agreement, in which event Lessee shall immediately remove all of Lessee's property from the Premises at Lessee's expense.

21. Nondiscrimination. The Lessee shall not discriminate against any individual in any way on account of such individual's race, color, religion, sex, age, handicap, or national origin.

22. Broker. Lessor and Lessee each represent to the other that there are no broker's commissions in connection with the Lease.

23. No Waiver. Any waiver by any of the parties hereto of any breach of this Lease or of any right of any party shall not constitute a waiver of any other breach or of any other right.

24. Entire Agreement. This Lease contains the entire agreement between the parties hereto, and no term or provision hereof may be changed, waived, discharged, or terminated unless the same be in writing executed by both parties hereto.

25. Applicable Law. The laws of Arizona shall govern the construction, performance, and enforcement of this Lease.

26. Time of Essence. Time shall be of the essence in the performance of every term, covenant, and condition of this Lease.

27. Headings. The Article headings contained herein are inserted only for convenience of reference and are in no way to be construed as a part of this Lease or as a limitation of the scope of the particular Articles to which they refer.

28. Benefit. This Lease shall insure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrator, legal representatives, successors, and assigns.

29. Quiet Enjoyment. So long as Lessee is not in default under the terms of this Lease, Lessee shall be entitled to the quiet enjoyment and use of the Leased Premises according to the terms of this Lease.

30. Termination. The Lessor and the Lessee each reserve the right to terminate this Lease agreement without cause at any time during the Lease period upon giving ninety (90) days written notice. In addition, Lessee is hereby placed on notice of the termination provisions contained in A.R.S. §38-511.

31. Taxes. Lessee agrees that it is solely responsible for any and all sales, use, privilege license, excise tax, possessory interest or any other such tax which may be imposed because of Lessee's use and occupancy of the premises pursuant to this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease this _____ day of _____, 2009.

LESSOR:

CITY OF TEMPE

Hugh Hallman
Mayor

LESSEE:

CATHOLIC CHARITIES COMMUNITY SERVICES

James J. Sluit
NAME
Title Chief Operating Officer'

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ATTEST:



Betty McNulty
5/26/09