

FACILITY USE AGREEMENT

This Agreement ("AGREEMENT") is entered into this 26th day of June, 2025 by and between the City of Westminster, a municipal corporation (hereinafter "CITY"), and Westminster Nursery School, a non-profit organization (hereinafter "TENANT").

RECITALS

WHEREAS, TENANT wishes to use public property located at Bolsa Chica Park, 13660 University St., in the City of Westminster, County of Orange and State of California (hereinafter the "PROPERTY") for the purposes of operating a preschool. The PROPERTY is more fully described in Exhibit A; and

WHEREAS, it is the desire of CITY to aide and assist TENANT in the furtherance of its preschool program by making its CITY facility available for TENANT'S use, while still allowing use of the PROPERTY by CITY as described in Exhibit B;

NOW, THEREFORE, in consideration of the promises and the respective and mutual agreements contained herein, said parties hereby agree as follows:

1. PROPERTY

City hereby Leases the PROPERTY to TENANT subject to the terms of this Agreement. TENANT has had an opportunity to thoroughly inspect the PROPERTY, and accepts it "as is," in its existing condition.

2. USE OF PROPERTY

- A. For consideration herein described, TENANT's use of all parcels of the PROPERTY shall be for preschool purposes in accordance with Exhibit B.
- B. No human habitation shall be permitted on the PROPERTY.
- C. If at any time TENANT stops using the PROPERTY for a preschool as specified in Exhibit B, CITY may terminate this AGREEMENT for cause.
- D. TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the PROPERTY, nor any business or activities conducted or carried on therein or therefrom, in violation of the terms of this AGREEMENT or of any federal, state or local law or regulation.

3. LIMITATION OF THE LEASEHOLD

This AGREEMENT and the rights and privileges granted TENANT in and to the PROPERTY are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this AGREEMENT or in any document

related hereto shall be construed to imply the conveyance to TENANT of rights in the PROPERTY which exceed those owned by CITY or go beyond those rights specified in Exhibit B.

4. PAYMENTS

TENANT shall pay the CITY fifteen percent (15%) of its monthly tuition fees throughout the term of this Agreement. Payments shall be due on 15th of every month and will be considered delinquent if not paid by the 30th of every month.

5. TERM

A. This AGREEMENT shall be for a term of five (5) years, commencing on the Effective Date, unless terminated earlier pursuant to Section 6 of this AGREEMENT and will automatically terminate on the fifth (5th) anniversary thereof.

B. The Effective Date of this AGREEMENT is June 26, 2025.

6. TERMINATION

A. Unless otherwise specified in this AGREEMENT, throughout the Term this AGREEMENT may be terminated by either Party without cause by providing the other sixty (60) days written notice of its intention to terminate.

B. If for cause as specified in this AGREEMENT, or if TENANT fails to perform, or otherwise breaches, any obligation under this AGREEMENT that creates an immediate threat to the health, safety or welfare of the public, then, in addition to any other remedies available under law, CITY may terminate this AGREEMENT by providing five (5) days written notice to TENANT.

7. SUBLEASE OR ASSIGNMENT

Any sublease or assignment of TENANT's interest in the PROPERTY or any part or portion thereof is prohibited without the CITY's written consent. Any attempted sublease or assignment without the CITY's written consent shall be null and void and shall be cause for immediate termination of this AGREEMENT and shall confer no right, title, or interest in or to this AGREEMENT.

8. TENANT IMPROVEMENTS

A. TENANT shall not make or cause any substantial alterations or improvements to be made in or on the PROPERTY without first obtaining the written approval of the CITY. TENANT shall obtain all applicable federal,

state and local permits and approvals before any alterations or improvements are made to the PROPERTY.

- B. TENANT shall not place any signs on the PROPERTY without CITY'S prior written consent, which approval may be withheld in CITY'S sole discretion.
- C. All improvements affixed to the PROPERTY by TENANT, including signage, shall become part of the realty and the property of CITY at the expiration or early termination of this AGREEMENT. At such time, CITY shall have the option to have the improvements removed, in which case TENANT shall remove such improvements or be responsible to CITY for the cost of removal as CITY so directs.
- D. In the event of damage to or destruction of TENANT-constructed improvements located within the PROPERTY or if TENANT-constructed improvements located within the PROPERTY are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, CITY shall undertake necessary repairs within thirty (30) days and diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the PROPERTY for the purposes required by the AGREEMENT. Notwithstanding the foregoing, in the event the TENANT-constructed improvements are so substantially and catastrophically damaged such that the PROPERTY can no longer reasonably be used or occupied by TENANT for its intended purpose, then in such case CITY shall have one hundred and twenty (120) days from the date of such event to commence and diligently pursue to completion the repair, replacement, or reconstruction of those damaged improvements as outlined above. TENANT shall be responsible for the cost of repair
- E. Except as otherwise provided herein, termination of this AGREEMENT shall not reduce or nullify TENANT's obligation under this paragraph. With respect to damage or destruction to be repaired by CITY or which CITY elects to repair, TENANT waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

9. MAINTENANCE

- A. CITY shall be responsible for all routine maintenance of the PROPERTY.
- B. Should repairs of the PROPERTY beyond normal wear and tear be necessitated due to the negligence of TENANT, TENANT shall be responsible for the costs of such repairs and shall reimburse CITY its actual

costs.

10. INSURANCE REQUIREMENTS

- A. TENANT shall procure and maintain throughout the duration of this AGREEMENT, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the TENANT's operations, occupancy of and use of the PROPERTY. TENANT shall provide current evidence of the required insurance in a form acceptable to the CITY and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this AGREEMENT. All insurance shall be provided at TENANT'S expense and there shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- B. Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained herein in Section (X) or the extent to which TENANT may be held responsible for payments of damages to persons or property.
- C. Minimum Scope and Limits of Insurance
 - 1. Commercial General Liability Insurance. TENANT shall maintain a policy for occurrence coverage for bodily injury and property damage, with coverage at least as broad as ISO Form #CG 00 01. The limit shall be no less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this AGREEMENT or shall be twice the required occurrence limit.
 - 2. Commercial Automobile Liability Insurance. TENANT shall maintain a policy with coverage at least as broad as ISO Form # CA 0001, including Symbol 1 (any auto). The limit shall be no less than \$1,000,000 each accident.
 - 3. Workers' Compensation and Employers' Liability Insurance. TENANT shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.
 - 4. All Risk Property Insurance. TENANT shall maintain all risk property insurance including coverage for TENANT improvements or betterments with a minimum limit equal to full replacement cost as approved by the CITY of the leased property and with no

coinsurance penalty provision.

5. Sexual Abuse/Molestation Insurance. TENANT shall procure and maintain Sexual Abuse/Molestation Liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability coverage or as a separate policy.

B. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the CITY.

C. Other Insurance Provisions. The required insurance policies shall contain or be endorsed to contain the following provisions:

1. Commercial General Liability and Business Automobile Liability

The CITY, its officials, officers, employees, agents and volunteers are to be covered as additional insured. The coverage shall contain no special limitations on the scope of its protection afforded to the CITY, its officials, officers, employees, agents and volunteers.

2. Commercial General Liability and Business Automobile Liability

The insurance shall be primary insurance as respects the CITY, its officials, officers, employees, agents and volunteers and shall apply separately to each insured against whom a suit is brought, or a claim is made. Any insurance or self-insurance maintained by the CITY, its officials, officers, employees, agents and volunteers shall be in excess of this insurance and shall not contribute with it.

3. All Risk Property

The CITY shall be named as loss payees.

4. Workers' Compensation and Employers' Liability Insurance

Insurer shall waive their right of subrogation against the CITY, and their respective officials, officers, employees, agents and volunteers for work done on behalf of the CITY.

5. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has

been given to the CITY.

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to the CITY with current BEST'S ratings of no less than B+, Class X. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the CITY, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if TENANT evidences the requisite need to the sole satisfaction of the CITY.

E. Verification of Coverage

TENANT shall furnish the CITY with certificates of insurance which bear original signatures of authorized agents, and which reflect insurers' names and addresses, policy numbers, coverage, limits, deductibles, and self-insured retentions. Additionally, TENANT shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by CITY before TENANT occupies property. The CITY reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

F. Termination for Lack of Required Coverage.

If TENANT, for any reason, fails to have in place, at all times during the term of this Agreement, including any extension hereto, all required insurance and coverage, CITY may immediately obtain such coverage at TENANT'S expense and/or terminate this Agreement for cause.

11. INDEMNIFICATION

- A. TENANT assumes all risk of injury to its employees, agents, and contractors, including loss or damage to property.
- B. TENANT agrees to defend, indemnify, hold free and harmless the CITY, its officials, officers, agents, employees and volunteers, at TENANT's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the CITY, its elected officials, officers, agents, employees and volunteers arising out of the performance of the TENANT, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the TENANT, its employees, and/or authorized subcontractors, but shall be

required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the TENANT, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, its elected officials, officers, agents, employees and volunteers based upon the work performed by the TENANT, its employees, and/or authorized subcontractors under this Agreement, whether or not the TENANT, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the TENANT shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole negligence or willful misconduct of the CITY. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or TENANT's Proposal, which shall be of no force and effect.

- C. No official, employee, agent or volunteer of City shall be personally liable for any default or liability under this Agreement.
- D. Notwithstanding the foregoing, nothing herein shall be construed to require TENANT to indemnify CITY from any claim arising from the sole active negligence or willful misconduct of the CITY.

12. REPORTING OF ACCIDENTS

TENANT shall promptly report any and all accidents, damage, and loss to CITY, except for *de minimus* items. TENANT shall take no action, such as admission of liability, which would, in its reasonable judgment, prejudice CITY or the insurance carrier in the defense of any claim.

13. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT

If CITY or TENANT commences legal action against the other claiming a breach or default of this AGREEMENT, the prevailing party in such litigation shall be entitled to recover from the other costs of sustaining such action, including reasonable attorney fees, as may be fixed by the court.

14. NOTICES

All notices pursuant to this AGREEMENT shall be personally addressed as set forth below or as either party may hereafter designate be written notice and shall be personally served or sent through the United States mail.

CITY

TENANT

Community Services Department

Westminster Nursery School

City of Westminster
8200 Westminster Blvd.
Westminster, CA 92683
(714) 895-2860
Attention: Community Services Director

P.O. Box 458
Westminster, CA 92683
(657) 269-7386
Attention: President

Except for termination notices, all notices, claims, and correspondence authorized or required by this Agreement shall be effective when personally served, or three days after deposit in the United State mail, first class postage prepaid with a proof of service. Termination notices shall be effective on the date set forth in the Notice as required by Section 6, TERMINATION, above.

15. INSPECTION

CITY or its authorized representative shall have the right at all reasonable times to inspect the PROPERTY to determine if TENANT is in compliance with this AGREEMENT, or for any other reasonable purpose.

16. PERMITS AND LICENSES

TENANT shall obtain any and all approvals, permits and/or licenses which may be required in connection with its operations on the PROPERTY, or in connection with any improvements it may construct on the PROPERTY. No permit approval or consent given hereunder by CITY in its governmental capacity shall affect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by CITY, as a party to this AGREEMENT, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

17. HAZARDOUS MATERIALS

As used herein the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including without limitation, CITY acting in its governmental capacity, the State of California or the United States Government.

A. TENANT shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the PROPERTY, except as may specifically authorized by CITY in writing. Any such authorization by CITY shall not alter or reduce TENANT's obligations under this section, including but not limited to its duty to indemnify and defend CITY, for any contaminations which may occur as a result of TENANT's use of the authorized material.

B. If TENANT breaches the obligations stated herein, or if contamination of the

PROPERTY by Hazardous Materials otherwise occurs for which TENANT is legally liable to CITY for damage resulting therefrom, then TENANT shall indemnify, defend and hold CITY harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the PROPERTY, damages for the loss or restriction on use of rentable or usable space or any amenity of the PROPERTY, damages arising from any adverse impact on marketing of space in the PROPERTY or portion of any building of which the PROPERTY is a part, and sums paid in settlement of claims, attorneys fees, consultant fees and expert witness fees) which arise during or after the term as a result of such contamination.

- C. This indemnification includes without limitation, costs incurred by CITY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or legal governmental entity because of Hazardous Material being present in the soil or ground water or under the PROPERTY. TENANT shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the PROPERTY to its condition prior to the introduction of such Hazardous Material by TENANT, provided TENANT shall first have obtained CITY's approval and the approval of any necessary governmental entities.
- D. CITY agrees to indemnify, defend and hold TENANT harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, known or unknown, arising from any pre-existing soil contamination or other pre-existence of any Hazardous Material on the PROPERTY prior to the date TENANT originally began to occupy the PROPERTY, including but not limited to any sums paid in settlement of claims, attorneys fees, consultant fees and expert witness fees which arise during or after the AGREEMENT term and arising solely from such pre-existing contamination, if any.

18. PHONE/UTILITIES

- A. During the Term of this AGREEMENT, TENANT shall be responsible for and pay all charges related to its use of phone services supplied to the PROPERTY.
- B. CITY shall be responsible for payment of all other utilities.

19. RECORDS, ACCOUNTS AND AUDIT

TENANT, shall keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of

whatever nature, conducted on the PROPERTY. The records must be supported by source documents such as enrollment records, tuition payment records, and other pertinent documents. CITY shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof.

20. PUBLIC RECORDS

Any and all written information submitted to and/or obtained by CITY from TENANT or any other person or entity having to do with or related to this AGREEMENT and/or the PROPERTY, either pursuant to this AGREEMENT or otherwise, at the option of CITY, may be treated as a public record open to inspection by the public pursuant to the California Public Records Act (Government Code Section 7920.000, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public. TENANT hereby waives, for itself, its officials, officers, agents, employees, subtenants and any person claiming by, through or under TENANT, any right or claim that such information is not a public record or that the same is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

21. RESERVATION TO CITY

- A. The PROPERTY is accepted "as is" and, thereby, TENANT is subject to any and all existing easements and encumbrances. In addition, CITY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water, sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the PROPERTY or any part thereof, and to enter the PROPERTY for any and all such purposes. CITY also reserves the right to grant franchises, easements, rights-of-way, and permits in, over, upon, through, across, under, and along any and all portions of the PROPERTY. No right reserved by CITY in the Paragraph shall be so exercised as to interfere unreasonably with TENANT's operations hereunder or to impair the security of any secured creditor of TENANT.
- B. CITY agrees that rights granted to third parties by reason of this Paragraph shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction.

22. HOLDING OVER

In the event TENANT shall continue in possession of the leased PROPERTY after the term of this AGREEMENT, such possession shall not be considered a renewal of his AGREEMENT, but a tenancy from month to month and shall be governed by the conditions and covenants contained in this AGREEMENT or provided by law.

23. CITY'S RIGHT TO RE-ENTER

- A. TENANT agrees to yield and peaceably deliver possession of the PROPERTY to CITY on the date of termination of this AGREEMENT, whatsoever the reason for such termination. Upon giving written notice of termination to TENANT, CITY shall have the right to re-enter and take possession of the PROPERTY on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the AGREEMENT and re-entry of the PROPERTY by CITY shall in no way alter or diminish any obligation of TENANT under terms of the AGREEMENT and shall not constitute an acceptance or surrender.
- B. TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the PROPERTY for any lawful reason or in the event CITY re-enters and takes possession of the PROPERTY in a lawful manner.

24. TAX ID AND BYLAWS

Within five (5) days from the Effective Date of this Agreement TENANT shall provide CITY with its non-profit tax id and a copy of its bylaws.

25. AUTHORITY OF TENANT

If TENANT is a corporation, each individual executing this AGREEMENT on behalf of said corporation represents and warrants that the signor is duly authorized to execute and deliver this AGREEMENT on behalf of said corporation, in accordance with the by-laws of said corporation, and that this AGREEMENT is binding upon said corporation.

26. RELATIONSHIP OF PARTIES

The relationship of the parties hereto is and shall remain that of Lessor and Tenant. It is expressly agreed that by executing this AGREEMENT and allowing TENANT to take possession of the PROPERTY, CITY does not in any way or for any purpose become a partner of TENANT, or otherwise establish a joint venture between CITY and TENANT. TENANT and its employees are, and at all times shall be, deemed

an independent contractor. Nothing herein shall be construed as creating the relationship of employer and employee or principal and agent between CITY and TENANT or any of TENANT's employees and TENANT and its employees shall not be entitled to any rights or privileges of CITY employees and shall not in any manner be considered to be CITY employees.

27. ATTACHMENTS

This AGREEMENT includes the following exhibits, which are attached hereto and made a part hereof:

Exhibit A - Description of Property

Exhibit B - Use of Property

28. WAIVER

- A. If any provision of this Agreement is determined to be illegal, unenforceable, or invalid, such act shall in no way affect the validity of any other provision in this Agreement.
- B. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the Party making the waiver.

29. NON-DISCRIMINATION

TENANT shall not discriminate in its preschool program or in its employment on the basis of color, race, religion, national origin, sex, age, physical or mental handicap.

30. ENTIRE AGREEMENT/AMENDMENTS

This AGREEMENT sets forth all agreements and understandings of the parties and any modification shall be in writing and properly executed by both parties.

IN WITNESS WHEREOF, the parties have executed this license the day and year first above written.

CITY OF WESTMINSTER
A Municipal Corporation

TENANT
WESTMINSTER NURSERY SCHOOL

Christine Cordon,
City Manager

President

ATTEST:

Ashton R. Arocho, City Clerk

APPROVED AS TO FORM:

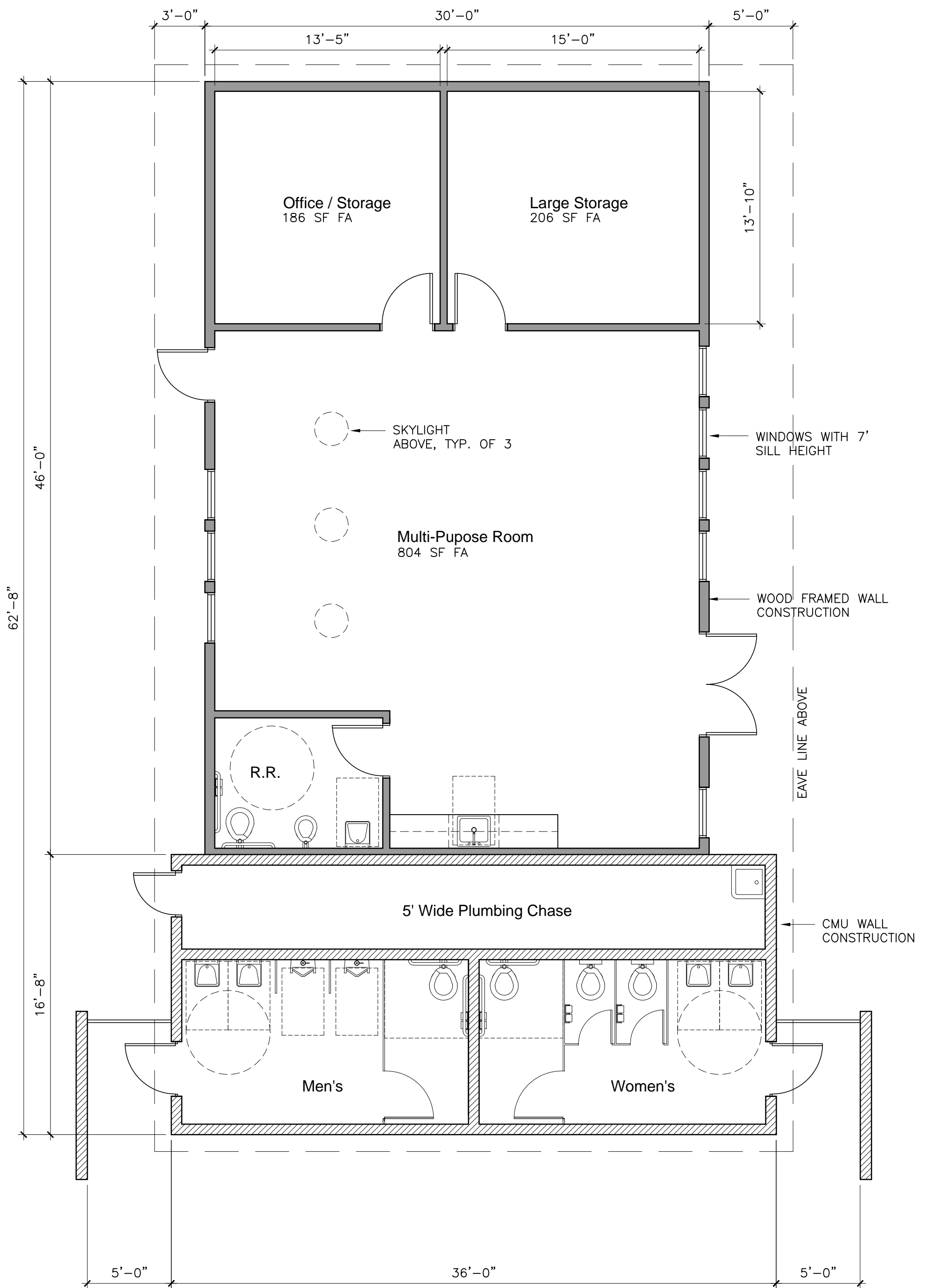
APPROVED AS TO INSURANCE:

Scott Porter, City Attorney

Jodie Griner, Human Resources & Risk
Management Director

ATTACHMENT A

Exhibit A
Bolsa Chica Building



TOTAL FOOTPRINT = 1,980 SF

Schematic Floor Plan - Rev 3	SCALE: $\frac{3}{16}" = 1'-0"$	C
Bolsa Chica Park Restroom & Multi-Purpose Building City of Westminster, California		
OLDHAM ARCHITECTS 550 S. brea, blvd. brea, ca 92821 714.482.8296 www.oldham-architects.com		

ATTACHMENT B

EXHIBIT B

The Westminster Nursery School will operate each year from September through June, or as otherwise approved by the Director of Community Services and Recreation. The program will be held Monday through Friday during their designated school hours. They will utilize the Multipurpose Room, Restroom and the Large Storage Room. In June, or as otherwise approved by the Director, the Nursery School will remove their equipment from the Multipurpose Room into their Large Storage Room.

This facility will be used by the Community Services Department as an afterschool program site during the school year from September through June and during the summer months from mid-June to mid-August. Westminster Nursery School will coordinate school set-up with the Community Services Department each year in August, or as otherwise arranged and approved by the Director.