

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

913



FROM: Successor Agency to the Redevelopment Agency

SUBMITTAL DATE:
December 6, 2012

SUBJECT: First Amendment to Lease – H.N. and Frances C. Berger Foundation

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Existing Facilities;
2. Ratify the First Amendment to Lease and authorize the Chairman of the Board to execute the same on behalf of the County; and
3. Direct the Successor Agency to submit to the Oversight Board for approval.

BACKGROUND: (Commences on Page 2)

[Handwritten Signature]

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 1	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: Real Estate Division

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

C.E.O. RECOMMENDATION: APPROVE

BY: *[Handwritten Signature]*
Jennifer L. Sargent

County Executive Office Signature

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: *[Signature]* 12/5/12
 SAMUEL WONG
 DATE: 10-18-12
 ANITA C. WILLIS
 FORM APPROVED COUNTY COUNSEL
 BY: *[Signature]*
 Policy Policy
 Consent Consent
 Dept't Recomm.: Per Exec. Ofc.:

Prev. Agn. Ref.: 9.19 of 7/17/07

District: 4/4

Agenda Number:

4.2

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

BACKGROUND:

In July, 2007, the Redevelopment Agency for the County of Riverside (RDA) entered into a five-year lease agreement with the H.N. and Frances C. Berger Foundation (The Foundation) for the purpose of the RDA developing a sheriff's station, aviation facilities, and related street improvements on approximately 18 acres in the unincorporated area of Thermal, California. Under the terms of the lease the property is to be conveyed to the RDA after substantial completion of the project. Prior to the dissolution of the RDA, the majority of the property was developed as stipulated and has been operating for the purposes intended. At the request of The Foundation, the attached First Amendment to Lease extends the lease by two years, until July 2014 to accommodate their charitable goal and time frame for the land transfer from The Foundation to the County of Riverside Successor Agency to the Redevelopment Agency.

At the termination of the lease, the Successor Agency will follow all guidelines pursuant to the property management plan as required by AB 1484.

Pursuant to the California Environmental Act (CEQA), the Lease Amendment was reviewed and determined to be categorically exempt from CEQA Guidelines Section 15301, Class 1 – Existing Facilities. The proposed project, the Lease Amendment, is the letting of property involving existing facilities. No expansion of an existing use will occur. A summary of the lease is as follows:

Location: 86625 – 86675 Airport Blvd.
Thermal, CA

Lessor: H.N. and Frances C. Berger Foundation
P.O. Box 13390
Palm Desert, CA 92255-3390

Term: Two years commencing July 17, 2012 and terminating July 16, 2014.

Rent: One dollar per year.

Utilities: County pays all utility costs.

Custodial: To be provided by County.

Maintenance: County provides all property maintenance.

The attached First Amendment to Lease has been reviewed and approved by County Counsel as to legal form.

Attachment:
First Amendment to Lease

FIRST AMENDMENT TO LEASE AGREEMENT

By and between

the H.N. and Frances C. Berger Foundation and the

Successor Agency to the Redevelopment Agency for the County of Riverside

This First Amendment to the Lease Agreement ("Amendment") is made as of July 16, 2012, (the "Effective Date") by and between the H.N. and Frances C. Berger Foundation, a Delaware corporation ("Lessor" or "The Foundation"), and the Successor Agency to the Redevelopment Agency for the County of Riverside, a public body, corporate and politic of the State of California ("Successor Agency"), with reference to the following:

RECITALS

A. Whereas, as a non-profit corporation, The Foundation promotes educational and public service facilities in communities throughout the Coachella Valley. The Foundation is the owner of certain real property ("Property") located in the unincorporated area of Thermal, California, consisting of one parcel totaling approximately 18 acres, as more particularly described on Exhibits "A" and "B" attached hereto and incorporated herein by reference; and,

B. Whereas, the Successor Agency is the successor in interest to the Redevelopment Agency for the County of Riverside pursuant to the provisions of Section 34173 of the California Health and Safety Code; and

C. Whereas, the Redevelopment Agency for the County of Riverside (Former RDA) was a redevelopment agency duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the provision of the Community Redevelopment Law which is Part 1 of Division 24 of the California Health and Safety Code (commencing with Section 33000 et. seq.); the Former RDA was terminated as of February 1, 2012 pursuant to Section 34172; and

D. Whereas, the County of Riverside and the Former RDA adopted Ordinance No. 638 on December 23, 1986, a redevelopment plan for an area within the County identified as the Desert Communities Project Area (4-1986) Sub Area Thermal (hereinafter the "Project Area"); and, whereas, the Desert Communities Redevelopment Plan (hereinafter the "Plan") was adopted in order to eliminate blight and revitalize the substandard physical and economic conditions that exist within the Project Area; and,

E. Whereas, pursuant to Sections 34177 – 34181 of the Health and Safety Code, the Successor Agency is authorized to make and execute contracts and other instruments necessary or convenient in compliance with the Enforceable Obligation Payment Schedule (EOPS) as superseded by the Recognized Obligation Payment Schedule (ROPS) as adopted by the Agency and the Oversight Board; and,

F. Whereas this lease is necessary in performance of an obligation of the Former RDA pursuant to the EOPS or as later superseded by the ROPS; and,

G. Whereas, The Foundation desires to extend its lease of the Property to the Successor Agency for the purpose of operating, to the extent permitted by law, thereon public service facilities to include a Sheriff's Station and Sheriff's Aviation Facility (the "Project") to provide public safety to the residents of Thermal and the Coachella Valley; and,

H. Whereas, the Successor Agency and The Foundation acknowledge that at or prior to the expiration of the lease, the Property will be conveyed to the Successor Agency with the stipulation that the use of the land be for public purposes and providing that the Successor Agency will be responsible for on-going maintenance and operation of the Project and Property; and,

I. Whereas, this Amendment changes certain terms and conditions of that certain lease dated July 17, 2007, by and between the H.N. and Frances

C. Berger Foundation, a Delaware corporation, Lessor, and the Redevelopment Agency for the County of Riverside, a public body, Lessee (the "Lease"); and,

J. Whereas, with reference to the terms and conditions for development as set forth in the Lease dated July 17, 2007, between the H.N. and Frances C. Berger Foundation and Redevelopment Agency for the County of Riverside, this Amendment affirms the H.N. and Frances C. Berger Foundation and the Successor agree and acknowledge that the development is complete and the Successor Agency has no further obligation to complete improvements of the Property pursuant to the Lease;

K. Now therefore, in consideration of the preceding promises and the mutual covenants and agreements hereinafter contained, the parties hereby mutually agree to amend the July 17, 2007 Lease Agreement as of the Effective Date; and

L. The Foundation and the Successor Agency desire, by this Amendment, to extend the term of the Lease for two (2) years as set forth herein; and to other such terms and conditions as follows:.

I. Term of Lease. Section 1 of the Lease is hereby amended by deleting and substituting therefore the following:

"1. Term of Lease. This Lease shall commence on the July 17, 2007 (the "Effective Date"), and shall terminate on July 16, 2014."

II. Rent. Section 2.1 of the Lease is hereby deleted and substituted therefore is the following:

"2.1 Rent. The Parties agree that the use of the property by the Successor Agency and The Foundation benefits the communities surrounding the Project by eliminating physical and economical blighting conditions, and improving access to public safety. Accordingly and in addition to the other promises set forth herein, Successor Agency covenants and agrees to pay, as rent, the sum of One Dollar (\$1.00) per lease year, commencing on the Effective Date, as rent to Lessor."

III. Offsite Improvements. Section 2.4 of the Lease is hereby deleted in its entirety.

IV. Development Plan and Improvements. Section 4.1 of the Lease is hereby amended by deleting and substituting therefore the following:

“4.1 Development and Improvements. The parties acknowledge that the following improvements have been constructed and owned by the Lessee: Sheriff’s Station and Sheriff’s Aviation Facility to provide public safety facilities to the residents of Thermal and the Coachella Valley (the “Project”). The construction of the aforesaid improvement on the leased premises satisfies all obligations of the Lessor with respect to the development of the leased property as contemplated by the parties herein.”

V. Financing. Section 4.2 of the Lease is hereby deleted in its entirety.

VI. Future Subdivision of Property. Section 4.4 of the Lease is hereby amended by deleting and substituting therefore the following:

“Section 4.4 Subdivision of Property. Successor Agency has completed, at its own expense, steps to process a parcel map which shall make the Property a separate legal lot. The parcel map will not adversely affect or restrict Lessor’s ownership interest in the Property and will contain the same or equivalent acreage. Successor Agency shall finalize the parcel map within 120 days of Property transfer as referenced herein.”

VII. Disposition of Property at Expiration of Lease Term. Section 11.1 of the Lease is hereby amended by deleting and substituting therefore the following:

“Section 11.1 Conveyance of Property to Successor Agency upon Expiration of Lease Term. Upon expiration of this Lease, Lessor shall grant fee title to Successor Agency so long as Successor Agency agrees

to use the Property or cause the Property to be used, for public purposes. Successor Agency may, in its sole discretion, transfer such fee title to the County of Riverside under the same terms and conditions stated herein.”

VIII. Disposition of Successor Agency's Property upon Termination. Section 11.2 of the Lease is hereby deleted in its entirety.

IX. Notices. Section 13.3 of the Lease is hereby amended by deleting and substituting therefore the following:

“13.3 Notices. All notices, requests, demands, waivers, consents, and other communications hereunder shall be in writing, shall be either transmitted by facsimile machine, hand delivered, sent by certified mail, or delivered by a regionally or nationally recognized overnight courier service, freight prepaid, and shall be deemed to have been duly given and to have become effective upon receipt, directed to the parties at the following addresses (or at some other address as shall be given in writing by a party hereto):

If to Lessee addressed to:

Successor Agency c/o

Economic Development Agency, County of Riverside

3403 Tenth Street, Suite 500

Riverside, CA 92501

Attn: Deputy Director, Real Estate

With a copy to counsel:

Riverside County Counsel

3960 Orange Street, Suite 500

Riverside, CA 92501

If to Lessor, addressed to:

H.N. and Frances C. Berger Foundation
P.O. Box 13390
Palm Desert, CA 92255-3390
Attn: Ronald M. Auen

With a copy to:

Michael B. Rover
Rover Armstrong
75100 Mediterranean
Palm Desert, CA 92211"

X. Venue. Section 13.5 of the Lease is hereby amended by deleting and substituting therefore the following:

"13.6 Venue. In the event any action or proceeding is commenced to enforce or interpret this Agreement, venue shall lie in the Superior Court of California, the County of Riverside."

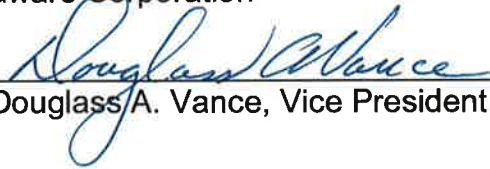
XI. This First Amendment and the Lease set forth and contain the entire understanding and agreement of the parties hereto. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to within this First Amendment and/or the Lease. Except as set forth in this Amendment, all other terms of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date written.

LESSOR:

Dated: Oct. 3, 2012

H.N. and FRANCES C. BERGER FOUNDATION, a Delaware Corporation

By: 
Douglass A. Vance, Vice President

SUCCESSOR AGENCY:

Dated: _____

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE

By: _____
John Tavaglione, Chairman
Board of Supervisors

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

Pamela J. Walls, County Counsel

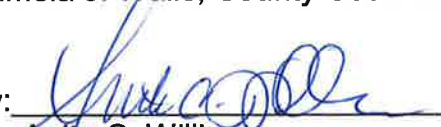
By: 
Anita C. Willis
Principal Deputy County Counsel

EXHIBIT "A"

PLAT AND LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

PARCEL "A"

A PORTION OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED AREA OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF AIRPORT BOULEVARD AND POLK STREET, SAID POINT ALSO BEING THE NORTH EAST CORNER OF SECTION 21;

THENCE NORTH 89°49'33" WEST ALONG THE CENTERLINE OF SAID AIRPORT BOULEVARD, A DISTANCE OF 1456.65 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN 60.00 FOOT STRIP OF LAND DEDICATED TO COACHELLA VALLEY COUNTY WATER DISTRICT RECORDED NOVEMBER 22, 1949 IN BOOK 1125 PAGE 492 OF OFFICIAL RECORDS;

THENCE SOUTH 00°08'44" WEST ALONG THE WEST LINE OF SAID 60.00 FOOT STRIP OF LAND A DISTANCE OF 30.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE WEST LINE OF SAID 60.00 FOOT STRIP OF LAND SOUTH 00°08'44" WEST A DISTANCE OF 1275.61 FEET TO A POINT ON THE SOUTH LINE OF THE EAST HALF OF LOT 2 OF COACHELLA LAND AND WATER COMPANIES SUBDIVISION OF SAID SECTION FILED IN BOOK 4 OF MAPS AT PAGE 53, RECORDS OF SAID COUNTY;

THENCE SOUTH 89°57'27" WEST ALONG SAID SOUTH LINE OF THE EAST HALF OF LOT 2, A DISTANCE OF 600.00 FEET TO THE WEST LINE OF SAID EAST HALF OF LOT 2;

THENCE NORTH 00°08'43" EAST ALONG SAID WEST LINE OF THE EAST HALF OF LOT 2, A DISTANCE OF 1277.88 FEET TO THE NORTH LINE OF SAID EAST HALF OF LOT 2;

THENCE SOUTH 89°49'33" EAST ALONG SAID NORTH LINE OF THE EAST HALF OF LOT 2, A DISTANCE OF 600.00 FEET TO THE TRUE POINT OF BEGINNING.

SEE EXHIBIT "B" ATTACHED

PREPARED UNDER THE SUPERVISION OF:

JAY S. FAHRION

JAY S. FAHRION, L.S. 8207



6/12/07
DATE

2007/04/03/0001
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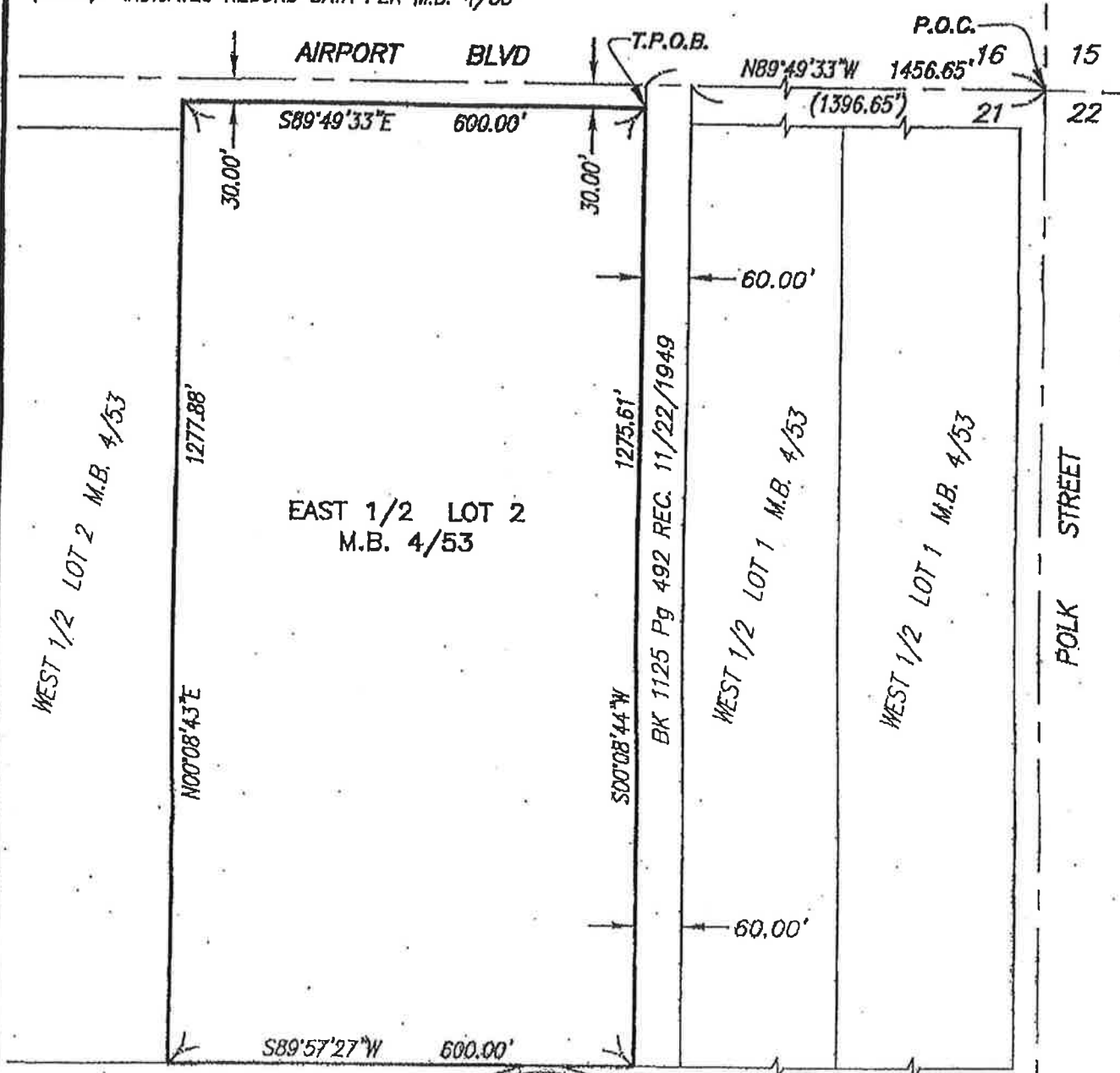


EXHIBIT "B"

SHEET 1 OF 1

POR. OF SEC. 21, T. 6 S., R. 8 E., S.B.M.

(XX.XX) INDICATES RECORD DATA PER M.B. 4/53



THIS DOCUMENT WAS PREPARED BY ME OR UNDER MY SUPERVISION, BASED ON RECORD INFORMATION.

Jay S. Fahrion
JAY S. FAHRION, L.S. 8207
LIC. EXP. 3/31/09



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