

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: May 12, 2004
Department: General Services
Budget Unit: 063
Agenda Date: June 1, 2004
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Ron S. Cortez, Director
General Services Department

STAFF CONTACTS: Don Grady, Real Property Agent (568-3065)
Real Estate Services

SUBJECT: Ground Lease for Foodbank at Foster Road in Santa Maria
Fifth Supervisorial District

Recommendations:

That the Board of Supervisors:

- A. Determine that the services provided by Foodbank of Santa Barbara County, including the coordination of several food distribution programs that serve residents of Santa Barbara County, including children, seniors and the poor, are necessary to meet the social needs of the County, and that Foodbank therefore qualifies for a rent subsidy; and
- B. Determine that a portion of the County-owned property located at 624 Foster Road, in Santa Maria, will not be needed for County purposes for the next twenty years; and
- C. Approve the proposed Ground Lease granting Foodbank of Santa Barbara County the right to construct and operate a food collection, storage and distribution facility on the Foster Road property, for a period of twenty years, at no cost to Foodbank.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 5.A High Quality of Life for All Residents.

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Executive Summary and Discussion:

Foodbank of Santa Barbara County is a non-profit corporation that provides food to children, seniors and the poor. Foodbank has proposed to build a facility, similar to the one currently operating in Santa Barbara, for the storage and distribution of food to meet the needs of residents of North County. The County owns a ninety-one acre parcel in Santa Maria, on Foster Road and Highway 135. The parcel is improved with several structures. A majority of the parcel, however, is unoccupied and unimproved; including the proposed 3.75 acre site of the new Foodbank facility.

California Government Code Section 26227 allows a board of supervisors of a county to fund programs deemed necessary to meet the social needs of the population of the county and to make available any real property of the county which will not be needed for county purposes during the time of possession, to be used to carry out such programs. The County currently provides funding in support of the Foodbank program. Therefore, your Board's determination that the unimproved portion of the Property proposed as the new site for the Foodbank facility will not be needed for county purposes during the time of possession will allow Foodbank to use the property to carry out the program in North County, without being required to pay rent. This Ground Lease will, therefore, be included on the list of rent subsidies provided to the County Administrator.

If, at any time during the term, your Board should determine that the services provided by Foodbank are no longer a benefit to the community, or if the afore-mentioned Government Code is repealed or replaced such that Foodbank no longer qualifies for the waiver of rent, Foodbank will pay fair market rent for the property. Additionally, at the end of the term, and at County's option, any structures erected on the property will revert to the County.

Prior to submission of the Lease for your review, Foodbank has provided Robert Ooley, the County Architect, a copy of all permits and construction plans. Construction of the facilities will begin shortly after execution of this Ground Lease.

Mandates and Service Levels:

No change in programs or service levels.

Fiscal and Facilities Impacts:

No fiscal or facilities impacts.

Special Instructions:

After Board action, please distribute as follows:

1. Original Document
2. Duplicate original and Minute Order

Clerk of the Board Files
Facilities Services, Attn: Don Grady

Project: Foodbank @ Foster Road
APN: 111-231-004 (Portion)
Folio: 003103
Agent: DG

GROUND LEASE AGREEMENT
FOODBANK AT FOSTER ROAD

THIS GROUND LEASE AGREEMENT is made by and between the

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 fee owner of that certain real property located on Foster Road, in the City of Santa Maria, more particularly described as Santa Barbara County Assessor's Parcel number 111-231-004, (hereinafter "Property"). The Property is shown as the diagonally slashed area of Exhibit "A", attached hereto and incorporated herein by this reference; and

WHEREAS, LESSEE coordinates several food distribution programs which serve residents of Santa Barbara County, including children, seniors and the poor; and

WHEREAS, California Government Code Section 26227 allows a board of supervisors of a county to fund programs deemed necessary to meet the social needs of the population of the county and to make available any real property of the county which will not be needed for county purposes during the time of possession, to be used to carry out such programs; and

WHEREAS, COUNTY currently provides funding in support of the foodbank program, and has determined that the unimproved portion of the Property (hereinafter "Site"), identified as the cross hatched area of Exhibit A, and shown and described on Exhibit "B" hereof, attached hereto and incorporated herein by this reference, will not be needed for county purposes during the time of possession; and

WHEREAS, LESSEE desires to lease the Site for the purpose of improving and expanding its food distribution services in northern Santa Barbara County by constructing and operating a foodbank on the Site; and

WHEREAS, COUNTY desires to grant a Ground Lease Agreement (hereinafter "Agreement"), to LESSEE to allow LESSEE to construct and operate a food collection, storage and distribution facility on the Site, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the provisions, covenants, and conditions, contained herein, the parties agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT**: The provisions of this Agreement shall be administered and enforced for the COUNTY by the Director of COUNTY'S General Services Department (hereinafter "Director"), or designee.

2. **LEASED AREA**: For and in consideration of the covenants to be performed by LESSEE under this Agreement, COUNTY hereby leases to LESSEE and LESSEE hereby takes from COUNTY, the Site, as shown and described on Exhibit B hereof, to be occupied by LESSEE'S food collection, sorting and storage facilities, personnel offices and parking area.

3. **ACCESS TO THE SITE**: LESSEE shall only access the Site using existing roads. COUNTY shall not be responsible for maintaining access to the Site and shall not be liable to LESSEE for lack of such access, however, in the event that the Site becomes inaccessible as a result of natural causes, COUNTY shall, to the extent reasonably necessary, cooperate with LESSEE in restoring access in a timely fashion.

4. **PURPOSE AND USE**: LESSEE shall use the Site solely to construct, maintain, repair, alter, replace and/or remove or have constructed, maintained, repaired, altered, replaced, and/or removed all or any portion of LESSEE'S foodbank personnel offices, food collection, sorting, storage and distribution facilities and all other appurtenant equipment and operations approved by COUNTY which are incidental thereto and necessary to operate and maintain LESSEE'S foodbank facility (hereinafter "Facility"). LESSEE shall not use the Site and/or the Facility for anything other than LESSEE'S foodbank offices, collection, food sorting, storage and distribution facilities.

LESSEE'S use of the Site shall conform to the Contract Documents dated May 19, 2004, which are on file with the County Architect and by reference made a part hereof. For the purposes of this Agreement, the "Contract Documents" shall include, but not be limited to:

- Construction application plans, Land Use Permit(s) and Building Permit(s);
- Construction drawings, including but not limited to, architectural, structural, mechanical, plumbing, electrical, civil and landscape;
- Construction schedule;
- Environmental reports;
- Mechanical, electrical and structural calculations; and
- General, technical and special conditions.

LESSEE shall not expand its use of the Site beyond the scope of said Contract Documents, nor use the Site for any other purposes without the express written consent of COUNTY.

In addition, LESSEE shall comply with all COUNTY security programs and policies regarding the Property.

5. **TERM**: The initial term of this Agreement shall be for a period of twenty (20) years, more or less, commencing on the date of execution by COUNTY (hereinafter

"Commencement Date") and terminating December 31, 2023, subject to such provisions for extension and termination as contained herein.

6. **EXTENSION OF LEASE:** 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 four (4) additional terms of five (5) years each upon mutual agreement of LESSEE and COUNTY. LESSEE shall request all extensions in writing at least sixty (120) days prior to the termination of the then-current term.

The extension periods shall be as follows:

Extension Period One, 5 years	January 1, 2024 through December 31, 2028
Extension Period Two, 5 years	January 1, 2029 through December 31, 2033
Extension Period Three, 5 years	January 1, 2034 through December 31, 2038
Extension Period Four, 5 years	January 1, 2039 through December 31, 2043

7. **RENT:** In accordance with Government Code Section 26227 and the Santa Barbara County Board of Supervisors determination that the operation of a food collection, sorting, storage and distribution facility is a benefit to the community, and in consideration for LESSEE’S construction of the Facility, as such construction is contemplated in Section 4. *PURPOSE AND USE* hereof, the Site is being provided to LESSEE by COUNTY at no cost to LESSEE.

Should, for any reason, the Santa Barbara County Board of Supervisors determine that the services provided by LESSEE are no longer a benefit to the community, or, should the aforementioned Government Code Section be repealed or replaced such that LESSEE no longer qualifies for the rights granted hereunder, LESSEE shall pay fair market rent for the Site. The amount of such fair market rent shall be determined by an independent appraiser, who has been agreed upon by both parties hereto; and shall be determined by the rental value of the land only. Said rent shall be due for the remainder of the term of this Agreement and shall rise 3% per year on the first day of the thirteenth month during which rent payments are due, and annually thereafter. Rent payments shall be made payable to, and delivered to the County of Santa Barbara, General Services Department.

It is the intention of this Agreement that the Site shall be provided to LESSEE at no cost to the COUNTY.

8. **SITE SUITABILITY:** LESSEE has investigated the Property and the Site and has determined that they are suitable for LESSEE’S intended operations, and therefore, LESSEE hereby accepts, by way of executing this Agreement, the Site, as described in Exhibit B hereof, in its existing condition.

LESSEE ACKNOWLEDGES THAT, EXCEPT AS STATED HEREIN, COUNTY HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE PROPERTY OR SITE, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY LESSEE.

9. **PERMITS, CONSTRUCTION AND IMPROVEMENTS:** LESSEE shall, at its sole expense, erect and maintain the Facility in accordance with the Contract Documents previously described herein. It is agreed that LESSEE shall submit schematic designs, design development and

final construction drawings to the County Architect for review prior to submission of same to any permitting agencies and that LESSEE shall make any changes to the above plans which may be requested by the County Architect. It is further agreed that LESSEE shall deliver a copy of the final version of the Contract Documents to the County Architect who will archive them.

If LESSEE has not commenced construction of the Facility within one (1) year of COUNTY'S execution of this Agreement then this Agreement shall terminate and all rights of LESSEE to the Site shall cease at COUNTY'S sole option. In the event of such termination, LESSEE shall execute any documents required to acknowledge such termination and cessation of LESSEE'S interest in the Site.

LESSEE shall give COUNTY no less than ten (10) days written notice prior to the commencement of any work in, on, or about the Site and shall keep the Property and Site free and clear of liens for labor and materials.

Any work done on or around the Site shall conform to the construction schedule, which is included in the Contract Documents and is also attached hereto as Exhibit "C", and incorporated herein by this reference. LESSEE shall, during all phases of construction, have a designated representative present on the Site to monitor construction and ensure compliance with the aforementioned construction schedule. In addition, COUNTY, through its General Services Department, may, at its option, have a designated representative on Site who, during all phases of construction, shall have the right to suspend and/or terminate any and all phases of such construction that do not comply with the Contract Documents and construction schedule. In the event COUNTY invokes this clause and halts construction, LESSEE shall be responsible to pay for any construction delays and/or delay claims. LESSEE agrees to reimburse the General Services Department, County Architect up to TWO THOUSAND DOLLARS AND 00/100 (\$2,000.00) for County architectural staff time expended to assure or confirm compliance with the Contract Documents. Upon completion of the project the County Architect may submit a purchase order to LESSEE for reimbursement of staff time expended and LESSEE shall reimburse within thirty (30) calendar days.

After completion of all required permitting, construction of the Facility shall begin promptly upon execution of this Agreement and be pursued expediently to completion. Copies of the required Land Use Permit(s) and Building Permit(s) shall be delivered to the County Architect and shall be archived with the Contract Documents.

In the event LESSEE wishes to alter or improve the Site or Facility in ways not anticipated by the Contract Documents, LESSEE shall obtain advance written approval from COUNTY'S Planning and Development division and the County Architect, and shall comply with all requirements of the County Architect and all permits.

The requirements relating to construction set forth herein are those of COUNTY as landowner and not as a governmental entity. Nothing in this Agreement shall be construed to entitle LESSEE to undertake construction of the Facility nor additional future improvements without complying with all permitting required by COUNTY in its governmental capacity.

10. **TITLE:** During the term of this Agreement, title to the Facility shall vest with LESSEE. In accordance with Section 9 above, the LESSEE has the right during the term of this Agreement, to erect facilities as may be needed; to erect additions, structures, or signs, in or upon the Site hereby leased. During the term of this Agreement or any extension thereof, the Facility shall be and remain the real property of LESSEE, however, LESSEE shall have no right to waste, destroy, demolish or remove the Facility, except as provided in this Agreement. In the event that LESSEE

discontinues use of the Facility, LESSEE may (with COUNTY'S written consent) dispose of the buildings in place by transferring title thereto to COUNTY in accordance with Section 36. SURRENDER OF PREMISES, hereof.

For purposes of this Agreement, all equipment used to sort, store and distribute food within the Facility shall not be a part of the Facility, and LESSEE shall retain title to such.

11. **ABANDONMENT OF THE SITE and/or FACILITY:** LESSEE shall not abandon, vacate, surrender or assign use of the Site and/or the Facility at any time during the term of this Agreement. If LESSEE does abandon, vacate, surrender or assign use of the Site and/or Facility, this Agreement and all of LESSEE'S rights thereto shall terminate at the option of COUNTY. COUNTY shall memorialize such termination via letter to LESSEE. In the event of such termination, the Facility and any personal property belonging to LESSEE and left on the Site more than thirty (30) days after the mailing of such termination letter shall be deemed abandoned at the option of COUNTY, and title to such shall pass to COUNTY. This provision shall also apply to property left after the termination, or other expiration of this Agreement.

12. **VALUE OF THE FACILITY:** It is hereby agreed that the value of the Facility shall be equivalent to the cost of materials & construction and that such value shall be depreciated over the initial twenty (20) year term. Upon completion of the Facility, LESSEE shall submit to COUNTY a final and adjusted Schedule of Values detailing such costs of materials and construction.

13. **NONINTERFERENCE:** LESSEE agrees not to use, nor permit those under its control, including, but not limited to, its employees, tenants, invitees, agents and/or contractors, to use any portion of the Property, Site, or Facility in any way which interferes with the use of the Property by COUNTY or other tenants of COUNTY occupying the Property. Such interference shall be deemed a material breach, and LESSEE shall terminate said interference immediately upon notice from COUNTY. In the event LESSEE fails to stop such interference promptly, this Agreement shall terminate at the option of COUNTY.

14. **UTILITY CHARGES:** LESSEE, upon obtaining the required permits and approvals, shall have the right to install and maintain the necessary mains and ancillary equipment required to bring utility services to the Site and Facility, at its sole cost and expense. All accounts for such utilities shall name LESSEE as the responsible party. LESSEE shall pay when due all charges for utilities used by LESSEE.

15. **MAINTENANCE AND REPAIR:** During the term of this Agreement, including any extensions, LESSEE agrees to keep in good maintenance and repair, at its sole expense, the Site and Facility, including, but not limited to:

- A. The structural parts of the Facility including the foundation, subflooring, bearing and exterior walls, roof framing subroofing and roof surfaces;
- B. The electrical conduits, conductors, ground equipment and all other associated devices;
- C. All mechanical equipment, as well as ancillary connections to the equipment, including but not limited to, electrical, gas, and water utility service, vents drains, ducting, and supporting structures;

- D. All other unexposed electrical, plumbing and sewage systems; and
- E. The grounds, landscaping and parking lot.

16. **MAINTENANCE RESERVE ACCOUNT:** To ensure that the Site and Facility are maintained in accordance with Section 15. MAINTENANCE AND REPAIR hereof, LESSEE, upon completion of the Facility, shall deposit five cents (\$.05) per square foot of interior floor space of the completed Facility, per month, into a dedicated reserve account (hereinafter "Reserve Account"). The Reserve Account may only be used by LESSEE to comply with the requirements of Section 15. MAINTENANCE AND REPAIR.

17. **RECORD KEEPING/AUDITING** LESSEE shall keep at LESSEE'S office, full and accurate books of account, cash receipts and other pertinent data customarily used in LESSEE'S activities, including without limitation, all data and information relevant to the cost of maintenance and repair of the Site and Facility. LESSEE shall keep such books of account, cash receipts and other pertinent data for a period of not less than four (4) years following the end of each year of the term of this Agreement.

The County shall have the right, upon reasonable notice during the term of this Agreement, and one year after expiration or termination of the term of the Agreement, to examine the books of account, cash receipts, records and other pertinent data showing all transactions related to maintenance and repair, the Reserve Account, as well as normal business done by LESSEE in conjunction with the Agreement. Any such audit(s) or examination(s) will be conducted by the County Auditor or his designee. LESSEE shall fully comply with the County Auditor or his designee in making any such inspections and examinations. If any examination performed by the County Auditor, or one of his designees, discloses a breach by LESSEE in any of its obligations hereunder, said breach shall be cured within thirty (30) days of receipt of written notice from COUNTY of such breach.

18. **ASSIGNMENT/ SUBLEASE:** LESSEE shall not assign, license, or sublease the Site, Facility or any part thereof or any right or privilege appurtenant thereto without COUNTY'S written consent. A consent by COUNTY to one assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment made contrary to this Section shall be null and void. Notwithstanding, upon written consent by COUNTY, which shall not unreasonably be withheld, LESSEE may assign this Agreement to other foodbank agencies or operators.

In the event LESSEE is not utilizing or occupying the entire Facility and chooses to sublease or allow occupancy of the unused portion, then COUNTY shall have first right to use that unused portion without charge. If COUNTY chooses not to occupy and the unused portion is subleased, the revenue generated thereby shall be paid entirely to COUNTY.

19. **SUCCESSORS IN INTEREST:** This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any government or private organization into which LESSEE may be merged.

20. **INDEMNIFICATION:** LESSEE shall defend, indemnify, and save harmless COUNTY, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments, or liabilities arising out of this Agreement or

occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of LESSEE or its agents, employees, or other independent contractors directly responsible to LESSEE; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the COUNTY.

LESSEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

21. **INSURANCE:** Certificate(s) of Insurance shall be furnished to COUNTY immediately upon execution of this Agreement and annually thereafter. Such insurance coverages, in the minimum limits as specified below, shall be maintained throughout the term of the Agreement. COUNTY shall have the right to review from time to time the minimum limits as established below. In the event of a change in the minimum limits, COUNTY shall inform LESSEE of such change by giving written notice to LESSEE not less than sixty (60) days prior to the expiration date of any existing insurance policy or policies. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Failure to comply with the insurance requirements shall place LESSEE in default. Upon request by COUNTY, LESSEE shall provide certified copies of any insurance policies to COUNTY within ten (10) working days.

A. Workers' Compensation Insurance. Statutory Workers' Compensation and Employees Liability Insurance shall cover all LESSEE'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by COUNTY.

B. General and Automobile Liability Insurance. The General Liability Insurance shall include personal injury liability, shall afford coverage for product liability, shall afford coverage for all premises and operations of LESSEE, and shall include contractual liability coverage for this Agreement. The Automobile Liability Insurance shall cover all owned, non-owned, and hired motor vehicles which are operated on behalf of LESSEE pursuant to LESSEE'S activities hereunder.

COUNTY and its officers, employees, and agents shall be included as "Additional Insureds" on all policies and a copy of the endorsement evidencing that the COUNTY has been added as a named additional insured on the policy must be attached to the certificate of insurance. The limit of liability of said policy or policies shall not be less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage, \$2,000,000 in the aggregate.

Personal injury coverage should also be in the amount of \$1,000,000 per person and \$2,000,000 in the aggregate. Said policy or policies shall contain a provision that such insurance as is afforded by the policy shall be primary and contributory to the full limits stated in the declarations, and if COUNTY has other valid and collectible insurance for a loss covered by this policy, COUNTY'S other insurance shall be excess only. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

C. Property Insurance. The Property Insurance shall provide all risk property coverage on a replacement cost basis for the Facility and Site. COUNTY shall be included as an additional insured on any Property Insurance policy. Said Property Insurance shall contain an

agreement under which the insurance company or companies supplying said policy shall notify COUNTY in writing at least thirty (30) days prior to cancellation of all or any part of such policy.

In the event of any loss to any property that is subject to this Agreement which is caused by any occurrence that is covered by such all risk property insurance, LESSEE shall be responsible for any payment of any deductible.

All property insurance carried by LESSEE shall include provisions denying to the insurer, acquisition by subrogation of rights of recovery against the other party to the extent the rights have been waived by the insured prior to occurrence of loss or injury.

This insurance requirement is subject to periodic review by the County every ten (10) years and shall follow the procedures set forth herein. Upon such review the County, with the concurrence of the County's Risk Manager and County Counsel and as approved by the Board of Supervisors may revise the insurance requirement to include additional types of insurance coverage and limits (provided that such change is reasonably based on changed risk of loss or past claims against the County or inflation).

COUNTY shall notify LESSEE of its intent to conduct such a review at least ninety (90) days prior to the expiration of the tenth (10th) year of the Agreement and LESSEE shall have the opportunity to provide information concerning the issue to COUNTY. COUNTY shall notify LESSEE of its preliminary determination as to any revision and the basis for that determination at least thirty (30) days prior to seeking Board of Supervisors approval of such revision. COUNTY must give due consideration to any information provided by LESSEE in opposition to such determination prior to final Board of Supervisors approval of such revision.

22. **NONDISCRIMINATION:** LESSEE shall comply with COUNTY law, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor. LESSEE shall comply with applicable laws, rules and regulations regarding nondiscrimination.

23. **ENVIRONMENTAL IMPAIRMENT:** LESSEE shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Property, Site or Facility due to LESSEE'S use and occupancy, LESSEE shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefore. LESSEE shall indemnify, hold harmless, and defend COUNTY from and against all liability, claim, cost, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, consulting, engineering and construction costs) incurred by COUNTY as a result of LESSEE'S breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution due to LESSEE'S use and occupancy, regardless of whether such liability, cost or expense arises during or after the term of this Agreement, and regardless of negligence, active or passive, of COUNTY.

24. **TOXICS:** LESSEE shall not manufacture or generate hazardous wastes on or in the Facility, Site or Property unless specifically authorized by this Agreement. LESSEE shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by LESSEE, its agents, employees, or designees on or in the Facility, Site or Property during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. LESSEE shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

25. **COMPLIANCE WITH THE LAW:** LESSEE shall comply with all applicable laws, rules, and regulations affecting the Site, Facility or Property now or hereafter in effect.

26. **TAXES AND ASSESSMENTS:** LESSEE shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, if any, which, due to LESSEE'S Facility may be levied upon said Facility and/or Site during the term of this Agreement.

27. **NOTICES:** Any notice to be given to the parties shall be in writing and shall be served, either personally or by mail, to the following:

COUNTY: County of Santa Barbara
Facilities Services Division
1100 Anacapa Street
Santa Barbara, CA 93101-6065
(805) 568-3070

LESSEE: Foodbank of Santa Barbara County
4554 Hollister Avenue
Santa Barbara, CA 93110
(805) 967-5741

or to the parties at such other place as may be designated in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail, reliable overnight courier, or by personal delivery. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

28. **DEFAULT:** Except as otherwise required herein, should LESSEE at any time be in material default hereunder with respect to any covenant contained herein, COUNTY shall give notice to LESSEE specifying the particulars of the default and LESSEE shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such notice, this Agreement shall terminate at the option of the COUNTY; unless the cure of such default shall reasonably take more than thirty (30) calendar days in which

case LESSEE shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

29. **REMEDIES:** In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including but not limited to the following:

- A. The nondefaulting party may waive the default or breach in accordance with Section 30, WAIVER, herein below.
- B. The nondefaulting party may maintain this Agreement in full force and effect and recover whatever monetary loss(es) may have resulted from such default or breach.
- C. Where LESSEE is the nondefaulting party, LESSEE may terminate the Agreement and surrender use of the Site.
- D. Where COUNTY is the nondefaulting party, COUNTY may terminate the Agreement and LESSEE shall vacate within 30 days of written notice from COUNTY.

30. **WAIVER:** It is understood and agreed that any waiver, express or implied of any term of this Agreement shall not be a waiver of any subsequent breach of a like kind or of any other provision of this Agreement.

31. **AMENDMENTS:** This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties.

32. **TERMINATION:** This Agreement shall terminate and all rights of LESSEE shall cease and LESSEE shall quietly and peacefully deliver to COUNTY, possession and interest in the Site; and possession, interest and title to the Facility:

- A. Upon expiration or earlier termination of the Agreement as provided in Section 5, TERM; or
- B. Upon ninety (90) day written notice from LESSEE; or
- C. In the event LESSEE does not commence construction of the Facility in a timely fashion in accordance with Section 9, PERMITS, CONSTRUCTION AND IMPROVEMENTS; or
- D. Upon abandonment of the Facility and Site as provided in Section 11, ABANDONMENT OF THE SITE and/or FACILITY; or
- E. Upon the failure of LESSEE to satisfy, observe or perform any of the covenants, conditions or reservations set forth in this Agreement and the expiration of the cure period as provided in Section 28, DEFAULT; or
- F. As provided in Section 33, DESTRUCTION; or
- G. In the event LESSEE is found to be in non-compliance with any of the Contract Documents and permits associated with this Agreement and such non-compliance is not resolved in a timely fashion.

33. **DESTRUCTION:** If the Facility or the Site is partially or totally destroyed by fire or other casualty, this Agreement, at the option of LESSEE, shall terminate. If LESSEE chooses to terminate the Agreement then LESSEE, at COUNTY'S option, shall remove all structures and

equipment from the Property and Site and shall return the Site to its original condition as near as is practical.

34. **HOLDING OVER:** Should LESSEE occupy the Site after the expiration date of this Agreement or any extension thereof, with the consent of the COUNTY, expressed or implied, such possession shall be construed to be a tenancy from month to month.

35. **AGENCY DISCLOSURE:** LESSEE acknowledges that the General Services Department, Facilities Services Division of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for LESSEE nor a dual agent in this transaction.

36. **SURRENDER OF PREMISES:** Upon expiration or termination of this Agreement, LESSEE shall vacate and surrender possession of, and any claim to the Site and Facility, leaving it in good condition, except for ordinary wear and tear. LESSEE shall execute whatever documents are reasonably requested by COUNTY to facilitate, acknowledge and evidence the release of all interest in the Facility and the passing of title thereto from LESSEE to COUNTY, and COUNTY shall execute whatever documents are required to accept said ownership interest and title.

In the event the Facility is removed by LESSEE or agent therefore, at the sole option of COUNTY, then upon completion of said removal, LESSEE shall provide the COUNTY with written notice that said Facility has been removed and the Site has been restored to its pre-Agreement condition as near as is practicable.

37. **CONDEMNATION:** In the event the Facility or any part thereof is taken by condemnation, eminent domain, or any such proceeding that precludes access to or use of the Facility and/or Site, COUNTY shall have the exclusive right to control the defense of any such action in condemnation or eminent domain and to defend any such action and settle the same in COUNTY'S absolute discretion. LESSEE agrees that COUNTY shall have the right, but not the obligation, to defend or settle any such action of condemnation or eminent domain affecting any of LESSEE'S installations at the Site.

LESSEE shall receive from COUNTY such proportionate amount of the judgment, award, or settlement as shall be attributable to LESSEE'S interests.

In the event possession of the Site or partial possession of the Site is obtained by a public agency or other agency empowered to take by eminent domain, in a manner which precludes LESSEE'S intended use, this Agreement shall terminate as of the effective date of possession and upon such termination, any obligation of LESSEE to pay rent shall cease with the payment of the prorated portion of rental obligations up to said termination date. Any prepaid rent shall be returned to LESSEE from the effective date of possession.

In the event of a partial taking, this Agreement may continue at COUNTY'S option.

38. **CAPTIONS:** The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

39. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity,

illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

40. **CERTIFICATION OF SIGNATORY:** The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind COUNTY and LESSEE to its terms and conditions or to carry out duties contemplated herein.

41. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

42. **CONSTRUCTION:** The parties have negotiated the terms of this Agreement. They have consulted an attorney when they felt the need. The terms of this Agreement reflect this negotiation and the intentions of both parties. These terms shall be interpreted with regard to each party equally.

43. **FACSIMILE SIGNATURES:** In the event that the parties hereto utilize facsimile transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission of the facsimile, except that funds shall not be released upon facsimile signature nor shall facsimile signed documents be accepted for recordation by the Clerk Recorder of the County.

44. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

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Project: Foodbank @ Foster Road
APN: 111-231-004 (Portion)
Folio: 003103
Agent: DG

IN WITNESS WHEREOF, COUNTY and LESSEE have executed this Agreement by the respective authorized officers as set forth below to be effective as of the date executed by COUNTY.

“COUNTY”
COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

Chair, Board of Supervisors

By: _____
Deputy

Date: _____

“LESSEE” FOODBANK OF
SANTA BARBARA COUNTY

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

Name and Title

By: _____
Deputy

Name and Title

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

By: _____

APPROVED:

APPROVED AS TO INSURANCE FORM:

Ronn Carlentine, SR/WA
Real Property Manager

John A. Forner, M.B.A., A.R.M.
Risk Manager