

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

813



FROM: Economic Development Agency / Facilities Management

SUBMITTAL DATE:

May 25, 2011

SUBJECT: Second Amendment to Lease – Riverside County and Wells Fargo Bank, California

RECOMMENDED MOTION: That the Board of Supervisors ratify the attached Second Amendment to Lease and authorize the Chairman of the Board to execute same on behalf of the county.

BACKGROUND: In February 1998, the County of Riverside acquired the real property, including the building, from WF Bulk Ceres and assumed the Original Lease as Landlord. The Original Lease has been amended by the First Amendment to Lease dated April 20, 2004, entered into between County and Wells Fargo Bank, NA, a United States corporation and national bank association. Lessee operates two exterior automated teller machines ("ATMs").

(Continued)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: Wells Fargo Bank

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: SYNTHIA M. GUNZEL
DATE: 5/18/11
Departmental Concurrence

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 3.4 of 2/10/98

District: 1

Agenda Number:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

3.40

BACKGROUND: (Continued)

The facility continues to meet the needs and requirements of the Wells Fargo Bank and they desire to extend the term an additional five years commencing March 1, 2011 and terminating February 29, 2016, along with an option to extend for an additional five years. This Lease is submitted for ratification due to late signature by the Lessee.

The attached Second Amendment to Lease is summarized below:

Lessor's Address:	County of Riverside 3133 Mission Inn Avenue Riverside, California 92507
Location:	600 W. Graham Avenue Lake Elsinore, California 92530
Term:	Effective as of March 1, 2011, through February 29, 2016
Size:	Two ("ATMs") on the exterior of the library
Rent:	\$775.00 monthly

The attached Second Amendment to Lease has been approved as to form by County Counsel.

1 **SECOND AMENDMENT TO LEASE**

2 **BY AND BETWEEN**

3 **THE COUNTY OF RIVERSIDE AND WELLS FARGO BANK, NA**

4
5 **THIS SECOND AMENDMENT TO LEASE** ("Second Amendment") is made
6 and entered into as of the _____, 2011, by and between the **County of**
7 **Riverside**, a political subdivision of the State of California ("Landlord"), and the **Wells**
8 **Fargo Bank, N.A.**, a national banking association ("Tenant"), for the property
9 described below upon the following terms and conditions:

10 **1. Recitals.**

11 a. WF Bulk Ceres, a California limited partnership ("WF Bulk"), as
12 landlord and Tenant entered into that certain Standard ATM Lease dated February 13,
13 1998 ("Original Lease") pursuant to which WF Bulk leased to Tenant a portion of that
14 certain building located at 600 W. Graham Avenue, Lake Elsinore, California
15 ("Building"), which portion is more particularly described in the Original Lease and
16 referred to therein as the "Premises".

17 b. On or about February 1998, County of Riverside acquired the real
18 property at 600 W. Graham Ave., Lake Elsinore, including the Building, from WF Bulk
19 and assumed all the obligations of landlord under the Original Lease.

20 c. The Original Lease has been amended by that certain First
21 Amendment to Lease dated February 24, 2001, entered into between Landlord and
22 Tenant, ("First Amendment") pursuant to which, among other things, the term of the
23 Original Lease, as amended, was extended to February 28, 2011.

24 d. The Original Lease, as amended by the First Amendment, shall
25 be referred to as the "Lease".

26 e. Landlord and Tenant desire to amend the Lease, among other
27 things, to extend the term period and provide the rent schedule for the extended term.

28 ///

1 **NOW, THEREFORE**, for good and valuable consideration the receipt and
2 adequacy of which is hereby acknowledged, the parties agree as follows:

3 **2. Capitalized Terms:** Second Amendment to Prevail. Unless defined
4 herein or the context requires otherwise, all capitalized terms herein shall have the
5 meaning defined in the Lease, as heretofore amended. The provisions of this Second
6 Amendment shall prevail over any inconsistency or conflicting provisions of the Lease,
7 as heretofore amended, and shall supplement the remaining provisions thereof. The
8 Lease remains in full force and effect except to the extent amended by this Second
9 Amendment.

10 **3. Lease Term.** Section 1 of the First Amendment and Section 5 of the
11 Lease Agreement shall be amended to provide that the term of this Lease shall be and
12 hereby is extended sixty (60) months commencing on March 1, 2011 and terminating
13 on February 29, 2016 (the "Extended Term").

14 **4. Rent.** Section 2 of the First Amendment and Section 7 of the Lease
15 Agreement shall be amended to provide that the monthly rent Tenant shall pay to
16 Landlord for the Premises during the Extended Term shall be as follows:

<u>Monthly Amount</u>	<u>Year</u>
\$775.00	March 1, 2011 to February 29, 2012
\$775.00	March 1, 2012 to February 28, 2013
\$775.00	March 1, 2013 to February 28, 2014
\$775.00	March 1, 2014 to February 28, 2015
\$775.00	March 1, 2015 to February 29, 2016

21
22 **5. Option to Extend.** Tenant is hereby granted on (1) option to extend the
23 term of the Lease for an additional five (5) years, commencing one day following the
24 expiration of the Extended Term (i.e., commencing on March 1, 2016) and ending on
25 February 28, 2021, both dates inclusive ("Option Term"), subject to the same terms
26 and conditions as contained in the Lease, except the rent payable by Tenant to
27 Landlord for the Premises during the Option Term shall be set for in Section 6 below.

28 ///

1 Tenant must give notice, in writing, to Landlord at least one hundred eighty (180) days
2 prior to expiration of the Extended Term, in order to exercise this option to extend.

3 **6. Rent During Option Term:** Section 4 of the First Amendment to Lease
4 shall be amended to provide that if Tenant exercises the option to extend pursuant to
5 Paragraph 5 above then the monthly rent payable by Tenant for the Premises during
6 the Option Term shall be as follows:

<u>Monthly Amount</u>	<u>Year</u>
\$852.50	March 1, 2016 to February 28, 2017
\$852.50	March 1, 2017 to February 28, 2018
\$852.50	March 1, 2018 to February 28, 2019
\$852.50	March 1, 2019 to February 29, 2020
\$852.50	March 1, 2020 to February 28, 2021

7
8
9
10
11
12 **7. Insurance.** Section 24 of the Lease shall be deleted in its entirety and
13 replaced as follows:

14 24. **Insurance.** Without limiting or diminishing the Tenant's obligation
15 to indemnify or hold Landlord harmless, Tenant shall procure and maintain or cause to
16 be maintained, at its sole cost and expense, the following insurance coverage's during
17 the term of this Agreement. As respects to the insurance section only, where noted,
18 Landlord herein refers to the County of Riverside, its Agencies, Districts, Special
19 Districts, and Departments, their respective directors, officers, Board of Supervisors,
20 employees, elected or appointed officials, agents or representatives as Additional
21 Insureds.

22 (a) **Workers' Compensation.** If the Tenant has employees as defined
23 by the State of California, the Tenant shall maintain statutory Workers' Compensation
24 Insurance (Coverage A) as prescribed by the laws of the State of California. The policy
25 shall be endorsed to waive subrogation in favor of The County of Riverside.

26 (b) **Commercial General Liability.** Commercial General Liability
27 insurance coverage, including but not limited to, premises liability, unmodified
28 contractual liability, products and completed operations liability, personal and

1 advertising injury, and cross liability coverage, covering claims which may arise from or
2 out of Tenant's performance of its obligations hereunder. Policy shall name the County
3 as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per
4 occurrence combined single limit. If such insurance contains a general aggregate limit,
5 it shall apply separately to this agreement or be no less than two (2) times the
6 occurrence limit.

7 (c) Vehicle Liability. If vehicles or mobile equipment are used in the
8 performance of the obligations under this Agreement, then Tenant shall maintain
9 liability insurance for all owned, non-owned or hired vehicles so used in an amount not
10 less than \$1,000,000 per occurrence combined single limit. If such insurance contains
11 a general aggregate limit, it shall apply separately to this agreement or be no less than
12 two (2) times the occurrence limit. Policy shall name the County as Additional Insureds.

13 (d) General Insurance Provisions - All lines.

14 1) Any insurance carrier providing insurance coverage
15 hereunder shall be admitted to the State of California and have an A M BEST rating of
16 not less than A: VIII (A:8) unless such requirements are waived, in writing, by the
17 County Risk Manager. If the County's Risk Manager waives a requirement for a
18 particular insurer such waiver is only valid for that specific insurer and only for one
19 policy term.

20 2) Notwithstanding anything to the contrary contained herein
21 or within the Lease, Tenant may fulfill its insurance obligations under the Lease by self-
22 insuring against the risks covered by the insurance required under this Section 24 after
23 notifying Landlord in writing of its election to self-insure, so long as Tenant has a net
24 worth of not less than \$100,000,000, as evidenced by its most recent annual public
25 report. Any such self-insurance shall be deemed insurance required to be carried by
26 Tenant under the Lease. The foregoing right of self-insurance is limited to Tenant and
27 successor by merger or acquisition but does not extend to any other assignee or
28 sublessee. In the event that Tenant elects to maintain all or any portion of such

1 coverages under a program of self-insurance or under policies that include self-insured
2 retentions or deductibles, Landlord shall have the same rights and protections under
3 this Lease as if Tenant carried such insurance with a third party insurance company
4 satisfying the requirements of this lease.

5 3) In the event that Tenant chooses to procure an insurance
6 policy to satisfy any or all of the insurance requirements contained herein, Tenant shall
7 cause Tenant's insurance carrier(s) to furnish the County of Riverside with a properly
8 executed original Certificate(s) of Insurance and copies of endorsements effecting
9 coverage as required herein, showing such insurance is in full force and effect. Further,
10 said Certificate(s) (to the extent available by the certificate issuer) shall contain the
11 covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to
12 the County of Riverside prior to any material modification, cancellation, expiration or
13 reduction in coverage of such insurance. In the event of a material modification,
14 cancellation, expiration, or reduction in coverage, this Agreement shall terminate
15 forthwith, unless the County of Riverside receives, prior to such effective date, another
16 properly executed original Certificate of Insurance and original copies of endorsements
17 or certified original policies, including all endorsements and attachments thereto
18 evidencing coverage's set forth herein and the insurance required herein is in full force
19 and effect. Tenant shall not commence operations until the County has been furnished
20 original Certificate (s) of Insurance and copies of endorsements. An individual
21 authorized by the insurance carrier to do so on its behalf shall sign the original
22 endorsements for each policy and the Certificate of Insurance.

23 4) It is understood and agreed to by the parties hereto that the
24 Tenant's insurance shall be construed as primary insurance, and the County's
25 insurance and/or deductibles and/or self-insured retentions or self-insured programs
26 shall not be construed as contributory.

27 5) Tenant shall pass down the insurance obligations contained
28 herein to all tiers of subcontractors working under this Agreement.

1 6) The insurance requirements contained in this Lease may be
2 met with a program of self-insurance acceptable to the Landlord.

3 7) Tenant agrees to notify Landlord of any claim by a third
4 party or any incident or event that may give rise to a claim arising from the performance
5 of this Lease.

6 (e) Tenant shall carry its own personal property insurance.

7 (f) Landlord shall maintain throughout the term of the Lease,
8 commercial general liability insurance including broad form blanket coverage against
9 claims for bodily injury, death and/or property damage occurring within, around, or
10 upon the Building, and contractual liability covering the indemnity set forth in Section
11 32 of the Lease, as modified hereby, which insurance shall afford "single occurrence"
12 protection of at least Two Million Dollars (\$2,000,000.00).

13 (g) Landlord shall maintain throughout the term of the Lease, all risk
14 property insurance in an amount equal to the full replacement cost (including
15 demolition and removal of debris) of the Building.

16 **8. Hold Harmless/Indemnification:** Section 32 of the Lease shall be
17 deleted in its entirety and replaced as follows:

18 32. **Indemnity.**

19 **a. Landlord Indemnification.** Tenant shall indemnify
20 and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and
21 Departments, their respective directors, officers, Board of Supervisors, elected and
22 appointed officials, employees, agents and representatives (individually and collectively
23 hereinafter referred to as "Landlord Indemnitees") from any liability whatsoever, based
24 or asserted upon, Tenant's use of the Premises and the operation of its business
25 thereat (or the use thereof by its officers, employees, contractors, agents or
26 representatives), arising out of or in any way relating to this Agreement , except to the
27 extent that any such liability is based on or arises out of the negligence or willful
28 misconduct of any of Landlord's Indemnitees. Tenant shall defend, at its sole expense,

1 all costs and fees including, but not limited, to reasonable attorney fees, reasonable
2 costs of investigation, defense and settlements or awards, the Landlord Indemnitees in
3 any claim or action based upon such alleged acts or omissions. With respect to any
4 action or claim subject to indemnification herein by Tenant, Tenant shall, at its sole
5 cost, have the right to use counsel of its own choice and shall have the right to adjust,
6 settle, or compromise any such action or claim without the prior consent of Landlord;
7 provided, however, that any such adjustment, settlement or compromise in no manner
8 whatsoever limits or circumscribes Tenant's indemnification to Landlord's Indemnitees
9 as set forth herein. Tenant's obligation hereunder shall be satisfied when Tenant has
10 provided to Landlord the appropriate form of dismissal relieving Landlord from any
11 liability for the action or claim involved. The specified insurance limits required under
12 the Lease shall in no way limit or circumscribe Tenant's obligations to indemnify and
13 hold harmless the Landlord Indemnitees herein from third party claims.

14 **b. Landlord Indemnification.** Landlord shall indemnify
15 and hold harmless Tenant and its respective past and present parent, subsidiaries,
16 divisions and affiliate corporations, and the respective past and present officers,
17 directors, shareholders, agents, attorneys and employees of each and all of the
18 foregoing entities, and its and their respective successors, heirs, assigns and any other
19 person or entity now, previously, or hereafter affiliated with the same (individually and
20 collectively hereinafter referred to as "Tenant Indemnitees") from any liability
21 whatsoever, based or asserted upon Landlord's use and/or operation of the Building (or
22 the use or operation thereof by its officers, employees, contractors, agents or
23 representatives), except to the extent that any such liability is based on or arises out of
24 the negligence or willful misconduct of any of Tenant Indemnitees. Landlord shall
25 defend, at its sole expense, all costs and fees including, but not limited, to reasonable
26 attorney fees, reasonable costs of investigation, defense and settlements or awards,
27 the Tenant Indemnitees in any claim or action based upon such alleged acts or
28 omissions. With respect to any action or claim subject to indemnification herein by

1 Landlord, Landlord shall, at its sole cost, have the right to use counsel of its own choice
 2 and shall have the right to adjust, settle, or compromise any such action or claim
 3 without the prior consent of Tenant; provided, however, that any such adjustment,
 4 settlement or compromise in no manner whatsoever limits or circumscribes Landlord's
 5 indemnification to Tenant Indemnitees as set forth herein. Landlord's obligation
 6 hereunder shall be satisfied when Landlord has provided to Tenant the appropriate
 7 form of dismissal relieving Tenant from any liability for the action or claim involved.

8 **9. Release from Liability.** Section 33 of the Lease shall be deleted in its
 9 entirety and replaced with the following:

10 **33. Release from Liability.** Notwithstanding Section 32 or any other
 11 provisions of this Lease, in no event shall either party be liable to the other for
 12 consequential damages resulting from a breach of this Lease.

13 **10. Notices.** Section 27 of the Lease shall be amended to provide that any
 14 notices required or desired to be served by either party upon the other shall be
 15 addressed to the respective parties as set forth below:

LANDLORD	TENANT
County of Riverside Economic Development Agency Real Estate Division 3403 Tenth Street, Suite 500 Riverside, California 92501	Wells Fargo Corp Properties Group Attn: Lease Mgmt MAC D1116-L10 BE: 198595 1525 West W.T. Harris Blvd. Charlotte, NC 28262 T: 704.374.6098 F: 704.590.0436 with copy to: Wells Fargo Bank Corporate Properties Group (MAC#E2064-072) BE: 198595 333 So. Grand Avenue, Suite 700 Los Angeles, Ca 90071 Attn: Lease Administration

1 or to such other addresses as from time to time shall be designated by the respective
2 parties.

3 **11.** Except as modified or supplemented by this Second Amendment to
4 Lease, all provisions of this Lease shall remain in full force and effect.

5 **12.** This Second Amendment to Lease shall not be binding or consummated
6 until its approval by the Board of Supervisors of Riverside County.

7 Dated: _____

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking
association (Tenant)**

8
9
10 By:  _____

LORI C. WRIGHT
CORPORATE OFFICER

11 Its: _____

12
13 By:  _____

KIM A. STRUNK
NEGOTIATOR

14 Its: _____

15
16 **ATTEST:**
17 Kecia Harper-Ihem
18 Clerk of the Board

COUNTY OF RIVERSIDE

19 By: _____
20 Deputy

21 By: _____
22 Bob Buster, Chairman
23 Board of Supervisors

24 **APPROVED AS TO FORM:**
25 Pamela J. Walls
26 County Counsel

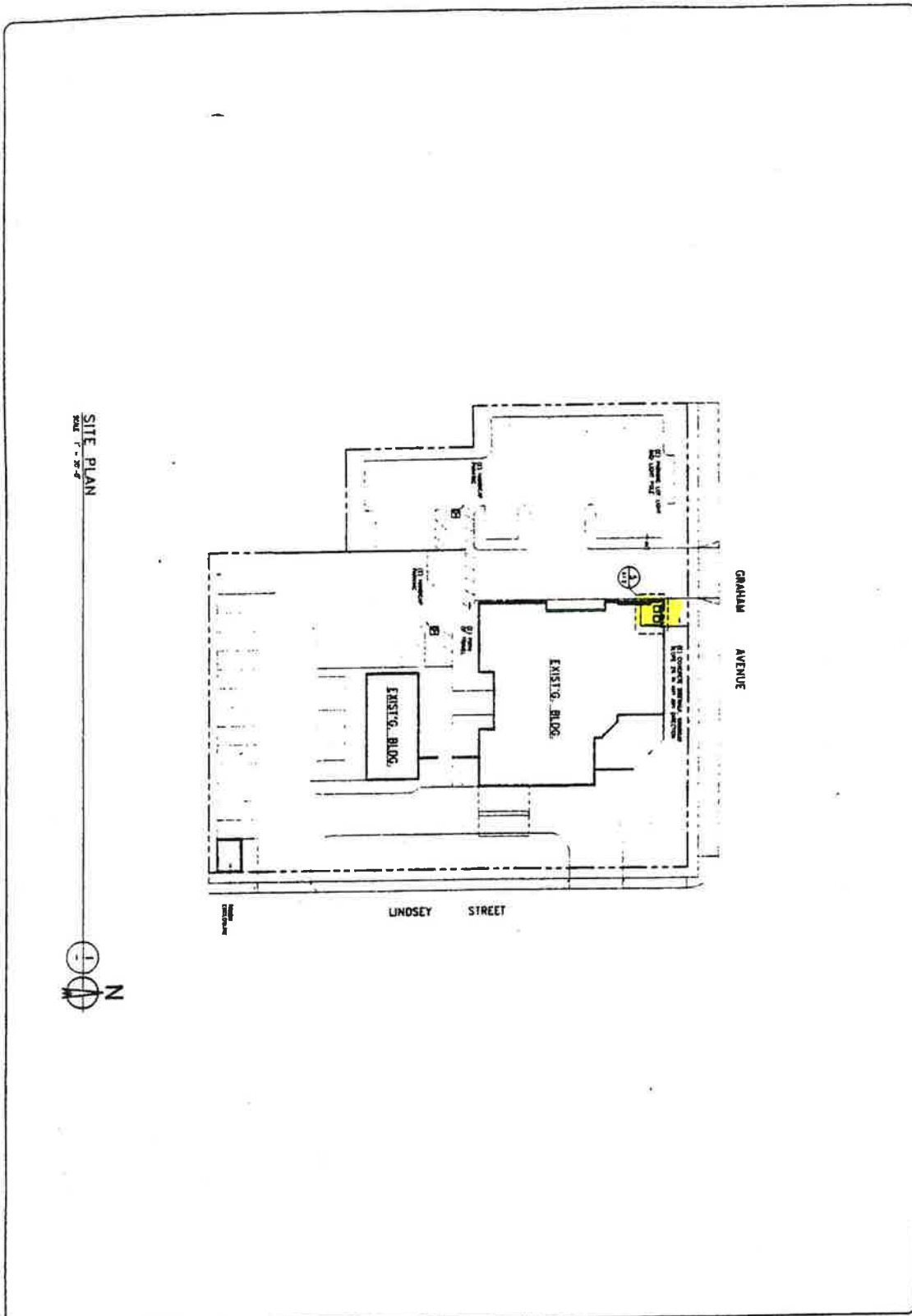
27 By:  _____
28 Synthia M. Gunzel
Deputy County Counsel

MH:ad/042511/LE025/13.872

EXHIBIT 'A'

1/2

EXHIBIT 'A'



A11 DIRECT MAILING ORDER NO. 11 ORDERED BY APPROVED BY	SITE PLAN SHEET TITLE	DATE 07/22/91 SCALE AS SHOWN	WELLS FARGO BANK 600 GRAHAM AVENUE LAKE ELSINORE, CA 92530		AYERS CORPORATION WELLS FARGO BANK - COMM. & BUSINESS SERVICES 22901 C La Palma Avenue Yorba Linda, CA 92687 Telephone: (714) 992-4400 Fax: (714) 992-8420	8336-A Portershire Place Lake Elsinore, CA 92550 Telephone: (951) 294-8940 Fax: (951) 294-8950
			PROJECT TITLE			