

LEASE AGREEMENT

This Lease Agreement (this “**Agreement**”) is entered into effect as of _____, 2012 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation (the “**City**”) and Family Services Counseling and Community Resource Center, a nonprofit corporation (the “**Lessee**”). The City and the Lessee are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. The City is the owner of the real property located at 2208 San Leandro Boulevard that is improved with a one-story building and part of a larger parcel known as 401 Marina Boulevard (the “**Property**”). The one-story building located on the Property, together with all the improvements located thereon (the “**Improvements**”) and the adjacent parking lot are hereinafter referred to as the “**Premises**”, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. The Lessee is a nonprofit corporation, the aims and objectives of which are, inter alia, to assist in the strengthening of family life in the community through professional affordable counseling. The purposes and work of the Lessee are of great interest and benefit to, and will promote the general welfare of the people of the City, and the aid of the City in providing a site for the Lessee should be extended therefore.

E. The City and the Lessee previously entered into a lease agreement for the Premises from September 1, 1997 through August 31, 2012, which gave the Lessee an option to lease the Premises for an additional fifteen (15) years if the Lessee notified the City of its intent to exercise this option no less than (1) year prior to expiration. The Lessee notified the City of its intent (10) months prior.

F. The City desires to lease the Premises once again to the Lessee, and the Lessee desires to lease from the City the Premises contingent upon the covenants contained in Exhibit B and herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. RECITALS. The Parties hereby acknowledge the truth of the Recitals set forth above, and such Recitals are hereby incorporated into this Agreement.

2. CONTINGENCY. This Agreement shall only become effective on the above mentioned Effective Date upon the completion of the maintenance items listed in Exhibit B and written approval by the City that such items have been sufficiently completed.

3. LEASEHOLD. The City leases to the Lessee, and the Lessee agrees to lease from the City the Premises. The City leases the Premises in “as-is” condition existing on the Effective Date, and the Lessee acknowledges that, except as otherwise expressly set forth in this Agreement, the City makes no representations or warranties to the Lessee with regard to the condition of the Premises or the fitness or suitability thereof for the Lessee’s purposes.

4. TERM. The term of this Agreement (the “**Term**”) shall commence on the Effective Date, and unless sooner terminated pursuant to the provisions hereof, shall expire on the fifth (5th) anniversary of the Effective Date. There may be one (1) additional five (5) year term extension (“**Extension**”). Six (6) months prior to the end of the Term, the Lessee must give the City written notice of the intent to exercise this Extension.

5. RENT. The Lessee shall pay to the City rent for the Premises (“**Rent**”) in the amount of One Hundred Dollars (\$100) per year. Rent for the entire initial five-year term shall be due and payable in advance on the Effective Date to the City at the address shown in Section 17 or such other place as the City may designate in writing.

6. USE. It is agreed that the Premises shall be used primarily as a community service office, promoting the aforesaid aims and principles of the Lessee. Under no circumstances may alcoholic beverages be kept, distributed, or consumed on the Premises. The Premises shall be used in compliance with relevant local, state, and federal laws and regulations and for no other purpose without the prior written consent of the City. The Lessee shall not encroach on the public right of way adjacent to the Premises or on the portions of the property located at 401 Marina Boulevard that are not part of the Premises.

7. LESSEE’S COVENANTS. The Lessee covenants that it is in good standing and a 501(c)(3) nonprofit organization.

8. TAXES. The Lessee agrees to pay all lawful real and personal property taxes and assessments levied by the State, County, the City or other tax or assessment levying bodies, upon any and all real and personal property or property interest it has or may have in the Premises described herein and any goods, wares, merchandise, equipment and other materials stored or kept therein. This Section is not intended to affect the Lessee’s nonprofit tax exempt status and will apply only in the event the Lessee undertakes activities which create tax liabilities in spite of the Lessee’s nonprofit tax exempt status.

9. MAINTENANCE AND REPAIRS. The Lessee shall at its sole cost and expense, and without any liability to the City, maintain the Premises and Improvements in good order and safe, sanitary and clean condition, reasonable wear and tear excluded. The Lessee shall operate, maintain and manage the Premises (including all landscaping and Improvements thereon) in good order and repair and in neat, clean sanitary and safe condition in compliance with all local, state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Premises. The Lessee is required to maintain (at its sole expense) including, but not limited to: interior and exterior paint and carpet, all electrical conduit, wiring, etc., smoke alarms, public restrooms, roof, gutters, and HVAC (as further specified in Exhibit B). Without limiting the generality of the foregoing, the Lessee shall also be responsible for maintaining landscaping on the Premises designated in Exhibit A and for undertaking at the Lessee’s sole expense, any necessary repair or resurfacing of paved surfaces on the Premises and any repair or maintenance of fencing. Such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. The Lessee shall keep and maintain all portions of the Premises free of accumulation of dirt, rubbish, and graffiti. The Lessee shall take reasonable steps to ensure that access to the Premises is limited to the Lessee and the Lessee’s agents, employees, contractors and subcontractors. The failure of the Lessee to maintain the Premises in accordance with this

Agreement shall, in the City's discretion, be grounds for termination of this Agreement pursuant to Section 18. The Lessee expressly acknowledges and agrees that the City has no obligation to maintain or repair the Premises.

10. UTILITIES. The Lessee shall pay for all utilities furnished to the Premises.

11. LIENS. The Lessee agrees to pay for all labor done or materials furnished in repair, replacement or improvement of the Premises by the Lessee, and to keep the Premises, Improvements and the Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by the Lessee's act or omission.

12. ASSIGNMENT OR SUBLETTING. This Agreement shall not be assigned or transferred, nor shall the Lessee have the right to sublet the Premises or any part thereof without the written consent of the City of San Leandro City Council evidenced by a resolution thereof duly adopted for said purpose.

13. CITY HELD HARMLESS. To the fullest extent allowed by law, the Lessee agrees to defend (with counsel reasonably acceptable to the City) and hold harmless the City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively the "**Indemnitees**") from and against all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation reasonable attorneys' fees and court costs) (all of the foregoing, collectively "**Claims**") resulting from or arising in connection with use of the Premises by the Lessee, its agent and employees, arising out of the construction, repair, alteration, relocation, use and maintenance of said structure and Premises and the Improvements thereon, including without limitation, Claims arising as a result of injury, death or property damage, and Claims arising as a result of or in connection with any release of any Hazardous Material in or about the Premises by the Lessee, or the Lessee's agents, employees, invitees, contractors, or subcontractors, or any other violation of any Environmental Law by the Lessee or the Lessee's agents, employees, invitees, contractors or subcontractors. The indemnity obligations of the Lessee under this shall not extend to Claims to the extent they arise as a result of the Indemnitees' gross negligence or willful misconduct. The Lessee likewise agrees to keep all Improvements upon the Premises insured against loss by fire in an amount to be designated by the City from time to time and in companies to be approved by the City. The Lessee assumes all risk of damage to the Premises, except acts of God.

14. INSURANCE. Until further notice the Lessee shall maintain in force an insurance policy, or policies, which will insure and indemnify the City against liability or financial loss resulting from injury occurring to persons in or about the demised structure and Premises in an amount not less than Two Million Dollars (\$2,000,000) combined single limit applying to bodily and personal injury, death and property damage. Such insurance shall name the City, its officers, officials, agents and employees as additional insured and/or loss payee. Such policy or policies shall be written on an occurrence basis, shall be issued by an insurance carrier licensed to do business in the State of California with current A.M. Best's rating of no less than A: VII, and shall name the City and the Indemnitees as additional insureds. This amount may be increased a reasonable amount from time to time if deemed necessary by the City.

Prior to the Effective Date, the Lessee shall furnish the City with certificates of insurance in form acceptable to the City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify the City of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal, except in the event of non-payment of premium a ten (10) day notice will be provided. Coverage provided by the Lessee shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by the City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. The Lessee shall provide the City with certified copies of the required insurance policies upon the City's request. Lessee shall, at its sole cost and expense, purchase and maintain an insurance policy for property damage to any improvements or modifications of the property, including, but not limited to, furniture and property of the Lessee.

15. LESSEE COVENANTS REGARDING ENVIRONMENTAL MATTERS. The Lessee hereby covenants and agrees that throughout the Term:

(a) The Premises, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and the Lessee shall not cause or permit the Premises or any portion thereof to be in violation of any Hazardous Materials Laws (as defined in Exhibit C).

(b) The Lessee shall not permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall Lessee permit the presence or release of Hazardous Materials in, on, under, about or from the Premises.

(c) Upon receiving knowledge of the same, the Lessee shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Lessee pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations, demands, inquiries, reports, or notices made or threatened by any third party against the Lessee, the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Premises; or (iv) the discovery of any occurrence or condition, by the Lessee, on any real property adjoining or in the vicinity of the Premises classified as "Border Zone Property" under the provisions of California Health and Safety Code section 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Premises pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims.**"

(d) Without the City's prior written consent, which shall not be unreasonably withheld, the Lessee shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Premises (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to

provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.

(e) If the presence of any Hazardous Material on the Premises results in any contamination of the Premises in violation of Hazardous Materials Laws, except to the extent such contamination is caused by the City, the Lessee shall promptly take all actions at its sole expense as are necessary to remediate the Premises as required by law; provided that the Lessee first obtains the City's approval of such actions, which approval may be withheld in the City's reasonable discretion. All costs and expenses of any Remedial Work shall be paid by the Lessee, it being understood that the City shall incur no cost, expense or liability in connection with any Remedial Work. The City shall have the right, but not the obligation, to join and participate in, as a party if it so elects at the City's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims.

16. RIGHT TO ENTER UPON PREMISES. The City, by and through its proper officers, employees, and agents reserves and shall always have the right to enter upon the Premises for the purpose of viewing and ascertaining the condition of same and the operation and maintenance thereof.

17. CITY'S RIGHT TO PERFORM LESSEE OBLIGATIONS. If following notice and the expiration of any applicable cure period as set forth in this Agreement, the Lessee fails to perform its obligations to maintain the Premises in accordance with the standards set forth in this Agreement, the City shall have the right, but not the obligation, to perform such work upon delivery of written notice to the Lessee, and the Lessee shall reimburse the City for all expenditures the City incurs in connection with such work. The City's election to undertake such obligation shall not operate as a waiver of any other right or remedy the City may have pursuant to this Agreement. Notwithstanding any contrary provision herein, the City shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Premises during the term of this Agreement nor shall the City be obligated to maintain or operate the Premises.

18. NOTICE. Until further notice in writing, any demand or notice which either Party shall be required or may desire to make upon or give to the other, shall be in writing. Such demand or notice shall be delivered personally or sent by registered or certified mail, addressed to the respective Parties as follows:

City: Tara Peterson
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

Lessee: Family Services Counseling and Community Resource Center
2208 San Leandro Boulevard
San Leandro, CA 94577

19. TERMINATION. In the event the Lessee shall fail to fulfill the conditions and covenants contained in this Agreement, including the requirement that the Lessee be a nonprofit

organization in good standing, the City, in addition to any other rights or remedies it may have at law or in equity, shall have the option of immediately terminating this Agreement and declaring said Agreement forfeited and the Term (or Extension) ended. In such event, the City may re-enter the Premises and remove all persons and property therefrom and repossess itself of the Premises.

In the event the Lessee chooses not to continue this Agreement upon increases in annual Rent, the Lessee may terminate this Agreement upon thirty (30) days written notice to the City. The City may terminate this Agreement without cause, upon ninety (90) days written notice to the Lessee.

20. NOTICE OF DEFAULT. Notwithstanding anything to the contrary in this Agreement contained, no forfeiture shall be declared by the City unless and until not less than thirty (30) days have elapsed after written notice of failure of the Lessee to perform the terms, agreements, conditions, or covenants herein to be performed by the Lessee, shall have been given to the Lessee by the City, and for forfeiture of said agreement for any default by the Lessee of the performance of any such term, agreement, condition or covenant shall be declared by the City, if such default shall have been cured, or obviated, prior to the expiration of such notice.

21. TIME IS OF ESSENCE. Time is of essence to this Agreement.

22. GOVERNING LAW. The laws of the State of California shall govern this Agreement.

23. SUCCESSORS AND ASSIGNS. Subject to the restrictions on transfer set forth in Section 11, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Lease to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

24. SEVERABILITY. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. ATTORNEY'S FEES. If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing party shall be entitled to recover from the other Party reasonable counsel fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

26. NO THIRD-PARTY BENEFICIARIES; DISCLAIMER OF PARTNERSHIP, LENDER/BORROWER RELATIONSHIP. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the Parties under this Agreement is solely that of landlord and tenant, and it is expressly understood and agreed that the City does not as a result of this Agreement in any way nor for any purpose become a partner of the Lessee or a joint venturer

with the Lessee in the conduct of business or otherwise by the Lessee. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between the City and the Lessee. It is further expressly understood and agreed that this Agreement is not intended to, and shall not be construed to create the relationship of lender and borrower, and the City does not, solely as a result of this Agreement, become a lender to the Lessee.

27. **ENTIRE AGREEMENT.** This Agreement, together with Exhibits A, B and C which by this reference are hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives in the City of San Leandro, State of California, as of the date first written above.

LESSEE:

Family Services Counseling and Community Resource Center, a California nonprofit corporation

BY: _____

PRINT NAME: _____

TITLE: _____

CITY:

CITY OF SAN LEANDRO, a municipal corporation

BY: _____

Chris Zapata, City Manager

ATTEST:

Marian Handa, City Clerk

APPROVED AS TO FORM:

Jayne W. Williams, City Attorney

Exhibit A

Legal Description

Real property in the City of San Leandro, County of Alameda, State of California, described as follows:

Beginning at the intersection of the northwestern line of 2nd Avenue, as said Avenue is shown on the Map of the Cherry Lynn Tract, filed January 24, 1908, in Book 23 of Maps, page 65, Alameda County Records, with the southwestern line of said Tract; thence along said southwestern line, northwesterly, 37.00 feet to a line drawn parallel with and 37.00 feet northwesterly, measured at right angles, from the said line of 2nd Avenue; thence along said parallel line, southwesterly, 98.81 feet, more or less, to a line drawn parallel with and 100.00 feet northeasterly, measured at right angles, from the northeastern line of the Western Pacific Railroad Company right-of-way; thence along last said parallel line, southeasterly, 269.80 feet, more or less, to the said southwestern line of said Tract; thence along last said line northwesterly, 251.06 feet, more or less, to the beginning. The above described parcel of land contains 12,404 square feet, more or less.

Exhibit B

Maintenance Items that Must Be Completed for this Lease to Become Effective

ITEM/LOCATION	COMMENTS	ACTION NEEDED
Int/Ext Paint and carpet	Building interior & exterior were painted in 2009 with CDBG funds; also (N) carpet, energy efficient hot water heat and windows.	None.
Electrical; main office area	<ul style="list-style-type: none"> ▣ Two power strips were daisy-chained together. ▣ Missing cover plate on receptacle. 	<ul style="list-style-type: none"> ▣ Replace two power strips with larger capacity unit. ▣ Install missing cover plate.
Smoke alarms (ceiling mounted)	Batteries are dead.	Replace batteries in all smoke alarm units and put on 2x/year replacement schedule.
Public restroom	<ul style="list-style-type: none"> ▣ Need new p-trap under sink. ▣ Toilet seat cover dispenser needs to be lowered to 40" above finished floor. ▣ Need correct ADA sign (with Braille). ▣ Install lever hardware on sink. 	<ul style="list-style-type: none"> ▣ Install new p-trap. ▣ Modify placement of dispenser. ▣ Install new ADA sign. ▣ Install lever hardware.
Roof/gutters	Gutters on east side have tree debris. Gutters appear intact (no rust or missing sections). No data in Tidemark to indicate when roof was last replaced. Tenant reports no known leaks (staff did not climb up to inspect roof).	Remove tree debris from gutters annually.
HVAC	Staff could not access the heater filter, but the unit appears in good condition.	Ensure that filter is changed annually.
Paving	<ul style="list-style-type: none"> ▣ Parking lot has areas of root intrusion/asphalt up-lift from large trees onsite. ▣ Parking space striping is faded and out of date with current standards. ▣ Handicapped sign is out of date. 	<ul style="list-style-type: none"> ▣ At a minimum, repair damaged asphalt, seal coat asphalt and restripe to current standards. ▣ Install new HC sign in parking lot (nailed to tree).
Landscaping/Fencing	Existing landscaping consists of English ivy growing along the back (eastern) fence; and a variety of slow-growing shrubs along the street frontage and	Site landscaping appears in healthy condition and is not currently overgrown. Periodic maintenance of ivy and shrubs is recommended. Ivy should not be allowed to grow up redwood tree or along cyclone

	<p>back fence. There is a large redwood tree (in front of HC parking area and two large X trees at the egress/frontage.</p> <p><input type="checkbox"/> Existing fencing along eastern property line includes a locked cyclone gate with 3-strand barbed wire and redwood fencing.</p>	<p>fence.</p> <p><input type="checkbox"/> Due to mature landscaping in front of wooden fence, staff could not fully visually assess. No broken slats or leaning posts were noted.</p>
Irrigation/Lighting	<p><input type="checkbox"/> Condition of onsite irrigation unknown (or if any exists). City does not maintain or pay utility bill.</p> <p><input type="checkbox"/> There is one parking lot light located onsite. Site visit occurred during the day so no assessment was made.</p>	<p>None.</p> <p>Lessee to notify City if parking lot light is out and City will repair.</p>

Exhibit C

DEFINITION OF HAZARDOUS MATERIAL, ENVIRONMENTAL LAWS

As used in this License, the term “**Hazardous Material**” means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, infectious waste”, toxic substance”, toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

As used in this License, the term “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).