



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: July 7, 2015

SUBJECT: APPROVAL OF AN AMENDMENT TO THE LEASE AGREEMENT WITH MONUMENT IMPACT FOR USE OF THE KELLER HOUSE AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT

Report in Brief

The current lease agreement with Monument Impact for the use of the Keller House expires on July 31, 2015. This proposed amendment extends the lease for five years and establishes a monthly lease payment of \$100.

Staff recommends that the City Council approve the Keller House amendment to lease agreement with Monument Impact and authorize the City Manager to execute the agreement.

Background

Since 1998, the city has been an active partner with the Monument Community Partnership (MCP) to address quality of life issues in the Monument corridor. In July, 2012, MCP and the Michael Chavez Center merged. The Chavez Center has successfully offered economic change for families to better their lives, while Monument Community Partnership has a long-standing history of addressing the overall well-being and facilitating the voice of the community. In April 2014, the merged-organization established their name as Monument Impact.

Discussion

The City's current lease with Monument Impact for the use of the Keller House expires on July 31, 2015. This proposed amendment will extend the lease term for five years. (Attachment 1). The amendment also establishes the lease rate at \$100 a month.

The amendment to the lease agreement with Monument Impact will allow the organization to continue their work in the Monument community. Monument Impact provides resources and services to residents with a strong focus on the Monument Community.

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July 7, 2015

Page 2

Fiscal Impact

The city will receive \$100 a month in rent for five years. Monument Impact will continue to pay for their own utilities. The nominal rent received will minimally off-set the City's building maintenance costs.

Public Contact

Posting of the City Council agenda. A copy of the agenda and report has been provided to Monument Impact.

Recommendation for Action

Staff recommends that the City Council approve the amendment to lease agreement with Monument Impact for the Keller House and authorize the City Manager to execute the agreement.



Valerie J. Barone
City Manager

valerie.barone@cityofconcord.org

Prepared by: Marla Parada
Recreation Program Manager
marla.parada@cityofconcord.org

Reviewed by: Joan Carrico
Director of Parks & Recreation
joan.carrico@cityofconcord.org

Attachment No. 1 – Amendment to Lease Agreement with Monument Impact

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (“**Amendment**”) is made and entered into as of August 1, 2015 (“**Effective Date**”) by and between the **CITY OF CONCORD**, a California municipal corporation in its capacity as a property owner and lessor rather than as a public entity (“**Landlord**”), and **MONUMENT IMPACT**, a California nonprofit public benefit corporation (“**Tenant**”), who agree as follows:

RECITALS

A. Landlord and Tenant’s predecessor-in-interest, **MONUMENT COMMUNITY PARTNERSHIP**, a California nonprofit public benefit corporation (“**Monument**”) entered into that certain Office Lease Agreement dated August 1, 2009 (“**Lease**”) which provides for the use, operation, maintenance, and improvement of certain Premises located in Concord, California. There have been no amendments to or extensions of the Lease.

B. On July 20, 2012, Tenant and Monument entered into an Agreement of Merger wherein Tenant and Monument agreed that Monument, as the Merging Corporation, would be merged with and into the Tenant as the Surviving Corporation, and that Tenant as the Surviving Corporation would be subject to all of Monument’s debts, liabilities, and trust obligations as of incurred by Tenant. The merged organization changed its name to Monument Impact in 2014.

C. Landlord and Tenant desire to amend and extend the Lease, all as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Capitalized Terms. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Lease.

2. Tenant. Tenant hereby confirms that the Agreement of Merger is and remains effective, that all of the right, title and interest of Monument in, to and under the Lease, was automatically assigned to and assumed by Tenant via the Agreement of Merger, that Tenant shall perform and comply with and to be bound by all of the terms, covenants, agreements, provisions and conditions of the Lease on the part of the tenant in the same manner and with the same force and effect as if Tenant had originally executed the Lease as tenant. All references to “Tenant” in the lease shall mean Monument Impact and Lease Section 1 is hereby revised to read as follows:

Monument Impact
1760 Clayton Road
Concord, CA 94520
Phone: (925) 682-8248
Facsimile: (925) 222-3623

3. Extension of Term. The Initial Term of the Lease is hereby extended for an additional five (5) years commencing on August 1, 2015, and expiring on July 31, 2020 (“**Extension Term**”). Tenant’s option to renew the Lease as set forth in Lease Section 2.1 is hereby deleted and shall be of no further force or effect.

4. **Right to Terminate**: Tenant, provided Tenant is not in default under any of the terms and conditions of the Lease, shall have the right to terminate the Lease at any time after August 1, 2016, upon one hundred eighty (180) days prior written notice to Landlord.

5. Base Rent. Base Rent for the Extension Term shall be One Hundred Dollars (\$100.00) per month.

6. Utilities.

a. Furnished Services. Lease Section 4.1 is hereby deleted in its entirety and replaced with the following:

4.1 Furnished Services. So long as Tenant is not in default under this Lease, Landlord shall furnish to the Premises, subject to the rules and regulations of the Building and to federal, state and local codes and directives of governmental agencies or the public utility company furnishing the service, or as otherwise determined by Landlord, alarm monitoring services. Notwithstanding the foregoing, if Tenant makes excessive use of the alarm monitoring services ("Services"), as determined by Landlord in Landlord's reasonable business judgment, Landlord may elect to have costs attributable to such excessive use charged to Tenant as a Specific Expense.

b. Extra Items. Lease Section 4.2 is hereby deleted in its entirety and replaced with the following:

4.2 Extra Items. Landlord will provide heat and air conditioning equipment required in Landlord's judgment for Tenant's use and occupancy of the Premises. Tenant, at Tenant's sole cost and expense, shall be responsible and directly contract and pay for any and all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, including: (i) heat and air conditioning; (ii) water; (iii) gas, if applicable; (iv) elevator or lift service, if any; (v) electricity; (vi) telephone, computer, communications; (vii) trash pick-up; and (viii) any other materials, services, or utilities (individually and collectively, the "Extra Items"). Landlord shall have no obligation to provide any Extra Items to the Premises. Notwithstanding the foregoing, if Landlord, in Landlord's sole discretion, elects to provide Extra Items, Tenant shall pay to Landlord upon demand the cost of any and all Extra Items furnished to Tenant; the cost of installing, maintaining and repairing equipment and/or facilities for the delivery of such Extra Items, if any; and any cost incurred by Landlord in keeping account of or determining such Extra Items in accordance with rates established by Landlord, and Landlord may discontinue such Extra Items upon thirty (30) days prior written notice to Tenant. If any Extra Items are provided, Landlord, at its election, may cause an electrical or water meter (including, without limitation, any additional wiring, conduit or panel required therefor) to be installed (and Tenant shall pay to Landlord upon demand the cost therefor) to measure use of Extra Items consumed by Tenant.

c. Exculpation of Liability. Lease Section 4.3 is hereby amended as follows:

i. Each instance of the defined term "Services" is hereby deleted and replaced with the following: "Services and/or any Extra Items"; and

ii. The following sentence shall be added at the end of the paragraph: "The exculpation of liability under this Section 4.3 shall not apply to the extent claims are caused by Landlord's sole or active negligence or willful misconduct."

7. Specific Expenses. Lease Section 6.1 is hereby amended as follows: The words “extra Services” in the last sentence is hereby deleted and replaced with the defied term “Extra Items”.

8. Insurance. Lease Section 7.2 is hereby deleted in its entirety and replaced with the following:

7.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith:

7.2.1 Commercial General Liability Coverage. Tenant shall maintain commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.

7.2.2 Automobile Liability Coverage. Tenant shall maintain automobile liability insurance covering all vehicles used in the performance of this Agreement providing a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

7.2.3 Property Insurance.

a. All Risk Coverage. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any Tenant Improvements, personal property, fixtures and equipment, including electronic data processing equipment, of Tenant (collectively "Tenant's Property") (and coverage for the full replacement cost thereof including business interruption of Tenant), together with, if the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located in the Premises.

7.2.4 Compliance with State Workers' Compensation Requirements. Tenant covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of California Labor Code §3700, et seq. Tenant shall, at all times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Tenant for City. This provision shall not apply upon written verification by Tenant that Tenant has no employees.

7.2.5 Other Insurance Provisions. The policies are to contain, or be endorsed to contain the following provisions:

a. Additional Insured. City, its officers, agents, employees, and volunteers are to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf of Tenant and operations of Tenant, premises owned, occupied, or used by Tenant. The coverage shall contain no special limitations on the scope or protection afforded to City, its officers, officials, employees, or volunteers. Except for worker's compensation and professional liability insurance, the policies mentioned in this Section 7.2 shall name City as an additional insured and provide for notice of cancellation to City. Tenant shall also provide timely and prompt notice to City if Tenant receives any notice of cancellation or nonrenewal from its insurer.

b. Primary Coverage. Tenant's insurance coverage shall be primary insurance with respect to City, its officers, officials, employees, and volunteers. Any insurance, risk pooling arrangement, or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of Tenant's insurance and shall not contribute with it.

c. Reporting Provisions. Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, officials, employees, or volunteers.

d. Verification of Coverage. Tenant shall furnish City with certificates of insurance and the original endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to City at the time of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form approved by the City Attorney. City reserves the right to require complete certified copies of all required insurance policies at any time.

9. Trade Fixtures; Alterations.

a. The last sentence of Lease Section 10.2 is hereby deleted in its entirety.

b. A new Lease Section 10.7 is hereby added as follows:

10.7 PREVAILING WAGES. Tenant acknowledges and agrees that any Tenant Improvements, repairs, maintenance, or alterations made by or on behalf of Tenant to the Premises, Property, or any portion thereof ("**Improvement Work**"), whether paid for in whole or part by Landlord or which are considered to have been paid for in whole or part by Landlord (e.g. which become Landlord's property upon the expiration or other termination of this Lease), will constitute "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds...." California Labor Code Section 1720. Accordingly, Tenant shall comply with applicable prevailing wage policies as set forth in the City of Concord Municipal Code, applicable California Labor Code requirements pertaining to "public works" (California Labor Code Section 1720 et seq., as amended from time to time and implementing regulations), the Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7, as amended from time to time and implementing regulations), and all other applicable Laws addressing the payment of prevailing wages in connection with any Improvement Work (collectively, "**Prevailing Wage Laws**"). Tenant shall require the general contractor for any Improvement Work to submit, upon request by Landlord, certified copies of payroll records to Landlord and to maintain and make records available to Landlord and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Tenant shall also include in its general contractor agreement, and in all of its subleases and other contracts, a provision in a form acceptable to Landlord which obligates the general contractor and others as applicable (a) to comply with, and to require that their respective subtenants, contractors and/or subcontractors comply with, Prevailing Wage Laws, and (b) upon request by Landlord to submit certified copies of payroll records to Landlord and to maintain and make such

payroll records available to Landlord and its designees for inspection and copying, during regular City business hours, at the Premises or at another location within the City of Concord. Tenant shall defend, indemnify and hold harmless Landlord and its officers, officials, employees, volunteers, agents and representatives (collectively, "**Indemnitees**") from and against any and all present and future Claims, arising out of or in any way connected with Tenant's obligation to comply with all Laws with respect to any Improvement Work and/or Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Section 1726. Tenant hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Tenant's obligation to comply with all Laws with respect to the Improvement Work and Prevailing Wage Laws. By waiving, releasing, and forever discharging Claims both known and unknown which are related to or which arise under or in connection with the items set out above, Tenant expressly waives any rights under California Civil Code section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The obligations of Tenant under this Section 10.7 shall survive the expiration or other termination of the Lease. Tenant shall ensure that its contracts with any contractor(s) contain substantially similar waivers and releases from such contractor(s) in favor of Indemnitees.

10. Certified Access Specialist Inspection. As of the Effective Date, neither the Premises nor the Building have been inspected by a Certified Access Specialist.

11. Furniture. In accordance with Concord Municipal Code Section 3.10.040(c), the City Manager of the City of Concord hereby (a) declares that the items identified as "City owns" on Lease Exhibit E, List of Furnishings and Personal Property, are surplus, and (b) directs that such items be donated to Tenant pursuant to a donation agreement in substantially the form attached hereto and satisfactory to the Purchasing Manager and the City Attorney. Such items are referred to herein as "Surplus Property."

12. Removal. Upon the expiration or other termination of the Lease or Tenant's right to possession of the Premises, Tenant (at Tenant's sole cost and expense) shall remove all Surplus Property together with all of Tenant's trade fixtures, equipment, furniture, and personal property from the Premises and leave the Premises in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

13. Brokers. Tenant and Landlord each represents and warrants that it has had no dealings with any real estate broker or agent in connection with this Amendment. Each party shall indemnify and hold harmless the other from and against all claims, demands, costs or liabilities (including, without limitation, attorneys' fees) asserted by any party based upon dealings of said party with any real estate broker or agent in connection with this Amendment.

14. Lease in Effect. Landlord and Tenant acknowledge and agree that, except as expressly amended by this Amendment, the Lease remains unmodified and in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

LANDLORD:
CITY OF CONCORD,
a California municipal corporation

TENANT:
MONUMENT IMPACT
a California nonprofit public benefit corporation

Valerie J. Barone, City Manager

By: _____

Name: _____

Its: _____

Attest:

Joelle Fockler, CMC, City Clerk

By: _____

Name: _____

Its: _____

Approved as to Form:

Mark S. Coon, City Attorney

Attachment: Surplus Property Donation Agreement
Exhibit E – List of Furnishings and Personal Property



CITY OF CONCORD, CALIFORNIA

SURPLUS PROPERTY DONATION AGREEMENT

THIS SURPLUS PROPERTY DONATION AGREEMENT is made and entered into as of August 1, 2015 (“**Effective Date**”) by and between the **CITY OF CONCORD**, a California municipal corporation (“**CITY**”), and **MONUMENT IMPACT**, a California nonprofit public benefit corporation (“**RECIPIENT**”), who agree as follows:

1. CITY and RECIPIENT are, respectively, Landlord and Tenant under that certain Office Lease Agreement dated August 1, 2009 (“**Lease**”) for Premises at the Keller House, 1760 Clayton Road, Concord, California, 94520, as amended by that certain Amendment to Lease dated August 1, 2015. Lease Exhibit E is entitled List of Furnishings and Personal Property (a copy of which is attached hereto and incorporated by reference) and identifies various furniture and equipment as either owned by the City or Tenant (identified thereon as “MCP”). As provided in the Amendment to Lease, CITY desires to donate to RECIPIENT, and RECIPIENT desires to accept from CITY, those items identified as “City owns” on Lease Exhibit E; such items are herein referred to as “Surplus Property.

2. CITY hereby agrees to donate, and RECIPIENT hereby agrees to accept the donation of, the Surplus Property.

3. RECIPIENT acknowledges and agrees that the Surplus Property is provided as-is, where is, with no representations, assurances, or warranties, either express or implied, as to the condition, value merchantability, fitness for a particular purpose, safety, or any other matter whatsoever regarding the Surplus Property. RECIPIENT has been using the Surplus Property in connection with RECIPIENT’S tenancy at the Keller House, has had the opportunity to use and inspect and has used inspected the Surplus Property, and relies exclusively on such personal use inspection, and not on any information provided by the CITY.

4. RECIPIENT fully releases and discharges CITY (hereafter defined to include City’s officials, officers, employees, representatives, and agents) from any and all manner of rights, liabilities, claims, actions, causes of action, suits, proceedings, demands, damages, costs, expenses (including reasonable attorneys’ fees and costs) or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, lost tax monies, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with this agreement and/or the Surplus Property (including without limitation, RECIPIENT’S or any third party’s acceptance, use, misuse, possession, ownership, sale, or disposal of the Surplus Property, or any harm or damage of any nature allegedly caused by the Surplus Property) (each a “Claim” and collectively “Claims”). RECIPIENT acknowledges and agrees that the release and waiver set forth herein is material consideration for CITY’S donation of the Surplus Property to RECIPIENT, and that, but for this release and waiver, Landlord would not have donated of the Surplus Property to RECIPIENT. By releasing and forever discharging the Claims, RECIPIENT expressly waives any rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

5. RECIPIENT shall additionally indemnify, defend (with counsel reasonably acceptable to CITY), and hold harmless the CITY from and against any and all Claims. RECIPIENT acknowledges that its duty to defend the CITY as heretofore described is separate from and additional to its indemnification obligations, and is triggered at the inception of any Claim against the CITY.

6. Each signatory signing on behalf of RECIPIENT below declares itself to be authorized to bind RECIPIENT to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date.

CITY:

CITY OF CONCORD,
a California municipal corporation

RECIPIENT:

MONUMENT IMPACT,
a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

Valerie J. Barone, City Manager

By: _____

Name: _____

Its: _____

Attest:

Joelle Fockler, CMC, City Clerk

Approved as to Form:

Mark S. Coon, City Attorney

EXHIBIT E
List of Furnishings and Personal Property

Office	Description	City owns	MCP owns
#1 Matt	Bookcase – 6 ft. dark brown	X	
	Phone set	X	
	Bulletin board – blue	X	
#2 Bryan	File cabinet – 3 drawer lateral, dark brown 42”Wx41.5”Hx19”D	X	
	Bookcase – 4 ft. brown	X	
	Computer chair	X	
	Reception chair – blue w/dk. wood	X	
	Bulletin board – blue	X	
	Phone set	X	
#3 Marla	Book shelves – 42”H x 36”W beige metal, 30”H x 4’W white	X	
	Phone set	X	
	Bulletin board – blue	X	
#4 Raquel	Phone set	X	
	2 reception chairs	X	
Copy area	Copier – Savin 2055DP	X	
	Printer – HP Laser Jet 4100N	X	
	20” Cabinet – dk. brown under counter	X	
	2 reception chairs – blue/gray		X
	Small equipment – stapler, 3 hole punch, electric stapler, electric pencil sharpener, paper cutter, tape dispenser	X	
	Wall brochure rack – oak 40”Wx36”Hx3”D	X	
#5 Host room	2 - 4 ft. computer tables – walnut		X
	4 ft. gray table		X
	File cabinet – 5 drawer, beige		X
	Love seat – leather		X
	Coffee Table		X
	2 computer chairs – gray		X
	2 reception chairs – beige		X
	2 bulletin boards – 1 cork & 1 w/white board		X
	Red Devil vacuum	X	
	Network rack and wiring in closet (to remain with the building)	X	
HP switch on network rack	X		
conference room	2 – 8 ft. folding tables – walnut	X	
	2 – 4 ft. folding tables – walnut	X	
	4 ft. adjustable table – walnut	X	
	Garbage can	X	
	Recycle bin	X	
	Microwave	X	
	Refrigerator	X	
	Toaster		X
	Coffee maker		X
	White board	X	
	Book Shelf – 30” x 6’ white	X	
	12 folding chairs	X	

	20 stacking chairs – dark blue	X	
	TV, VCR, DVD		X
	TV stand		X
	Step stool	X	
lobby	Desk – 5 ft. metal beige	X	
	Desk – 40” metal beige	X	
	5 ft. table – walnut		X
	Computer chair	X	
	Book Shelf – 30” x 6’ white	X	
	Rotating brochure rack	X	
	Brochure rack on wall – black		X
	Bulletin board – blue	X	
	Bulletin board – cork		X
	Double reception chair		X
	Fax machine		X
#6 Kathy’s office	Desk – 5’ wooden		X
	Computer station – light oak		X
	Computer chair		X
	Printer – HP Deskjet 995ck		X
	File cabinet – 3 drawer charcoal	X	
	Table – 4’ square oak		X
	Bookshelf – 5’H dark wood	X	X?
	White dry erase board – 4’		X
	Safe		X
	Clock		X
#7 Julie’s office	Desk – 3 piece gray w/under desk keyboard tray	X	
	Table – round mauve/oak		X
	File cabinet – 5 drawer beige	X	
	File cabinets – 2 drawer legal size, 2 drawer small tan		X
	Computer chair – gray		X
	Cork bulletin board		X
	White dry erase board		X
#8 Linda’s office	Desk – “L” shape wooden w/adjustable keyboard tray	X	
	Computer chair	X	
	Reception chair – blue/oak		X
	Lateral file cabinets – 2 drawer beige, 5 drawer tan		X
	Book shelf – 7’H dark wood	X	
	Cork bulletin board		X
	Printers – HP 1510 plus 2 on top of cabinet		X
	Water dispenser		X
	Two 3-hole punches		X
	Small paper shredder		X
Hallway outside Linda’s office	Shelf – 30”H x 33”W white		X
	Artificial tree		X
	Cork bulletin board 4’		X
Misc.	Garbage cans in offices/areas #1, 2, 3, 4, 5, 8 and bathrooms	X	
	2 Park benches for outside	X	