

LEASE

THIS LEASE made and entered into this _____ day of _____, 2011, by and between the City of Tempe, Arizona, a municipal corporation, hereinafter referred to as Lessor or City, and Tempe Community Action Agency, Inc., an Arizona non-profit organization, hereinafter called Lessee or TCAA;

WITNESSETH

1. Leased Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor certain interior and exterior space at the Escalante Community Center, building and property located at 2150 East Orange, Tempe, Arizona 85281. The space that is leased is hereby identified on the site map attached hereto as *Exhibit "A"* which is incorporated herein by this reference, and shall be defined as the "Leased Premises".

2. Term. The term of this lease shall expire on June 30, 2021. 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 one (1) additional term of five (5) years for each term with the extension expiring on June 30, 2026. 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 providing office and program space to TCAA to promote health and human services in Tempe and the surrounding area pursuant to and in conformity with rules, regulations and by-laws of TCAA. TCAA conducting these programs while maintaining its non-profit status is important to Tempe and constitutes additional consideration for this Lease. In the event that TCAA ceases to operate as a non-profit entity under the I.R.C. 501(c)(3), it shall be considered a material breach of the Lease and may result in termination of the Lease by the City, in the City's sole discretion. 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. TCAA agrees to abide by all City Community Services and Escalante Community Center policies, rules and/or guidelines in its use of the Leased Premises, attached hereto and incorporated herein by this reference as *Exhibit "B"*.

5. Utilities. City shall pay all utilities, including water, sewer, refuse, electric, gas, and local

telephone. TCAA shall pay all long distance telephone and facsimile charges, Wi-Fi, telecommunication, cable and internet charges, and shall keep the Leased Premises free of any liens created by the Lessee's failure to make such payments.

6. Insurance.

6.1. Minimum Limits of Insurance. Lessee shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain for the mutual benefit of the City and Lessee, general public liability insurance against claims for bodily injury, death or property damage, products/completed operations and personal and advertising injury, which insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of Lessee or its officers, agents, representatives, employees or servants during all times that this License and Agreement is in effect. Insurance limits are inclusive of umbrella coverage. Lessee shall maintain limits no less than those stated herein for each type of insurance.

6.2. General Requirements. Lessee's insurance of the types and amounts required in this section shall be from companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized to do business in the State of Arizona.

6.2.1. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Lease Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement and may result in termination of this Agreement.

6.2.2. The insurance coverage, except workers' compensation and professional liability, required by this Lease Agreement, shall name City, its agents, representatives, directors, officials, and employees, as additional insureds, and shall specify that insurance afforded Lessee shall be primary insurance, and that any self insured retention and/or insurance coverage carried by City or its employees shall not contribute to the coverages provided by Lessee. This provision and the naming of the City as an additional insured shall not be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(ies).

6.2.3. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials and employees for any claims arising out of Lessee's acts, errors, mistakes, omissions, work or service.

6.2.4. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of Lessee who shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be

noted on the Certificate of Insurance. City, at its option, may require Lessee to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable letter of credit. Self-insured retentions of up to \$1,000,000 (One Million Dollars) shall be accepted.

- 6.2.5. All policies shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to City.
- 6.2.6. Lessee shall be responsible for ensuring that the City is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation or expiration of any of the policies as required by this License and Agreement.
- 6.2.7. 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 the requirements stated herein for Lessee.
- 6.2.8. City reserves the right to periodically review said insurance limits to ensure coverage based on market and risk requirements throughout the effective term of this Agreement.

6.3. Proof of Insurance-Certificates of Insurance.

- 6.3.1. Prior to or upon execution of this Agreement, Lessee shall furnish to City Certificates of Insurance issued by Lessee's agent or broker, as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates. Such certificate(s) shall include the endorsement listing the City as an Additional Insured pursuant to Section 6.2.2 and shall be attached as *Exhibit "C"* to this Agreement.
- 6.3.2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City ten (10) business days prior to the expiration date.
- 6.3.3. All Certificates of Insurance shall identify the policies in effect on behalf of Lessee, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the Agreement documents. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance carrier or agent. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this Agreement shall be sent to:

City of Tempe
Attn: Risk Manager
20 E. 6th St., 2nd Floor
Tempe, AZ 85281

with copy to:
City of Tempe
Attn: Community Services, Social Services
3500 S. Rural Road
Tempe, AZ 85282

6.3.4. City reserves the right to request and to receive, within ten (10) business days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Lessee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Lessee from, or be deemed a waiver of City's right to insist on, strict fulfillment of Lessee's obligations under this Agreement.

6.4. Required Coverage.

6.4.1. Such insurance shall protect Lessee from claims set forth below that may arise out of or result from the operations of Lessee under this Agreement and for which Lessee may be legally liable, whether such operations be by Lessee or by a consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG 00 01 10 01 and CG 20 37 07 04 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

6.4.2. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Lessee's employees;

6.4.3. Claims for damages insured by usual personal and advertising injury liability coverage;

6.4.4. Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6.4.5. Claims involving contractual liability insurance applicable to Lessee's obligations under the Indemnification Agreement.

6.5. Commercial General Liability - Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written for not less than \$5,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000 per occurrence and an aggregate of \$10,000,000 in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20 10 10 01 and CG 20 37 07 04, and shall include coverage for Lessee's completed operations and products.

- 6.6. Worker's Compensation and Employer's Liability. Lessee shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Lessee's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1 million for each accident, \$1 million disease coverage for each employee, and \$1 million disease policy limit. In case any work is subcontracted, Lessee will require the subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required of Lessee.
- 6.7. Automobile Liability. If Lessee owns and/or operates vehicles in Arizona, Lessee shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$5 million each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the Lessee's work. Coverage shall be at least as broad as coverage Symbol 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001 0306, or any replacements thereof). Such insurance shall include coverage for pollution for upset/overturn/collision of the automobile(s) and loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5 million per accident for bodily injury and property damage.

7. Liability and Indemnification. To the fullest extent of the law, Lessee shall defend, indemnify and hold harmless the City, its officers, employees, boards, commissions, agents and assigns, individually and collectively, from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges, and expenses, including reasonable attorney's fees, (hereinafter "Claims") which may be imposed upon or incurred by or asserted against the City arising from any use, nonuse, act, omission, 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, patrons, volunteers and/or lessees, or any other person for whose acts, errors, mistakes, or omissions Lessee may be legally liable and from any Claims or amounts arising or recovered under workers compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of Lessee, its agents, employees or representatives, to fulfill Lessee's obligations under this Lease Agreement, whether resolution of the above Claim(s) proceeds to judgment or not. In the event that any action or proceeding shall be brought against Lessor by reason of any claim referred to in this Section 7, Lessee, upon written notice from City, shall at Lessee's sole cost and expense, defend the same through counsel selected by the City. Lessor shall not be liable for any damage to or theft of any personal property owned, leased or used by Lessee left in, on or about the Leased Premises. The provisions of this Section 7 shall survive termination of this Lease Agreement.

8. Repairs and Maintenance.

- 8.1. City shall make all necessary repairs to the building exterior and interior resulting from ordinary wear, including walls, doors, windows, roof, and exterior paint. City also agrees to make repairs of the existing City telephone equipment provided to TCAA for its use, resulting from ordinary wear and the uses contemplated herein. Requests for maintenance shall be directed to the Escalante Community Center Social Services Supervisor or designee.

- 8.2. Lessee shall be solely responsible for any damage caused or permitted by TCAA or its employees, agents, volunteers, licensees, invitees, or officers, to the Leased Premises. In the event of such damage, TCAA shall make any necessary repairs by a licensed contractor or at City's election, City may repair such damage at the expense of TCAA and TCAA shall reimburse City for such expenses upon City's demand. City shall be solely responsible for any damage caused or permitted by City, to personal property of TCAA on the Leased Premises, as listed on *Exhibit "D"*, attached hereto and incorporated herein by this reference. *Exhibit "D"* may be revised from time to time upon the agreement of the City Social Services Manager and TCAA.
- 8.3. Lessee shall operate and maintain the Leased Premises and provide all furnishings and equipment necessary to the operation not provided by the City. Lessee shall keep all areas of its assigned interior and exterior space of the Leased Premises in a clean and orderly condition, and maintain such areas to conform to all City requirements.
- 8.4. City shall provide regular interior custodial services for the Leased Premises, in keeping with the standard and methodology used for City buildings, with interior office space, recycling and solid waste collection excepted. 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 improvement 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 itself with the aforementioned safety provisions shall not relieve it 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 the terms herein, 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 Section, 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 as specified herein, 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 standard U.S. mail, certified or registered mail, or facsimile, addressed as follows:

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

Lessee: Tempe Community Action Agency
3500 South Rural Road
Tempe, Arizona 85282

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:

20.1.1. The failure to pay any amount due under this Agreement and failure to cure such non-performance within thirty (30) days after written notice from Lessor; or

20.1.2. The failure to keep effective and in place the insurance required by this Lease Agreement. 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.

20.1.3. 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

20.1.4. 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 Agreement.

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 or remedy available by law or in equity.

24. Entire Agreement. This Lease Agreement 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. Such amendment or addendum may be signed by the City Manager or his designee.

25. Applicable Law. The laws of Arizona shall govern the construction, performance, and enforcement of this Lease Agreement. All litigation shall be initiated in the Superior Court of Maricopa County, State of Arizona.

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

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 term or any extension period upon giving ninety (90) days written notice, or upon the mutual agreement of the parties. Agreement may be provided for purposes of this Section on behalf of the City by the City Manager or his designee. 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 applicable 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 Lease Agreement.

32. Counterparts. This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the

same instrument and it shall not be necessary that any single counterpart bear the signature of all parties.

33. Termination for Non-Appropriation of Funds. In no event shall the City be obligated, liable or responsible for performance of the obligations set forth herein, any provision of this Lease Agreement, or any expenses incurred by Lessee in securing this Lease Agreement (including but not limited to purchasing insurance coverage or other security), at any time, including prior to or following City Council's approval, should funds not be appropriated by the City through its Council or staff, in order to complete the term or any extension term of the Lease Agreement. In the event that funds are not appropriated to meet or complete this Lease Agreement term or any extension thereof, then City shall immediately provide notice to Lessee of such non-allocation and terminate the Lease Agreement. City shall incur no resulting liabilities or penalties for termination under this Section.

34. Legal Compliance. To the extent applicable, Lessee hereby agrees to fully comply with federal and Arizona state law concerning employment including but not limited to, the Legal Arizona Workers Act (LAWA) and all amendments thereto, and acknowledges that a breach of this warranty is a material breach of the Lease Agreement, and may result in termination of the Lease Agreement. City retains the right to inspect the documents of any and all employees, contractors, subcontractors and sub-subcontractors performing services relating to the Lease Agreement to ensure compliance with this warranty.

[SIGNATURE PAGE TO FOLLOW]

SIGNED this ___ day of _____, 2011.

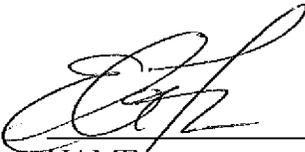
LESSOR:

LESSEE:

CITY OF TEMPE

TEMPE COMMUNITY ACTION AGENCY, INC.

Hugh Hallman
Mayor



NAME
Title *Executive Director*

ATTEST:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney