

Project: Foodbank at 4554 Hollister Ave., SB
APN: 061-040-019, -020, & -021 (Ptn)
Folio: 002270
Agent: GA

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT, hereinafter "Second Agreement," is entered into, by and between

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY,"

and

FOODBANK OF SANTA BARBARA COUNTY, a California non-profit corporation, hereinafter referred to as "LESSEE,"

with reference to the following:

WHEREAS, COUNTY is the owner of that certain real property and improvements located at 4554 Hollister Avenue, Santa Barbara, California, in the unincorporated area of the COUNTY of Santa Barbara, and also known as County Assessors Parcel Nos. 061-040-019, -020 and -021 (hereinafter "Property"); and

WHEREAS, LESSEE a non-profit corporation whose mission is to provide nourishment to those in need by acquiring and distributing safe nutritious foods via local agencies and providing education to solve hunger and nutrition problems in Santa Barbara County; and

WHEREAS, COUNTY has been leasing "Property" since December 17, 1984, to LESSEE for use as a collection, storage and distribution center for commodities, surplus and donated food; and LESSEE has been leasing a portion of the property since December 17, 1984, and subsequently amended by First Amendment to Lease Agreement on November 21, 2006; and

WHEREAS, the LESSEE and COUNTY desire to amend the agreement to extend the term for a period of five (5) years, with three five (5) year options to extend and update the insurance and indemnification provisions.

NOW THEREFORE, in consideration of the premises, and the mutual covenants and conditions contained herein, COUNTY and LESSEE agree as follows:

1. Section 4, TERM, shall be deleted in its entirety and replaced with the following:

"4. **TERM AND EXTENSION OF LEASE**: The term shall be modified to extend the term by five (5) years, effective as of the date executed by COUNTY and terminating on April 30, 2020, unless extended or terminated as hereinafter provided.

In the event this Agreement has not otherwise been terminated and LESSEE is in good standing at the end of the above-referenced term, such term may be extended for three (3) additional terms of five (5) years each upon mutual agreement of LESSEE and COUNTY. The Director of the General Services Department, or designee, is authorized to grant an extension on behalf of COUNTY. LESSEE shall request all extensions in writing at least ninety (90) days prior to the termination of the then-current term. Failure of LESSEE to exercise its right to extend within the specified ninety (90) day notification period shall be notice to COUNTY of LESSEE'S intent to terminate the Agreement at the end of the then-current term.

The extension periods shall be as follows:

Extension Period One, 5 years	May 1, 2020 through April 30, 2025
Extension Period Two, 5 years	May 1, 2025 through April 30, 2030
Extension Period Three, 5 years	May 1, 2030 through April 30, 2035"

2. Section 12. INSURANCE: shall be deleted in its entirety and replaced with the following:

"12. INSURANCE: LESSEE shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the LESSEE operation and use of the leased premises. The cost of such insurance shall be borne by the LESSEE.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if LESSEE has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Property Insurance:** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision. If the LESSEE maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the LESSEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance at (least as broad as ISO Form CG 20 10).
2. **Primary Coverage** – For any claims related to this Agreement, the LESSEE's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the LESSEE's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – LESSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LESSEE may acquire against the COUNTY by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the LESSEE to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – LESSEE shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the LESSEE's obligation to provide them. The LESSEE shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. LESSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.”

1. Section 13. **INDEMNIFICATION**: shall be deleted in its entirety and replaced with the following:

“13. **INDEMNIFICATION**: LESSEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys’ fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. LESSEE’s indemnification obligation applies to COUNTY’s active as well as passive negligence but does not apply to COUNTY’s sole negligence or willful misconduct.

A. Notification Of Accidents And Survival Of Indemnification Provisions:

1. LESSEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.”

It is expressly understood that in all other respects, the terms and conditions of the original Lease Agreement dated September 5, 1995, shall remain in full force and effect.

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Folio: 002270
Agent: GA

IN WITNESS WHEREOF, COUNTY and LESSEE have executed this Second Amendment to Lease Agreement to be effective as of the date signed by COUNTY.

"COUNTY"
COUNTY OF SANTA BARBARA

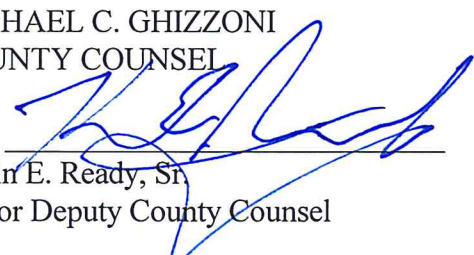
ATTEST:
MONA MIYASATO
CLERK OF THE BOARD

By: _____
Janet Wolf
Chair, Board of Supervisors

By: _____
Deputy Clerk

Date: _____

APPROVED AS TO FORM
MICHAEL C. GHIZZONI
COUNTY COUNSEL

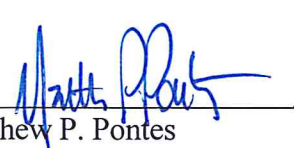
By: 
Kevin E. Ready, Sr.
Senior Deputy County Counsel

"LESSEE"
FOODBANK OF SANTA BARBARA
COUNTY

By: 
Erik Talkin, Executive Director

By: 
James Nichols, Secretary


APPROVED:

By: 
Matthew P. Pontes
Director of General Services

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 
Deputy

APPROVED:

By: 
Don Grady, Esq
Real Property Manager

APPROVED:

By: 
Ray Aromatario, A.R.M., A.I.C