

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

From: Jessica Sandifer, Senior Management Analyst 

Date: June 19, 2015 (City Council Meeting of 07/01/15)

Subject: Consider Renewal of Lease Agreement between the City of Moorpark and Boys and Girls Club of Moorpark for 798 Moorpark Avenue

BACKGROUND/DISCUSSION

The Redevelopment Agency of the City of Moorpark ("Agency") acquired 798 Moorpark Avenue ("Property"), for redevelopment purposes. The Property was subsequently transferred to the City of Moorpark ("City") as a housing asset. The Boys and Girls Club of Moorpark began renting the property at 798 Moorpark Avenue in July 2013. The original term of the lease was for one year with a one year extension. The extended lease term is set to expire on July 21, 2015.

On June 16, 2015, the City Council approved the sale of the properties at 798 and 782 Moorpark Avenue, 765 Walnut Street and 81 Charles Street to the Area Housing Authority of the County of Ventura (AHA) for an affordable housing development. The AHA will be applying for tax credits for the project. Based on the current development schedule, if the AHA is successful in obtaining tax credits, the project will start construction in January 2016. This will require the Boys and Girls Club to vacate the space at 798 Moorpark Avenue.

In order to give the Boys and Girls Club enough time to seek replacement office space, staff is recommending renewing their lease for a six month period to provide them time to locate a replacement office. The lease also contains a provision that allows the City Manager to approve an extended term of one to six months, but not to exceed six months. The extended term would only be approved if for some reason, the AHA's development schedule was delayed.

As was previously the case, the rent would be \$1.00 for the term and the Boys and Girls Club will continue to be responsible for all utilities, maintenance, and repairs to the Property.

Honorable City Council
July 1, 2015
Page 2

FISCAL IMPACT

As with the previous Agreement, the proposed lease agreement is not anticipated to generate revenue for the City, but will reduce the expenses for maintaining the Property until the AHA takes over ownership of the site.

STAFF RECOMMENDATION

Approve lease agreement between the City of Moorpark and the Boys and Girls Club of Moorpark and authorize the City Manager to sign the lease, subject to final language approval of the City Manager.

Attachment : Lease Agreement

ATTACHMENT 1

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Lease") is made and entered into as of this _____ day of _____, 2015, by and between the City of Moorpark, a municipal corporation, the Lessor (hereinafter "City"), and Boys and Girls Club of Moorpark, Inc., a non-profit organization, (hereinafter the "Lessee").

THE PARTIES AGREE THAT:

SECTION 1. PROPERTY LEASED

City, in consideration of the rents herein agreed to be paid and of the indemnifications, covenants, and agreements agreed to herein, hereby leases to Lessee, and Lessee hereby leases from the City, that certain real property known as 798 Moorpark Avenue, Moorpark, California, (hereinafter referred to as the "Premises").

SECTION 2. TERM

The term of this Lease shall commence on the 1st day of July 2015, and all terms and conditions of the Lease shall continue for six (6) months.

City's obligations hereunder shall be contingent upon Lessee's payment in full of any obligations described in Section 5 below, and Lessee's complying with all other provisions set forth herein.

SECTION 3. OPTION TO EXTEND

Lessee has an option to extend the term of this Lease for up to an additional six (6) month period, with the approval of the City Manager, but in no event will the extended term exceed six (6) months.

SECTION 4. HOLDING OVER

It is further agreed that if Lessee shall retain possession of the Premises beyond the original term of this Lease or any extension thereof, without the express written consent of the City, Lessee shall continue to be Lessee from month-to-month during such hold-over period.

Lessee shall be subject to all of the terms, covenants and conditions of this Lease, including the obligation to pay rent during any such hold-over period, at the rate specified in Section 5, hereof, or as may be adjusted pursuant to the Lease.

SECTION 5. RENT

Beginning on July 1, 2015, and continuing to January 31, 2016, Lessee shall pay City, without abatement, deduction or offset, rent in the amount of one dollar (\$1.00) payable in advance on or before the first day of tenancy. Said one dollar (\$1.00) rental amount will cover any extended terms provided under this Agreement.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS

Except for the sole negligence of City, Lessee shall defend, indemnify and keep and hold City, including City's officers, employees and agents, their successors and assigns, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of Lessee, sustained in, on or about the demised premises or arising out of Lessee's use or occupancy thereof, as a proximate result of the acts or omissions of Lessee, its employees and agents, or its contractors, licensees, invites or subtenants, their successors and assigns or arising out of the condition of the property. City shall, by appropriate, written notice to Lessee, advise Lessee as soon as practicable regarding any potential liability of Lessee under this Section.

SECTION 7. NOTICE OF NON-ELIGIBILITY FOR RELOCATION BENEFITS

Please read this notification carefully prior to signing this agreement and moving into the property. The City of Moorpark purchased the Premises for redevelopment purposes.. As a post-acquisition Lessee, you will not be eligible for relocation benefits under the federal and state law. This notice is to inform you of the following information **before you enter into any lease agreement and occupy a unit at the above address:**

1. You may be displaced at the end of lease term.
2. You may be subject to a rent increase upon lease renewal or option to extend the lease term.
3. You will not be entitled to any relocation benefits.

If you have to move or your rent is increased, you will not be reimbursed for any such rent increase or for any costs or expenses incurred by you in connection with a move. Should state law change, Lessee agrees to waive any and all claims for relocation benefits.

SECTION 8. USE

Lessee shall use the Premises for office space and/or any other activities related to the Boys and Girls Club.

SECTION 9. UTILITIES

Lessee agrees to pay all monthly service charges for electric current, gas, sewer and trash and recycling removal, and any other utilities which may be furnished to or used upon the Premises by Lessee during this Lease. It is further agreed that in the event Lessee shall fail to pay the above mentioned charges when due, City shall have the right to pay the same on demand, together with any interest thereon and any other fees that may be owed. The City shall be reimbursed by Lessee within five (5) days of notice from City for the amount of payment plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Failure to pay monthly service charges for any above-mentioned utility in a timely fashion shall be cause for termination of this Lease.

SECTION 10. TAXES, ASSESSMENTS, AND LIENS

Lessee shall pay directly to the tax collector, when due, all taxes and assessments which may be levied against Lessee's possessory interest in the Premises and upon all improvements and personal property which are located on the Premises. Within five (5) days after the date when any tax or assessment would become delinquent, Lessee shall serve upon City receipts or other appropriate evidence establishing the payment.

Lessee shall keep the Premises and improvements free from all liens and encumbrances by reason of the use or occupancy of the Premises by Lessee. If any liens or encumbrances are filed thereon, Lessee shall remove the same at their own cost and expense and shall pay any judgment and penalties which may be entered thereon. Should Lessee fail, neglect, or refuse to do so, City shall have the rights to pay any amount required to release any lien or encumbrance or to defend any action brought thereon, and to pay any judgment or penalty, and Lessee shall be liable to City for all costs, damages, and attorneys' fees, and any amounts expended in defending any proceedings, or in the payment of any lien, encumbrance, judgment, or penalty. City may post and maintain upon the Premises notices of non- responsibility as provided by laws. Upon demand by City, Lessee shall post the bond contemplated by Civil Code Section 3143.

SECTION 11. INSTALLATION BY LESSEE

Lessee shall not make any alterations, additions, or improvements upon the Premises without the prior written consent of the City. Any alterations, or additions or improvements installed or caused to be installed to the site, or any fencing, exterior lighting, or any other improvements on the Premises (collectively "Installations") shall be solely at Lessee's cost and are not reimbursable by the City at any time, including at the time of termination of the Lease by either the Lessee or City. All alterations, additions and improvements shall be temporary in nature and done in a good and workmanlike manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all

federal, state, county, and local laws, ordinances, codes, standards, and requirements relating thereto. Unless otherwise expressly agreed to by the City, any alterations, additions and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Lease. Lessee agrees to and shall indemnify, defend, and save City free and harmless against all liability, loss, damage, costs, legal counsels' fees, and other expenses of any nature resulting from any Lessee alterations, additions, or improvements to the Premises.

SECTION 12. REMEDIES

In case of the failure or refusal of Lessee to comply with and perform each and all of the terms and covenants on their part herein contained, this Lease and all rights hereby given shall, at the option of the City, cease and terminate, and the City shall have the right forthwith to remove Lessee's personal property from the Premises at the sole cost, expense and risk of Lessee, which cost and expense Lessee agrees to pay to City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City. Such action shall be preceded by thirty (30) day written notice.

SECTION 13. MAINTENANCE

Lessee has examined the Premises and accepts it in its existing condition. Throughout the term of this Lease Lessee shall, at Lessee's sole cost and expense, maintain the Premises and all improvements thereon in good order, condition, and repair and in accordance with all applicable statutes, ordinances, rules, and regulations. Lessee shall immediately report any problems with the Premises to Property Manager at (805) 517-6225, or other designee of the City Manager with written notice pursuant to Section 33 of this Lease. City shall not be obligated to repair or maintain the Premises or improvements in any manner throughout the term of the Lease.

City may elect to perform any obligation of Lessee pursuant to this Section due to Lessee's failure or refusal to do so and at Lessee's waiver of any rights or remedy for Lessee's default. Lessee shall reimburse City for the cost and expense they incurred in the performance of Lessee's obligation within fifteen (15) days of City's request for payment, plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services. Failure to maintain Premises as outlined herein shall be considered grounds for termination of this Lease.

Lessee shall also indemnify, defend with legal counsel approved by City and hold harmless City and its officers, employees, servants and agents from and against

all claims, actions, liabilities, losses, damages, costs, attorneys' fees, and other expenses of any nature for loss or damage to property, or injury to or death of persons, arising in any manner whatsoever, directly or indirectly, from Lessee's performance pursuant to this Section. The indemnification, legal defense and hold harmless provisions of this Lease shall survive the termination of the tenancy.

SECTION 14. PESTICIDES AND HERBICIDES

Lessee shall use pesticides and herbicides from the City-approved pesticide and herbicide list on the Premises, in strict accordance with all applicable statutes, ordinances, rules and regulations. Such pesticides and herbicides shall be limited to those that are permitted for residential housing units.

SECTION 15. HAZARDOUS MATERIALS INDEMNITY

As used in this Section, Hazardous Materials means any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated or addressed pursuant to: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901, et seq.; the Substances Control Act, 15 U.S.C., Section 2601, et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100, et seq.; the California Hazardous Substance Account Act, Health and Safety Code Section 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280, et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1, et seq.; California Health and Safety Code Section 25501, et seq.; (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Section 13000, et seq. all as amended, (2) any other federal or state law or any local law regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now is, or at any time hereafter may be, in effect, and (3) any rule or regulation adopted or promulgated under or pursuant to any of said laws.

If Lessee receives any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit, or the like regarding any Hazardous Material on the Premises, Lessee shall immediately serve City with a copy of such notice.

In no case shall Lessee cause or allow the deposit or disposal of any such substance on the Premises. However, household products necessary for routine

cleaning and maintenance of the Premises may be kept on the Premises in quantities reasonable for current needs.

The provisions of this Section shall survive the termination of the tenancy and shall relate back to all periods of Lessee's possession of the Premises. The provisions of this Section are intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9707(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City from any liability pursuant to such law.

SECTION 16. NO WARRANTIES BY CITY

The Premises are accepted by Lessee in an "as is" condition and without any representation or warranty by City as to the condition of the Premises or as to fitness of the Premises for Lessee's use.

SECTION 17. CASUALTY INSURANCE

City shall not be obligated to keep the Premises and the improvements thereon insured against any insurable risk; nor shall City insure Lessee for any personal injury or property damage. If the Premises have sustained any damage, Lessee shall obtain the City's written approval prior to proceeding with any repairs. City is not obligated to approve or repair the Premises, and reserves the right to deny, at its sole discretion, any requested repairs to the Premises by the Lessee. If the City denies Lessee's request to repair the Premises, this Lease shall cease and terminate immediately.

Lessee hereby and forever waives all right to claim or recover damages from City in any amount as the result of any damage to the Premises or any improvement thereon or as a result of any injury to any person upon the Premises.

SECTION 18. INSURANCE

Lessee shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached to and part of this Agreement. ***The policy shall name Lessee as the insured and the City of Moorpark as additional insured.***

SECTION 19. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Lessee understand and agree that the laws of the state of California shall govern the rights, obligations, duties, and liabilities of the parties to this

Agreement and also govern the interpretation of this Agreement.

SECTION 20. ENTRY BY CITY

During the tenancy, City may enter the Premises upon not less than twenty-four (24) hours advance notice and Lessee shall make the Premises available during normal business hours to the City's authorized agent or representative for the purpose of: (1) to show the premises to prospective or actual purchasers, mortgagee, Lessees, workmen, or contractors, (2) to make necessary or agreed repairs, decorations, alterations, or improvements, and (3) at all reasonable times to examine the condition thereof, including its environmental condition. In an emergency, City's agent or authorized representative may enter the premises at any time without securing prior permission from Lessee.

SECTION 21. ASSIGNMENT AND SUBLETTING

No portion of the Premises or of Lessee's interest in this Lease shall be transferred by way of sublease, assignment or other voluntary or involuntary transfer or encumbrance, without the prior written consent of the City. Such consent shall be at City's sole discretion. Any transfer without consent shall be void, and shall, at the option of the City, terminate this Lease.

SECTION 22. DEFAULT OR BREACH

Except as otherwise provided, at any time one party to this Lease is in default or breach in the performance of any of the terms and conditions of this Lease, the other party shall give written notice to remedy such default or breach. If the default or breach is remedied within thirty (30) days following such notice, then this Lease shall continue in full force and effect. If such default or breach is not remedied within thirty (30) days following such notice or if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, if Lessee fail to commence to cure within the thirty (30) day period, the other party may, at its option, terminate this Lease. Such termination shall not be considered a waiver of damages or other remedies available to either party because of such default or breach. Each term and condition of this Lease shall be deemed to be both a covenant and a condition.

SECTION 23. INSOLVENCY OR BANKRUPTCY

If Lessee shall be adjudged bankrupt or insolvent, this Lease shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the Lessee under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Lease shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all

rights of the Lessee thereupon shall cease and terminate.

SECTION 24. DISPOSSESSION

In the event Lessee is lawfully deprived of the possession of the Premises or any part thereof, at any time during the tenancy, by anyone other than City, they shall notify City in writing, setting forth in full the circumstances in relation thereto. Upon receipt of said notice, City may, at its option, either install Lessee in possession of the Premises or terminate the tenancy and refund to Lessee the pro rata amount of any pre-paid rent. No claim for damages or whatsoever kind or character incurred by Lessee by reason of such dispossession shall be chargeable against City.

SECTION 25. CONDEMNATION

If the whole of the Premises should be taken by a public authority under the power of eminent domain, then the term of this Lease shall cease on the day of possession by the public authority. If only a part of the Premises should be taken under eminent domain, Lessee shall have the right to either terminate this Lease or to continue in possession of the remainder of the Premises. If Lessee remain in possession, all of the terms hereof shall continue in effect, the rental payable being reduced proportionately for the balance of the Lease term. If a taking under the power of eminent domain occurs, those payments attributable to the leasehold interest of the Lessee shall belong to the Lessee, and those payments attributable to the reversionary interest of the City shall belong to the City.

SECTION 26. WAIVER

A waiver by either party of any default or breach by the other party of any provision of this Lease shall not constitute or be deemed to be a waiver of any subsequent or other default or breach. No waiver shall be binding, unless executed in writing by the party making the waiver. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to the Lease shall not constitute a waiver of any preceding default or breach by Lessee other than default in the payment of the particular rental payment so accepted, regardless of City's knowledge of the preceding default or breach at the time of accepting the rent; nor shall acceptance of rent or any other payment after termination of the tenancy constitute a reinstatement, extension, or renewal of the Lease or revocation of any notice or other act by City.

SECTION 27. ACQUIESCENCE

No acquiescence, failure, or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered

or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance.

SECTION 28. PARTIES BOUND AND BENEFITTED

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

SECTION 29. CONDITION UPON TERMINATION

Upon termination of the tenancy, Lessee shall surrender the Premises to City including all improvements, clean and in good condition, except for ordinary wear and tear which Lessee was otherwise obligated to remedy under Section 12 above. Any installation which Lessee installs during occupancy with in accordance with Section 11 of this Lease, and has not removed at the termination of the Lease, shall become the possession of the City. Lessee shall repair at Lessee's expense, any damage to the Premises caused by the removal of any improvement made by Lessee from such installation. Any installations, improvements, or additions to the Premises prior to the execution of this Lease shall be deemed as part of the Premises and shall be the possession of the City.

SECTION 30. LESSEE'S FAILURE TO REMOVE PERSONAL PROPERTY

Upon termination of the tenancy, City may reenter and retake possession of the Premises and store Lessee's personal property for a period of thirty (30) days at Lessee's cost and expense. If Lessee fails to pick up said personal property and pay said cost and expenses during said thirty (30) day period, City may dispose of any or all of such personal property in any manner that City, in its sole and absolute discretion, deems appropriate.

If any of Lessee's personal property remains on the Premises after the termination of the tenancy, City may use, dispose of, or sell any of said property, in its sole and absolute discretion, without compensating Lessee for the same and without the City having any liability whatsoever therefore.

SECTION 31. NO RECORDATION

Neither this Lease Agreement nor a memorandum thereof shall be recorded by Lessee.

SECTION 32. LEGAL COUNSELS' FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to, this Lease or as a result of any alleged breach of any provision of this Lease, or for an unlawful detainer

action, the prevailing party shall be entitled to recover its costs and expenses, including legal counsels' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

SECTION 33. NOTICES AND PAYMENTS

All notices required under this Lease, including notices of change of address, shall be in writing, and all notices and payments shall be addressed as follows:

Owner: City Manager
 City of Moorpark
 799 Moorpark Avenue
 Moorpark, California 93021

Lessee: Chief Professional Officer
 Boys and Girls Club of Moorpark
 200 Casey Road
 Moorpark, California 93021

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one specified above. Except as otherwise provided by statute, notice shall be deemed served and received upon receipt by personal delivery or upon the second (2nd) day after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid.

SECTION 34. PARTIAL INVALIDITY

If any provision of this Lease is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease shall nonetheless remain in full force and effect to the full extent allowed by law.

SECTION 35. GENDER AND NUMBER

For the purpose of this Lease wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

SECTION 36. SECTION HEADINGS

Section headings in this Lease are for convenience only, and they are not intended to be used in interpreting or construing the terms, covenants and conditions of this Lease.

SECTION 37. INTEGRATION AND MODIFICATION

This Lease constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements and understandings, oral or written, are hereby merged herein. This Lease may not be modified or amended except; (1) in a writing signed by all of the parties hereto; or (2) upon expiration of thirty (30) days service in accordance with Civil Code Section 1946, or any successor statute in effect on the date the written notice is served, by City on Lessee of a written notice setting forth the modification or amendment.

The parties agree that no estoppel argument can be raised during legal proceedings in order to avoid the provisions of this Section.

SECTION 38. INTERPRETATION

Should interpretation of this Lease, or any portion thereof, be necessary, it is deemed that the Lease was prepared by the parties jointly and equally, and the Lease shall not be interpreted against either party on the ground that the party prepared it or caused it to be prepared.

SECTION 39. TERMINATION

This Lease shall automatically terminate on July 31, 2014, unless extended in accordance with Section 3 of this Lease. Should Lessees business not thrive as anticipated, Lessee shall have the right to terminate this Lease within the original term and option period with a thirty (30) day notice.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized representatives as of the date first written above.

CITY OF MOORPARK

BOYS AND GIRLS CLUB OF
MOORPARK

By: _____
Steven Kueny
City Manager

By: _____
W. Scott Mosher
Chief Professional Officer

ATTEST:

By: _____
Maureen Benson
City Clerk

EXHIBIT A

Insurance Requirements

Tenant will maintain insurance in conformance with the requirements set forth below. Tenant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Tenant agrees to amend, supplement or endorse the existing coverage to do so. Tenant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to CITY.

Tenant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence and \$2,000,000 in aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident and \$2,000,000 in aggregate. If Tenant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way on this project, Tenant shall provide evidence of personal auto liability coverage for each such person.

Pollution Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to the City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 per claim and aggregate.

Worker's Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Best rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Tenant. Tenant and CITY agree to the following with respect to insurance provided by Tenant:

1. Tenant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds CITY, its officials, employees, servants, agents, and independent consultants ("City indemnities"), using standard ISO endorsement No. CG 2011 with an edition prior to 2004. Tenant also agrees to require all contractors and subcontractors working on the Premise to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Tenant, or Tenant's agents, from waiving the right of subrogation prior to a loss. Tenant agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Tenant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the CITY, as the need arises. Tenant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY'S protection without CITY'S prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Tenant's general liability policy, shall be delivered to CITY at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by Tenant or deducted from sums due Tenant, at CITY's option.

8. Certificates are to reflect that the insurer will provide 30 day notice to CITY of any cancellation of coverage. Tenant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Tenant, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to CITY.
10. Tenant agrees to ensure that subcontractors, and any other party entering onto the Premises, provide the same minimum insurance coverage required of Tenant. Tenant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Tenant agrees that upon request, all agreements with subcontractors and other parties entering onto the Premises will be submitted to CITY for review.
11. Tenant agrees not to self-insure or to use any self-insured retention or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, or other entity or person entering onto the Premises to self-insure its obligations to CITY. If Tenant’s existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. At that time the CITY shall review options with the Tenant, which may include reduction or elimination of the deductible of self-insured retention, substitution of other coverage, or other solutions.
12. For purposes of applying insurance coverage, only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Tenant acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform Tenant of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.
14. Tenant will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled

or terminated for any reason. Termination of this obligation is not effective until CITY executes a written statement to that effect.

15. Tenant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Tenant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement is required in these specifications applicable to the renewing or new coverage must be provided to CITY within five days of the expiration of the coverages.
16. The provisions of any workers' compensation or similar act will not limit the obligations of Tenant under this agreement. Tenant expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its employees, officials, and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a give coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party of insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Tenant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge CITY or Tenant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the CITY. It is not the intent of CITY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto.
21. Tenant agrees to provide immediate notice to CITY of any claim or loss against Tenant arising out of the lease of the Premises. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.