

CITY FACILITIES LEASE AGREEMENT

between

THE CITY OF LEMOORE,

a California Municipal Corporation

and

THE KINGS COMMUNITY ACTION ORGANIZATION,

a Private, Non-Profit Organization

This City Facilities Lease Agreement (“Agreement”) is hereby made and entered into this ____ day of _____, 2009, by and between the CITY OF LEMOORE, a California municipal corporation (“City”) and the KINGS COMMUNITY ACTION ORGANIZATION, a private, non-profit organization (“KCAO”). City and KCAO are from time to time throughout this Agreement referred to as “Party” or “Parties”.

I. RECITALS

WHEREAS, the City has ownership of the Cinnamon Municipal Complex, a facility in Lemoore, for the purpose of services to the Lemoore community out of said facility; and

WHEREAS, the Cinnamon Municipal Complex is located at 711 Cinnamon Drive in Lemoore, California; and

WHEREAS, KCAO has the exclusive expertise and resources to operate a food bank in said facility; and

WHEREAS, it is the intent of the City of Lemoore and KCAO to provide food bank, food warehousing, and delivery in said facility; and

WHEREAS, there is a need to ensure that the identified portion of the facility will benefit the low and very low income group (as defined by the USDA) of Lemoore for a minimum of ten (10) years with two (2) renewable five (5) year extensions; and

WHEREAS, the City of Lemoore and KCAO agree that communication between the two parties is a high priority.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth, it is agreed by the Parties as follows:

II. LEASE OF THE FACILITY

- A. The property subject to this Agreement is located entirely at the Cinnamon Municipal Complex, incorporated herein by reference (“Facility”). The City of Lemoore agrees to

allow the KCAO to utilize, and KCAO agrees to be financially responsible for the repair and maintenance costs of:

1. The exclusive use of approximately 8,000 square feet of the south west corner of the building – identified by Exhibit A as subject space.
2. The shared use of the approximately 2,000 square feet immediately to the East of the subject space for installation of refrigeration and freezer equipment and entry/egress for subject space by staff and equipment in warehousing operations.
3. The shared use of the approximately 1,000 square feet of the loading dock space.
4. KCAO will utilize said space Monday through Friday from 6am to 5pm, unless otherwise agreed upon in writing.
5. KCAO shall maintain their utilized space and shared space in good, sanitary condition. Any spills or unsafe/unhealthy conditions created by KCAO, its staff, volunteers or visitors will be mitigated immediately.
6. KCAO may utilize the common space described above. Any damage resulting from the activities or the negligence of KCAO, its staff, volunteers or guests shall be the responsibility of KCAO, and KCAO will bare the cost of repair.

Portions of the Facility identified above for use by KCAO are hereinafter referred to as “Leased Premises” and shall be made available by City to KCAO for purposes consistent with this Agreement.

B. It is the intent of the City of Lemoore and KCAO that the Leased Premises mentioned in Section II.A of this Agreement should remain used for food bank food storage and delivery benefiting low and very low income families for a minimum ten (10) years with two (2) renewable five (5) year extensions for a fee of \$1.00 per year.

C. Utilities/Services. KCAO will be responsible to pay for all utilities/services for the Leased Premises. This will be paid to the City of Lemoore within two weeks of presentation to KCAO of the calculated apportionment of the actual bill(s).

1. **Natural Gas:** N/A.
2. **Electricity:** The Electric panel located in the south west portion of the building will be metered at the expense of KCAO, with the City billing once a month based on the highest kilowatt price paid by the City during the respective billing cycle.
3. **Water:** KCAO will be allowed to utilize City of Lemoore water service at no charge.
4. **Trash:** KCAO will subscribe to the City of Lemoore’s applicable commercial refuse service at the respective rate.
5. **Yard Service:** N/A.
6. **Janitorial Services:** KCAO will be expected to provide/pay for janitorial services in and around (40’ radius) the food storage facility
7. **Pest Control:** KCAO will be expected to provide/pay for Pest Control services in and around (40’ radius) the food storage facility.

D. Assignment and Subletting. KCAO shall not have the right to assign, sell or mortgage its interest in this Lease Agreement or to sublet the Leased Premises.

- E. Onsite Facility Improvements.** KCAO shall reimburse the City for the construction and installation of the Onsite Facility Improvements in accordance with Exhibit B, and be reimbursed by KCAO for all improvements mentioned therein, within 30 days of each invoice being presented.
- F. Maintenance.** From and after the Effective Date, KCAO shall, at its own expense, maintain, preserve and keep the Leased Premises identified in Section II.A of this Agreement in good repair, working order and condition, and shall in a timely manner make all repairs, replacements and improvements necessary to keep the Facility in such condition. City shall have no responsibility for such maintenance, or for any such maintenance, repairs, replacements or improvements. KCAO shall, at its own expense and following City's written approval, have the right to remodel the Leased Premises or to make additions, modifications and improvements thereto. Such additions, modifications and improvements shall not in any way damage the Facility, or cause it to be used for purposes other than those authorized herein.
- G. Parking.** The City reserves the right to assign or re-assign parking at any time. KCAO is guaranteed to have 4 parking spaces assigned to them during the tenure of this Agreement. If the City deems it necessary, for the needs of City customers, employees, and KCAO volunteers, KCAO may be required to reimburse the City for a reasonable portion of the costs necessary to expand the parking area.
- H. Shared Use and Responsibility of the Existing Bathroom.** From and after the Effective Date, KCAO shall, at its own expense, preserve, replenish, and maintain to an acceptable level of cleanliness, the existing bathroom, identified in Exhibit A as the shared bathroom. During City events that are held in the Cinnamon Municipal Complex, which warrant use of the shared bathroom by City employees, agents, invitees, or guests, the City shall ensure the cleanliness of the shared bathroom upon conclusion of the event, and shall not hold KCAO responsible for damages, or violation of this clause.

III. TERM AND TERMINATION

The Lease Agreement granted herein shall be for a term of ten (10) years commencing on _____, 2009 and ending _____, 2019, except as otherwise provided herein. The Agreement shall automatically renew and be extended for up to two additional five (5) year terms, unless written notice to terminate is provided at least 90 days prior to the expiration of either the ten-year term or either five-year extension by either party to this Agreement. During the initial ten-year term or the extended term(s), all the same terms and conditions of this Agreement shall remain in effect unless modified by supplemental written agreement of the parties.

IV. CONTINGENCY; INSURANCE; AND OTHER MATTERS

- A. Liability Insurance.** From and after the Effective Date, KCAO shall procure and maintain continuously in effect, with respect to any scheduled use of the Leased Premises and Facility conducted, sponsored or sanctioned by KCAO, insurance in the amount of not less than \$1,000,000 per occurrence against liability for injuries to or death of any person, or damage to or loss of property arising out of or in any way relating to the maintenance, use or operation of the Leased Premises and Facility or any part thereof. KCAO will, during and

after the Effective Date, cause all contractors who work in or on the Leased Premises and Facility to maintain similar insurance against all similar liabilities on their part.

- B. Indemnity.** KCAO agrees to defend, hold harmless and indemnify the City against all claims, liabilities, losses, damages and actions which arise from any activity sanctioned by KCAO at or adjacent to the Facility.

City agrees to defend, hold harmless and indemnify KCAO from all claims, liabilities, losses, damages and actions which arise from any activity sanctioned by the City at or adjacent to the Facility.

Actions, claims or proceedings which arise out of or in any way relate to the conduct of the officers, employees, agents or volunteers of KCAO, or its invitees, shall be the responsibility of KCAO and covered under the KCAO promise of indemnity to the City set forth above.

The actions, claims or proceedings which arise out of or in any way relate to the conduct of the officers, employees, agents, volunteers of the City, or its invitees, shall be the responsibility of the City, and covered under its promise of indemnity to KCAO set forth above.

- C. Property Insurance.** From and after the Effective Date hereof, KCAO shall have and assume the risk of loss with respect to all Onsite Facility Improvements, constructed or to be constructed by KCAO or on KCAO's behalf, including those described in Exhibit B, and with regard to all equipment owned or operated by KCAO. KCAO shall provide all-risk insurance, subject to the standard exclusion contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any of those items shown on Exhibit B which may be destroyed or damaged. The City of Lemoore shall be named as loss payee.
- D. Worker's Compensation Employer's Liability Insurance.** KCAO shall carry Worker's Compensation Insurance covering all its employees and volunteers on, in, near or about the Facility, and upon request, shall furnish to City certificates evidencing such coverage throughout the Term of this Agreement. If not included in its workers compensation policy, KCAO shall also maintain employer's liability coverage in an amount of not less than \$1,000,000 per accident for bodily injury or disease.
- E. Other Insurance and Requirements for All Insurance.** All insurance required by this Section may be carried under a separate policy or a rider or endorsement; shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in California with an A.M. Best rating of no less than A:VII; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to both parties at least thirty (30) days before the cancellation of revision becomes effective; and shall name KCAO and City as insured parties. KCAO shall deposit with City or its assignee, policies evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, KCAO shall furnish to City evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Section, unless such insurance is no longer obtainable in which event such party shall notify the other party of this fact. KCAO's

insurance coverage shall be primary as respects the City of Lemoore, its officers, officials, employees, and volunteers. Any insurance or self insurance maintained by the City of Lemoore, its officers, officials, employees or volunteers shall be in excess of KCAO's insurance and shall not contribute with it.

V. EVENTS OF DEFAULT AND REMEDIES.

A. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the terms "Events of Default" and "Default" shall mean, whenever they are used in this Agreement, with respect to the Facility, any one or more of the following events:

1. Failure by KCAO to pay any rental payment or other payment required to be paid hereunder at the time specified herein and the continuation of said failure for a period of ten (10) business days after written notice given by the City that the payment referred to in such notice has not been received.
2. Failure by KCAO to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the first clause of this Section, for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to KCAO by City, unless City shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, City will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by KCAO within the applicable period and diligently pursued until the default is corrected.
3. The filing by KCAO of a voluntary petition in bankruptcy, or failure by KCAO promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of KCAO to carry on its operations at the Facility, or adjudication of KCAO as a bankrupt, or assignment by KCAO for the benefit of creditors, or the entry by KCAO into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to KCAO in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

B. Remedies on Default. Whenever any Event of Default referred to in Section V.A hereof shall have happened and be continuing with respect to the Leased Premises or Facility, City shall have the right, at its option and without any further demand or notice, to take one or any combination of the remedial steps:

1. With or without terminating this Agreement, reenter and take possession of the Leased Premises and the Improvements and exclude KCAO from using it; provided, however, that if this Agreement has not been terminated, City shall return access to the Leased Premises and Improvements to KCAO when the event of default is cured; and provided further that KCAO shall continue to be responsible for the Utilities/Services due with respect to the period when City is in sole possession of the Leased Premises; or,
2. With or without terminating this Agreement, reenter and take possession of the Leased Premises and sublease the Leased Premises.

3. Take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of KCAO under this Agreement.

C. Delay; Notice. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle any party to exercise any remedy reserved to it in this Agreement it shall not be necessary to give any notice, other than such notice as may be required in this Agreement.

D. No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every such remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

E. Agreement to Pay Attorneys' Fees and Expenses. If any litigation or court proceeding is commenced by either party to this Agreement, the prevailing party in such action shall be entitled to collect its reasonable attorneys' fees from the non-prevailing party.

VI. ADMINISTRATIVE PROVISIONS

A. Binding Effect. This Lease Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their successors and assigns.

B. Applicable Law. This Lease Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

C. Effective Date. This Lease Agreement shall be effective as of the date first set forth above.

CITY OF LEMOORE, CALIFORNIA

By _____
Jeff Briltz, City Manager

KINGS COMMUNITY ACTION ORGANIZATION

By _____
David Droker, Executive Director