AGENDA ITEM

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CITY COUNCIL
AGENDA STAFF REPORT

DATE: May 20, 2020

TO: Mayor and City Council

APPROVED BY: David D. Dale, City Manager DD

PREPARED BY: Norma Gerardo, Acting Recreation Manager ng

SUBJECT: Approve and Authorize the City Manager to Sign the Enclosed Non-Exclusive License Agreement with Catholic Charities

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Recommendation:

Consideration to approve and authorize the City Manager to sign the enclosed Non-Exclusive License Agreement with Catholic Charities located at 707 Dool Ave., Calexico, CA, known as the Senior Citizen Hall.

Background:

Catholic Charities provides affordable or free meals to senior citizens at the Senior Citizen Hall. The existing Non-Exclusive License Agreement between the City of Calexico and Catholic Charities expired on June 30, 2019.

Discussion & Analysis:

The new license agreement will be for the period beginning July 1, 2019 through June 30, 2021. The rent for the Senior Citizens Hall for the term of this agreement will be monthly payments of $1,100.00 due at the first day of every month.

Fiscal Impact:

$13,200 in annual rent payments. Funds are deposited to General Fund.

Coordinated With:

Community and Economic Development

Attachment:

1. City of Calexico - Catholic Charities Non-Exclusive License Agreement.

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NON-EXCLUSIVE LICENSE AGREEMENT

This Non-Exclusive License Agreement ("Agreement") is made between the CITY OF CALEXICO ("City"), hereinafter from time to time referred to as "GRANTOR" and CATHOLIC CHARITIES, hereinafter referred to as "GRANTEE."

1. DESCRIPTION

GRANTOR hereby rents to GRANTEE, and GRANTEE hereby rents from GRANTOR that certain real property located at 707 Dool Ave., Calexico, California, otherwise known as the Senior Citizen Hall ("Premises").

2. TERM

GRANTEE has access to the Premises from 9:00am through 1:30pm, Monday through Friday, for the period beginning July 1, 2019 through June 30, 2021.

GRANTEE shall not have access to the Premises outside of the hours listed above without the express written consent of GRANTOR. GRANTEE understands that the Premises may be used for other purposes by the City or other parties outside the hours allotted to GRANTEE under this Agreement.

3. RENT

The rent for the Premises for the term as set forth at Paragraph 2 above, is One Thousand One Hundred Dollars $1,100.00 per month from July 1, 2019 through June 30, 2021. Payment is due and payable on the first day of each month during the term of this Agreement.

All payments shall be delivered to: City of Calexico, 608 Heber Ave., Calexico, CA 92231

GRANTEE hereby acknowledges that late payment by GRANTEE to GRANTOR of rent and other sums due hereunder will cause GRANTOR to incur costs not contemplated by this Agreement. Accordingly, in the event GRANTEE is delinquent in remitting the rent due in accordance with the rent provisions of this Agreement, GRANTEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, GRANTEE shall pay an additional five percent (5%), for total of ten percent (10%). The parties hereby agree that said late charges are appropriate to compensate GRANTOR for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by GRANTOR shall in no event constitute a waiver of GRANTEE's default with respect to such overdue amount, nor prevent GRANTOR from exercising any of its other rights and remedies.

All payments by GRANTEE to GRANTOR shall be by a good and sufficient check. No payment made by GRANTEE or receipt or acceptance by GRANTOR of a lesser amount than the correct amount of rent due under this Agreement shall be deemed to be other than a payment on account

of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and GRANTOR may accept such check or payment without prejudice to GRANTOR's right to recover the balance or pursue any other available remedy.

4. SECURITY/CLEANING DEPOSIT

A security/cleaning deposit of nine hundred fifty dollars ($950) shall be paid on execution of the Agreement ("Deposit"). The Deposit shall be held until the return of keys. Costs incurred by the GRANTOR to return the Premises to the same condition as prior to the commencement of this Agreement shall be deducted from the Deposit.

5. PARKING

GRANTEE's use of the property shall include the parking at the Premises.

6. USE AND OCCUPANCY

GRANTEE is renting the Premises in its present condition. GRANTEE shall use and occupy the Premises for the purpose of as noted on Exhibit "A" herein incorporated into this Agreement. The Premises shall be used for no other purpose without the written consent of GRANTOR.

7. UTILITIES

GRANTOR shall, at its sole expense, pay all utilities and services furnished to the Premises during the term hereof. In the event GRANTEE desires telephone or other communication available at the Premises, GRANTEE shall pay all such expenses.

8. DAMAGES

GRANTEE is responsible for and shall reimburse the GRANTOR for any personal injury or property damage, or loss or liability of any kind incurred by GRANTOR as a result of any of the activities of GRANTEE or of GRANTEE'S guests or members, incurred in connection with GRANTEE'S use of the Premises. This includes, but is not limited to, cost to have chairs cleaned, tables repaired, and custodial time to clean the Premises if needed.

9. HOLD HARMLESS

GRANTEE shall defend, hold harmless, and indemnify City, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including, but not limited to, reasonable attorney's fees retained by City, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees by reason of any person's or persons' bodily injury, including death, or property (including property of City) being damaged by the negligent acts, willful acts, or errors or omissions of the GRANTEE or any person employed under GRANTEE, or any other individual in any capacity related to arising out of the use of the Premises as set forth in Item 6 above, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of City.

10. INSURANCE

At the sole discretion of the City, upon execution of this Agreement GRANTEE may be required to provide proof of insurance. Insurance coverage must be from an insurance carrier authorized to transact business in the State of California and maintain continuously during the term of this Agreement. Commercial Liability Insurance and other insurance necessary to protect the City and the public with limits of liability of not less than one million dollars ($1,000,000) combined single limit bodily and property damage; such insurance shall be primary as to any other insurance maintained by the City. All insurance shall include an endorsement or an amendment to the policy of insurance which names City of Calexico, its elected officials, officers, employees, agents, and volunteers as additional insured and provides that the coverage shall not be reduced or canceled without thirty (30) days written prior notice certain to the City.

11. RESPONSIBILITY OF GRANTEE

The GRANTEE agrees to assume full responsibility for the conduct of its members, agents, participants, customers, employees and guests, and all other persons who visit or use the facility in connection with GRANTEE's rental thereof.

12. TERMINATION

Thirty (30) days written notice. In addition, the GRANTOR may immediately terminate this Agreement, without further notice, if GRANTOR does not receive payment of rent by the 15th of the month on which rent is due.

13. NOTICES

All notices required by this Agreement to be given to either party may be given personally or by depositing the same in the United States mail, postage prepaid, and addressed to either party as set forth below and, in that event, notice shall be deemed to have been given three (3) days after mailing.

If to GRANTOR:	City Manager 608 Heber Avenue Calexico, CA 92231 Finance Director 608 Heber Avenue Calexico, CA 92231
If to GRANTEE:	Dr. Robert Moser Executive Director P.O. Box 121831 San Diego, CA 92112

14. ASSIGNMENT, SUBAGREEMENT, ENCUMBRANCE

GRANTEE shall not encumber this Agreement, the Premises thereof and the improvements thereon by a deed of trust, mortgage, or any other security instrument without the express written consent of GRANTOR, obtained in each instance in accordance with GRANTOR policies. Furthermore, neither the whole nor any part of the Premises nor any of the rights or privileges granted by this Agreement shall be assignable or transferable in any way without such consent. Nor shall GRANTEE grant any permission to any other person to occupy any portion of the Premises without such consent. Any such purported assignment, transfer, subagreement, encumbrance, or permission given without such consent shall be void.

15. INUREMENT

Subject to the restrictions on assignments as herein contained, this Agreement shall inure to the benefit of, and shall be binding upon the assigns, successors in interest, personal representatives, estates, and heirs of the respective parties hereto.

16. POSSESSORY INTEREST

California Revenue and Taxation Code Section 107.6 requires that every state or public entity Agreement include a paragraph that states that GRANTEE recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that the GRANTEE may be subject to the payment of property taxes levied on such interest. GRANTEE believes and may very well be correct, that no tax may be assessed against its consular post because it is exempt. Regardless of whether or not a tax can be assessed, this provision is left in the Agreement merely to satisfy the requirements of California Revenue and Taxation Code. GRANTOR acknowledges that GRANTEE may be exempt from such taxation.

17. DEFAULT

If GRANTEE defaults on any terms, covenants, or conditions of the Agreement, and said default is not cured within ten (10) days after written notice thereof, this Agreement shall immediately terminate and GRANTEE shall have no further rights hereunder and shall immediately remove from said Premises; and GRANTOR may immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said Premises. GRANTOR shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from GRANTEE in the amount necessary to compensate GRANTOR for all the detriment and damages proximately caused by GRANTEE's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom.

18. LIENS

GRANTEE shall keep the Premises free and clear of any mechanics liens and and/or materialmen's liens arising out of any improvements, repairs, or alterations to the Premises performed by or on behalf of GRANTEE. GRANTEE agrees that it will at all times indemnify, defend and hold harmless the GRANTOR, its elected officials, officers, employees, agents, and volunteers from and against any and all mechanics' liens and/or materialmen's liens arising out

of, related to, or in any way connected with, directly or indirectly, any improvements, repairs, or alterations to the Premises performed by or on behalf of GRANTEE.

19. SUBORDINATION

GRANTEE accepts this Agreement subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Premises, or upon the building and to any renewals, refinancing and extensions thereof, but GRANTEE agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Agreement on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. GRANTOR is hereby irrevocably vested with full power and authority to subordinate this Agreement to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Premises, and GRANTEE agrees upon demand to execute such further instruments subordinating this Agreement or attorning to the holder of any such liens as GRANTOR may request. In the event that GRANTEE should fail to execute any instrument of subordination herein required to be executed by GRANTEE promptly as requested, GRANTEE hereby irrevocably constitutes GRANTOR as its attorney-in-fact to execute such instrument in GRANTEE's name, place and stead, it being agreed that such power is one coupled with an interest. GRANTEE agrees that it will from time to time upon request by GRANTOR execute and deliver to such persons as GRANTOR shall request a statement in recordable form certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Agreement

20. BANKRUPTCY

In the event that a petition is filed by or against GRANTEE (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of GRANTEE's property or for GRANTEE's interest in this Agreement; or (iv) for the reorganization or modification of GRANTEE's capital structure, this Agreement shall at the option of GRANTOR immediately terminate and all rights of GRANTEE hereunder shall immediately cease and terminate.

21. HOLDOVER

This Agreement shall terminate without further notice at expiration of the term. Any holding over by GRANTEE after either expiration or termination shall not constitute a renewal or extension or give GRANTEE any rights in or to the Premises. If GRANTEE, with the prior written consent of GRANTOR, remains in possession of the Premises after expiration of the term or after the date in any notice given by GRANTOR to GRANTEE terminating this Agreement, then such possession by GRANTEE shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice which may be given at any time by either party.

The foregoing provisions of this section are in addition to and do not affect GRANTOR's rights hereunder or as otherwise provided by law or in equity. GRANTEE shall indemnify and hold GRANTOR harmless from any loss or liability resulting from any delay by GRANTEE in

surrendering the Premises, including, without limitation, any claims made by any succeeding GRANTEE based on such delay.

22. ACCEPTANCE OF PREMISES

By accepting and executing this Agreement, GRANTEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the Premises. GRANTEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this Agreement. GRANTEE also acknowledges that the Premises are in the condition called for by this Agreement, that GRANTOR has performed all work with respect to Premises, and that GRANTEE does not hold GRANTOR responsible for any defects in the Premises. GRANTEE furthermore accepts and shall be responsible for any risk of harm to any person and property, including without limitation employees of GRANTEE, from any latent defects in the Premises.

23. ATTORNEY'S FEES AND COSTS

The remedies provided herein are cumulative and may be enforced separately or concurrently. Should GRANTOR be compelled to institute any legal action to enforce any of the terms, covenants or conditions hereof, then in the event of the termination of said proceedings in the GRANTOR's favor, the GRANTEE hereby agrees to pay such sums as the court may deem reasonable on account of the GRANTOR's attorney's fees.

24. JURISDICTION AND VENUE

This Agreement shall be governed by the laws of the State of California. Any disputes arising to litigation shall be resolved in the Superior Court of Imperial County.

25. REPRESENTATIONS AND WARRANTIES

GRANTOR and GRANTEE represent and warrant to each other that they have power adequate for the execution, delivery and performance of their respective obligations under this Agreement.

26. ENTIRE DOCUMENT

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it as it relates to all prior and contemporary agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties. No waiver of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, nor shall it be binding unless executed in writing by the party making the waiver.

27. SEVERANCE

If any provision of this Agreement is determined to be void by a court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the

EXHIBIT A

USE AND OCCUPANCY

The use of the Premises by GRANTEE shall be limited to the providing very affordable or free meals to senior citizens. This includes use of the kitchen at the Premises, along with the hall areas for serving meals. In conjunction with use of the Premises, GRANTEE shall also:

- Clean up kitchen, hall and entire Premises after each use
- Set up tables and chairs
- Secure the facilities during and after use
- Set up/maintain an extra refrigerator in kitchen area at the sole expense of GRANTEE
- Set up/maintain an ice machine in kitchen area at the sole expense of GRANTEE
- Lock up all supplies used by GRANTEE

GRANTOR shall provide:

- Use of Premises, including kitchen facilities.
- A number of tables and chairs
- A key to access the Premises
- Use of a designated storage closet

provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____ 2020.

GRANTEE

Robert Moser

By:_____

Signature

Catholic Charities, Diocese of San Diego

_____

Date

GRANTOR – CITY OF CALEXICO

_____

Signature

_____

Date