

FORM APPROVED COUNTY COUNSEL
BY: PATRICIA MUNROE
DATE: 7/14/13

Departmental Concurrence

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



FROM: Economic Development Agency / Facilities Management

463

SUBMITTAL DATE:
August 8, 2013

SUBJECT: Lease Agreement – District Attorney, Palm Desert

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Lease Agreement and authorize the Chairman of the Board to execute the same on behalf of the County of Riverside; and
2. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Existing Facilities.

BACKGROUND: (Commences on Page 2)

Christopher Hans
Christopher Hans

FISCAL PROCEDURES APPROVED
PAUL ANGULO, CPA, AUDITOR-CONTROLLER
BY: Lisette Rose 8/7/13
Lisette Rose

Robert Field

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 351,726	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/14

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: East County Detention Center Project Budget

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

C.E.O. RECOMMENDATION: APPROVE

BY: Jennifer Saroent
Jennifer Saroent

County Executive Office Signature

By: Jeffrey Van Wagenen, Assist. DA
Office of the District Attorney

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District: 4/4

Agenda Number: 3-30

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

BACKGROUND:

In 2011, California Governor Jerry Brown signed into law Assembly Bill 109, known as the "Realignment Plan" which shifts the responsibility from the state to the counties for the custody, treatment and supervision of certain offenders. This legislation, combined with the current level of demand for detention facilities in the County, has resulted in the need for additional detention system capacity.

To aid in the financing of such a facility, on March 27, 2012, the Board of Supervisors approved item 3.10, entitled "Acceptance of \$100 Million AB 900 Funding Award from the Corrections Standards Authority," formally accepting a funding award in the amount of \$100 million to be applied to the planning, design, and construction of a new detention facility in the County.

The Indio CAC facility at 82-675 Highway 111, Indio was deemed to be the location most suitable for this project and on November 6, 2012, the Board of Supervisors approved item 3.21 for an architectural services agreement to be executed between an architectural firm and the County for the design of a new detention facility at that location.

The County is in the process of designing and constructing a detention facility on the Indio CAC site which will be known as the East County Detention Center (ECDC). The site is currently improved with office and related facilities totaling approximately 122,000 square feet built from 1968 to 1975. The County plans to relocate the occupants, demolish the facilities, and construct the new detention complex. The new detention complex will feature 1,627 detention beds. On February 26, 2013, the Board of Supervisors approved the Monthly Progress Report Regarding the ECDC, which enumerated the documents required by the State to date in connection with the state-provided bond financing and confirmed the submittal of these documents to the State and compliance by County.

As a companion project to the ECDC project, the Economic Development Agency (EDA) identified County-owned land of approximately 5.68 acres on the southwest corner of Highway 111 and Jackson Street in the City of Indio as the location most suitable for the construction of a privately owned leased office building of approximately 90,000 square feet with a ground lease to the county to accommodate these departments and entities. The District Attorney, Public Defender, County Counsel, and Law Library will be permanently relocated into this new leased facility. As a result of these moves, TLMA and the Assessor-clerk Recorder also need to be relocated.

On June 24, 2012, EDA issued a Request for Proposal to real estate developers for the planning, design, and construction of a 90,000 square foot office building to be known as the County Law Building and recommended the Board approve a Pre-Development Agreement with the Trammell Crow Company which was approved by the Board of Supervisors on April 9, 2013 as item 3-2. EDA is working to negotiate a Ground Lease and Facilities lease with Riverside Communities Properties Development Inc. as landlord and will bring these negotiated documents to the Board in the future for Board of Supervisors consideration. The estimated completion timeframe for the County Law Building is approximately the first calendar quarter of 2015.

Due to the necessity to commence demolition of the Indio CAC project in November of 2013, and the inability of the Indio CAC occupants (including the Public Defender and the Offices of the District Attorney) and other entities to occupy the new County Law Building until the first calendar quarter of 2015, there is a need for temporary and/or permanent facilities. The purpose of this Form 11 is to recommend approval of a lease agreement for a temporary facility for the Offices of the District Attorney.

(Continued)

BACKGROUND: (Continued)

This Lease was reviewed and determined to be categorically exempt from CEQA Guidelines Section 15301, Class 1 – Existing Facilities. The proposed project, the Lease, is the letting of property involving existing facilities. No expansion of an existing use will occur.

A summary of the Lease is as follows:

Lessor:	DBP Office 1, L.L.C. 77-885 Las Montanas Road, Suite A Palm Desert, CA 92211
Premises:	77933 Las Montanas Road, Suite 205 Palm Desert, California 92211
Size:	5,901 square feet
Term:	Twenty-four months commencing on completion and acceptance of tenant improvements with a right to early terminate on or after eighteen months without penalty. Anticipated occupancy September 15, 2013.
Rent:	\$1.52 per sq. ft. \$8,969.52 per month \$107,634.24 per year
Annual Adjustment:	None
Utilities:	County pays for all utilities.
Custodial:	Provided by Lessor
Maintenance:	Provided by Lessor
RCIT:	\$48,920
Security:	\$11,866
Improvements:	Lessor to complete improvements. County will reimburse upon completion and acceptance. Cost not to exceed \$183,535 which includes an \$8,800 contingency for any additional items requested by County which are not included in the original scope of work.

This Lease Agreement has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

All associated costs for this Lease Agreement will be fully funded through the ECDC Project budget. EDA will request a budget adjustment during the first quarter of FY 2013/14.

Attachments: Exhibit A, Exhibit B, Lease

Exhibit A

District Attorney Lease Cost Analysis FY 2013/14 77933 Las Montanas Road, Suite 205, Palm Desert, California

Total Square Footage to be Leased:

EXPECTED AMOUNTS

Current office: 5,901 SQFT

Total Expected Lease Cost for FY 2013/14

ACTUAL AMOUNTS

Current Office: 5,901 SQFT

Approximate Cost per SQFT (Sep - Jun) \$ 1.52

Lease Cost per Month (Sep- Jun) \$ 8,969.52

Total Lease Cost (Sep - Jun) \$ 89,695.20

Total Actual Lease Cost for FY 2013/14 \$ 89,695.20

Estimated Additional Costs:

EXPECTED AMOUNTS

Utility Cost per Square Foot \$ 0.12

Estimated Utility Costs per Month (Sep - Jun) \$ 708.12

Total Estimated Expected Cost for FY 2013/14 \$ -

ACTUAL AMOUNTS

Utility Cost per Square Foot \$ 0.12

Costs per Month (Aug - Jun) \$ 708.12

Total Estimated Actual Utility Cost for FY 2013/14 \$ 7,081.20

RCIT \$ 48,920.00

Security \$ 11,866.00

Tenant Improvements \$ 183,535.00

EDA Lease Management Fee (Based @ 3.89%) \$ 10,628.65

Total Estimated Actual Cost for FY 2013/14 \$ 262,030.85

TOTAL ESTIMATED COST FOR FY 2013/14 \$ 351,726.05

East County Detention Center Project Budget 100%

1 items, County reserves the right to determine if the Premises are prepared for useful
2 occupancy. The Term shall expire at midnight on the last day of the twenty-fourth
3 (24th) month ("Expiration Date") unless sooner terminated pursuant to the terms of this
4 Lease.

5 (b) Any holding over by County after the expiration of said term shall
6 be deemed a month-to-month tenancy upon the same terms and conditions of this
7 Lease for a period of three (3) months; provided, that if neither County nor Lessor has
8 elected to terminate the Lease within such 3-month then the monthly rent shall be
9 equal to 103% of the Rent due for the last full calendar month of the regular Term.
10 Holdover Rent shall not be prorated if County surrenders the Premises earlier than the
11 last day of the calendar month.

12 **4. Options to Extend.** County shall have two (2) options to extend ("
13 Option to Extend") the term of this Lease each for one (1) year periods (each shall be
14 referred to as an "Extension Term"), which options shall be exercised in the following
15 manner:

16 (a) The first option shall be exercised by County giving Lessor notice
17 of its election thereof, in writing, no later than sixty (60) days prior to the expiration of
18 the initial term of this Lease.

19 (b) The second option shall be exercised by County giving Lessor
20 notice of its election thereof, in writing, not later than sixty (60) days prior to the
21 expiration of the first Extension Term.

22 **5. Rent.**

23 (a) County shall pay the sum of Eight Thousand Nine Hundred
24 Sixty-Nine and 52/100 Dollars (\$8,969.52) per month to Lessor as rent for the
25 Premises, payable, in advance, on the first day of the month or as soon thereafter as a
26 warrant can be issued in the normal course of County's business; provided, however,
27 in the event County cannot take useful occupancy of the Premises until after the first
28 day of the month, rentals for the first and last months shall be pro-rated on a thirty (30)

1 day calendar basis, payable on the date of occupancy for the first month and on the
2 first day of the last month, or as soon thereafter as a warrant can be issued in the
3 normal course of County's business.

4 (b) In the event the County exercises its option to extend the Term of
5 the Lease pursuant to the provisions of 4 above, the monthly rent shall be increased by
6 three percent (3%) for each respective-Extension Term.

7 **6. Custodial.**

8 (a) **Custodial Services.** Lessor shall provide, or cause to be
9 provided, and pay for all custodial services in connection with the Premises and such
10 services shall be provided as set forth in the attached Exhibit "C." The provider of such
11 custodial services will perform background checks through LiveScan or in the manner
12 specified by County, of qualified permanent and temporary employees to determine
13 their suitability for employment. The provider will be bonded in the sum of \$10,000.00,
14 and proof of such insurance, as supplied by the Lessor, shall be furnished prior to
15 occupancy of Premises by County. In addition to bonding as required herein, Lessor
16 shall also receive proof of statutory workers' compensation insurance, commercial
17 general liability and vehicle liability insurance from the provider of any custodial
18 functions performed at the Premises location.

19 (b) **County's Right to Provide Custodial Service and Deduct Cost.**

20 If County provides written notice to Lessor of an event or circumstance that requires
21 the action of Lessor with respect to the custodial services as set forth in Paragraph 6
22 and Exhibit "C," and Lessor fails to provide such action as required by the terms of this
23 Lease within three (3) days of County's notice, County may take the required action to
24 provide custodial services by its staff or those of a custodial contractor if: (1) County
25 delivers to Lessor an additional written notice advising Lessor that County intends to
26 take the required action if Lessor does not begin the required action within forty-eight
27 (48) hours after the written notice; and (2) Lessor fails to begin the required work within
28 this forty-eight (48) hour period. Upon demand by County, Lessor shall promptly

1 reimburse County the actual cost and expenses thereof, provided said costs and
2 expenses are reasonable. Should Lessor fail to promptly pay the cost and expenses,
3 County may deduct and offset that amount from Rent payable under this Lease. For
4 purposes of this Section, notice given by fax or e-mail shall be deemed sufficient.

5 **7. Utilities.** County shall pay for all utility services used in connection with
6 the Premises, including, but not limited to, County telephone, interior electric, interior
7 building water, natural gas and sewer services, as may be required in the
8 maintenance, operation and use of the Premises. Lessor shall provide and pay for all
9 other utility services, including standard office refuse collection.

10 **8. Maintenance.**

11 (a) Lessor warrants that the Premises shall be in good and suitable
12 condition at such time as County can take useful occupancy. Lessor shall keep the
13 Premises in such good condition, and in compliance with all federal, state and local
14 laws, ordinances, rules, codes and regulations including but not limited to fire, health
15 and safety. Additionally, Lessor shall maintain the exterior and interior of the Premises,
16 including, but not limited to, insect/pest control services, air conditioning equipment,
17 heating equipment, plumbing, electrical wiring and fixtures, windows and structural
18 parts, in good working condition and repair and in compliance with all laws, ordinances,
19 rules and regulations, including, but not limited to, the Americans with Disabilities Act.

20 (b) In the event Lessor fails, or refuses, to make any repairs to the
21 Premises as may be required or necessitated, County reserves the right to undertake
22 such repairs, subject to two (2) weeks' notice to Lessor in writing. County shall be
23 entitled to prompt reimbursement by Lessor of County's reasonable costs and
24 expenses in taking such action. If, within thirty (30) days after receipt of County's
25 written demand for payment of County's costs incurred in taking such action on
26 Lessor's behalf, Lessor has not paid the invoice or delivered to County a detailed
27 written objection to it, County may deduct from Rent payable by County under this
28 Lease the amount set forth in the invoice.

1 (c) Notwithstanding the provisions contained in Paragraph 8(a) above,
2 in the event an emergency arises which requires or necessitates repairs to the
3 Premises in order to insure the health and safety of persons or property or both, and
4 Lessor fails, or refuses, to make such repairs in an expeditious manner, County may
5 undertake such repairs and notify Lessor thereof in writing promptly thereafter. Upon
6 demand by County, Lessor shall promptly reimburse County the actual cost and
7 expenses thereof, provided said costs and expenses are reasonable. Should Lessor
8 fail to promptly pay the cost and expenses, County may deduct and offset that amount
9 from Rent payable under this Lease.

10 **9. Improvements by Lessor.**

11 (a) Lessor shall prepare the Premises for useful occupancy as shown
12 on Exhibit "B," attached hereto and by this reference made a part of this Lease in an
13 amount not to exceed One Hundred Eighty Three Thousand Five Hundred Thirty Five
14 and 00/100 Dollars (\$183,535.00), which includes an Eight Thousand Eight Hundred
15 and 00/100 Dollars (\$8,800.00) contingency for any additional items requested by
16 County which are not included in the original scope of work. The cost of said
17 improvements shall be set forth in an itemized statement including contingency and
18 included in Exhibit "B". Upon completion and acceptance of all tenant improvements
19 Lessor shall provide an itemized invoice to County within thirty (30) days. Payment
20 shall be made by County to Lessor within forty-five (45) days of receipt of itemized
21 statement.

22 (b) Lessor recognizes and understands that said preparation of the
23 Premises shall be subject to the provisions contained in the California Labor Code
24 (commencing with Section 1720) relating to general prevailing wage rates and other
25 pertinent provisions therein.

26 (c) Lessor shall comply and stay current with all applicable building
27 standards, which may change from time to time, including but not limited to, the
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1 Americans with Disabilities Act in preparing the Premises for occupancy as specified in
2 Paragraph 9(a) above.

3 **10. Improvements by County.**

4 (a) Any alterations, improvements or installation of fixtures to be
5 undertaken by County shall have the prior written consent of Lessor after County has
6 submitted plans for any such proposed alterations, improvements or fixtures to Lessor
7 in writing. Such consent shall not be unreasonably withheld by Lessor.

8 (b) All alterations and improvements made, and fixtures installed, by
9 County shall remain County property and may be removed by County at or prior to the
10 expiration of this Lease; provided, however, that such removal does not cause injury or
11 damage to the Premises, or in the event it does, the Premises shall be restored.

12 **11. Indemnification and Hold Harmless.**

13 (a) Lessor shall indemnify and hold harmless the County Parties (as
14 defined in Section 11(h) below) from any liability, including, but not limited to, property
15 damage, bodily damage, bodily injury, or death, or from any services provided by
16 Lessor Parties or any act, error, omission, of Lessor Parties or of any invitee, guest, or
17 licensee of Lessor in, on, or about the Project arising out of, from or in any way relating
18 to this Lease. Lessor Parties shall not indemnify County Parties when such liability
19 arises out of or from County's responsibilities under the terms of this Lease. When
20 indemnifying County Parties, Lessor shall defend at its sole cost and expense,
21 including but not limited to, attorney fees, cost of investigation, defense and
22 settlements or awards, on behalf of the County parties in any claim or action based
23 upon such liability.

24 (b) County shall indemnify and hold harmless the Lessor Parties from
25 any liability, including, but not limited to, property damage, bodily injury, or death,
26 based or asserted on events which may occur within the County Premises arising out
27 of or from its use and occupancy relating to this Lease. County Parties shall not
28 indemnify Lessor Parties for liability arising within the County Premises when such

1 liability arose out of or from Lessor's responsibilities under the terms of this Lease.
2 County shall defend at its sole cost and expense, including, but not limited to, attorney
3 fees, cost of investigation, defense and settlements or awards, on behalf of the Lessor
4 Parties in any claim or action based upon such liability.

5 (c) With respect to any action or claim subject to indemnification
6 herein, the indemnifying party shall, at their sole cost, have the right to use counsel of
7 their choice and shall have the right to adjust, settle, or compromise any such action or
8 claim without the prior consent of the indemnified party; provided, however, that any
9 such adjustment, settlement or compromise in no manner whatsoever limits or
10 circumscribes the indemnifying party's obligation to indemnify as set forth herein.

11 (d) The indemnifying party's obligation hereunder shall be satisfied
12 when they have provided the indemnified party the appropriate form of dismissal
13 relieving the indemnified party from any liability for the action or claim involved.

14 (e) The specified insurance limits required in this Lease shall in no
15 way limit or circumscribe the indemnifying party's obligation to indemnify as set forth
16 herein.

17 (f) In the event there is conflict between this clause and California
18 Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code
19 2782. Such interpretation shall not relieve the indemnifying party's obligation to
20 provide indemnification to the fullest extent allowed by law.

21 (g) **Survival of Indemnification.** The paragraphs of this Paragraph
22 11 shall survive the expiration or earlier termination of this Lease until all claims against
23 County Parties involving any of the indemnified matters are fully, finally, and absolutely
24 barred by the applicable statutes of limitations.

25 (h) **Definition of "County Parties" and "Lessor Parties".** For
26 purposes of this Section 11, the term "County Parties" refers singularly and collectively
27 to County, Special Districts, their respective Directors, Officers, Board of Supervisors,
28 agents, employees, and independent contractors as well as to all persons and entities

1 claiming through any of these persons or entities. The term "Lessor Parties" refers
2 singularly and collectively to Lessor and the partners, venturers, trustees, and ancillary
3 trustees of Lessor and the respective officers, directors, shareholders, members,
4 parents, subsidiaries, and any other affiliated entities, personal representatives,
5 executors, heirs, assigns, licensees, invites, beneficiaries, agents, servants,
6 employees, and independent contractors of these persons or entities.

7 **12. Insurance.**

8 (a) **Lessor's Insurance.** Without limiting or diminishing any
9 indemnification contained within this Lease, Lessor and/or their authorized
10 representatives, including, if any, a property management company, shall procure and
11 maintain or cause to be maintained, at its sole cost and expense, the following
12 insurance coverage during the term of this Lease.

13 (b) **Workers' Compensation.** Workers' Compensation Insurance
14 (Coverage A) as prescribed by the laws of the State of California. Policy shall include
15 Employers' Liability (Coverage B) including Occupational Disease with limits not less
16 than \$1,000,000 per person per accident. The policy shall be endorsed to waive
17 subrogation in favor of The County of Riverside.

18 (c) **Commercial General Liability.** Commercial General Liability
19 Insurance coverage, protecting Lessor and County against claims for bodily injury,
20 property damage, and personal injury arising out of the ownership, use occupancy or
21 maintenance of the Premises and all areas appurtenant thereto. Policy limits shall not
22 be less than \$1,000,000 per occurrence. If such insurance contains a general
23 aggregate limit, it shall apply separately to this Lease or be no less than two (2) times
24 the occurrence limit.

25 (d) **Vehicle Liability.** If vehicles or licensed mobile equipment are
26 used on the Project, Lessor shall maintain auto liability insurance for all owned, non-
27 owned or hired automobiles in an amount not less than \$1,000,000 per occurrence
28 combined single limit.

1 (e) **Property (Physical Damage).**

2 (1) All-Risk real property insurance coverage, including
3 earthquake and flood, if applicable, for the full replacement cost value of buildings,
4 structures, fixtures, all improvements therein, and building systems on the Project as
5 the same exists at each early anniversary of the term. Policy shall include Business
6 Interruption, Extra Expense, and Expediting Expense coverage as well as coverage for
7 off-premises power failure. Policy shall name the County as a Loss Payee as their
8 interests may appear.

9 (f) **General Insurance Provisions – All Lines.**

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

16 (2) The Lessor or Lessor's insurance carrier(s) must declare its
17 insurance deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000.00 per occurrence such deductibles and/or retentions shall
19 have the prior written consent of the County Risk Manager before the commencement
20 of the Lease term. Upon notification of deductibles or self-insured retentions which are
21 deemed unacceptable to the County, at the election of the County's Risk Manager,
22 Lessor's carriers shall either: 1) reduce or eliminate such deductibles or self-insured
23 retentions as respects this Agreement with the County, or 2) procure a bond which
24 guarantees payment of losses and related investigations, claims administration,
25 defense costs and expenses.

26 (3) At the inception of this Lease and annually at the Lessor's
27 insurance policy renewal date(s), the Lessor shall cause their insurance carrier(s) to
28 furnish the County of Riverside with a properly executed original Certificate(s) of

1 Insurance and certified original copies of Endorsements effecting coverage as required
2 herein showing such insurance is in full force and effect. Further, said Certificate(s)
3 shall contain the covenant of the insurance carrier(s) shall provide no less than thirty
4 (30) days written notice be given to the County of Riverside prior to any material
5 modification or cancellation of such insurance. In the event of a material modification or
6 cancellation of coverage, this Lease shall terminate forthwith, unless the County of
7 Riverside receives, prior to such effective date, another properly executed original
8 Certificate of Insurance and original copies of endorsements evidencing coverage and
9 the insurance required herein is in full force and effect. Individual(s) authorized by the
10 insurance carrier to do so on its behalf shall sign the original endorsements for each
11 policy and the Certificate of Insurance. The Lease term shall not commence until the
12 County of Riverside has been furnished original Certificates of Insurance and certified
13 original copies of endorsements and any and all other attachments as required in this
14 Section.

15 (4) It is understood and agreed by the parties hereto and the
16 Lessor's insurance company(s) that the Certificate(s) of Insurance and policies shall so
17 covenant and shall be construed as primary insurance, and the County's insurance
18 and/or deductibles and/or self-insured retentions or self-insured programs shall not be
19 construed as contributory.

20 (g) **County's Insurance.** County maintains funded programs of Self-
21 Insurance. County shall provide to Lessor a Certificate of Self-Insurance evidencing
22 the County's Self-Insurance for the following coverage, if so requested by Lessor:

23 (1) Workers' Compensation \$1,000,000 per occurrence

24 (2) Commercial General Liability \$1,000,000 per occurrence

25 (3) Automobile Liability \$1,000,000 per occurrence

26 In addition, County assumes the risk of damage to any furniture,
27 equipment, machinery, goods, supplies or fixtures which are or remain the property of
28 County or as to which County retains the right of removal from the Premises, except to

1 the extent due to the negligent act or omission of Lessor. In no event shall County
2 carry on any activities which would invalidate any insurance coverage maintained by
3 Lessor. County shall promptly comply with all reasonable requirements of the
4 insurance underwriters and/or any governmental authority having jurisdiction thereover,
5 necessary for the maintenance of reasonable fire and extended insurance for the
6 Building and/or Project.

7 **13. Options to Terminate.**

8 (a) In the event County cannot take useful occupancy ninety (90) days
9 from final execution of this Lease, subject to extension for acts of God, force majeure
10 and other events beyond the control of Lessor's contractor, then County may, at its
11 election, either (1) deduct from any rents that may become due hereunder the sum of
12 Two Hundred Ninety Nine and 00/100 Dollars (\$299.00) for each day the Premises are
13 not prepared for useful occupancy as liquidated damages for failure to provide useful
14 occupancy in a timely manner as prescribed hereunder. Lessor and County agree that
15 such damages are to be one of the mutually exclusive remedies, as prescribed in this
16 Paragraph 13, for such failure, in that at the time of entering into this Lease it would be
17 impractical and extremely difficult to fix the actual damages that would flow from
18 Lessor's failure to provide useful occupancy in a timely manner, including, but not
19 limited to, the difference in money between the total sum to be paid by County to
20 another party for rent to lease such party's real property, if the rental hereunder is less
21 than the rental to be paid such other party, or (2) cancel this Lease no later than one
22 hundred twenty (120) days after mutual execution of this Lease and Lessor hereby
23 waives any and all rights that it may have against County for any costs, expenses
24 and/or charges that Lessor may have incurred as a result of preparing the Premises for
25 occupancy.

26 (b) County shall have the option to terminate this Lease if the
27 Premises are destroyed or damaged to the extent that they cannot be repaired within
28 sixty (60) days. If the damage can be repaired within sixty (60) days, it shall be the

1 duty of the Lessor to make such repairs promptly, and during said period, the rent shall
2 abate pro rata as to the portion of the Premises not usable by the County. County
3 reserves the right to determine what, if any portions of the Premises are usable.

4 (c) The County shall have the option to terminate this Lease after 18
5 months of occupancy, by providing Lessor sixty (60) days' notice thereof in writing.

6 **14. Notices.** Any notices required or desired to be served by either party
7 upon the other shall be addressed to the respective parties as set forth below:

8
9 County:
10 County of Riverside
11 Economic Development Agency -
12 Real Estate Division
13 3403 Tenth St., Suite 500
14 Riverside, CA 92501

Lessor:
DBP Office I L.L.C.
77-885 Las Montanas Road, Suite A
Palm Desert, CA 92211
Attn: Marsha Vincelette

15 With a copy to:
16 IFC California Corporation
17 Attn: Legal Department
18 1302 Puyallup Street
19 Sumner, WA 98390

20
21 or to such other addresses as from time to time shall be designated by the respective
22 parties.

23 **15. Quiet Enjoyment.** Lessor covenants that County shall at all times during
24 the term of this Lease peaceable and quietly have, hold and enjoy the use of the
25 Premises so long as County shall fully and faithfully perform the terms and conditions
26 that it is required to do under this Lease.

1 **16. Binding on Successors.** The terms and conditions herein contained
2 shall apply to and bind the heirs, successors in interest, executors, administrators,
3 representatives and assigns of all the parties hereto.

4 **17. Severability.** The invalidity of any provision in the Lease as determined
5 by court of competent jurisdiction shall in no way affect the validity of any other
6 provision hereof.

7 **18. Venue.** Any action at law or in equity brought by either of the parties
8 hereto for the purpose of enforcing a right or rights provided for by this Lease shall be
9 tried in a court of competent jurisdiction in the County of Riverside, State of California,
10 and the parties hereto waive all provisions of law providing for a change of venue in
11 such proceedings to any other county.

12 **19. Attorneys' Fees.** In the event of any litigation or arbitration between
13 Lessor and County to enforce any of the provisions of this Lease or any right of either
14 party hereto, the unsuccessful party to such litigation or arbitration agrees to pay to the
15 successful party all costs and expenses, including reasonable attorneys' fees, incurred
16 therein by the successful party, all of which shall be included in and as a part of the
17 judgment rendered in such litigation or arbitration.

18 **20. County's Representative.** County hereby appoints the Assistant County
19 Executive Officer/EDA as its authorized representative to administer this Lease.

20 **21. Entire Lease.** This Lease is intended by the parties hereto as a final
21 expression of their understanding with respect to the subject matter hereof and as a
22 complete and exclusive statement of the terms and conditions thereof and supersedes
23 any and all prior and contemporaneous leases, agreements and understandings, oral
24 or written, in connection therewith. This Lease may be changed or modified only upon
25 the written consent of the parties hereto.

26 **22. Interpretation.** The parties hereto have negotiated this Lease at arm's
27 length with advice of their respective attorneys, and no provision contained herein shall
28

1 be construed against County solely because it prepared this Lease in its executed
2 form.

3 **23. Mechanic's Liens.** If any mechanic's or material men's lien or liens shall
4 be filed against the Premises for work done or materials furnished to a Party, that Party
5 shall, at its own cost and expense, cause such lien or liens to be discharged within
6 fifteen (15) days after notice thereof by filing or causing to be filed a bond or bonds for
7 that purpose.

8 **24. Surrender.** County shall, after the last day of the term or any extension
9 thereof or upon any earlier termination of such term, surrender and yield up to Lessor
10 the Premises in good order, condition and state of repair, reasonable wear and tear
11 and damage by fire or other casualty excepted. County may, but shall not be required
12 to: (a) patch or paint any walls/surfaces; (b) remove any leasehold improvements
13 constructed or installed prior to or during the term of this Lease or any extension
14 thereof; or (c) remove any fixtures or equipment installed prior to or during the term of
15 this Lease or any extension thereof.

16 **25. Estoppel Certificates.**

17 **25.1** Within twenty (20) business days after receipt of a written request
18 by either party, the other party shall execute and deliver to the requesting party an
19 Estoppel Certificate, in the form of the attached Exhibit "D", indicating in the certificate
20 any exceptions to the statements in the certificate that may exist at that time.

21 **26. Subordination, Non-Disturbance, and Attornment.**

22 **26.1 Subordination, Non-Disturbance, and Attornment Agreement.**

23 To carry out the purposes of Section 26.2 and Section 26.3, the Parties agree to
24 execute a Subordination, Non-Disturbance and Attornment Agreement in the form set
25 forth in the attached Exhibit "E."

26 **26.2 Subordination.** County agrees that within forty-five (45) business
27 days after Lessor's written request, it shall execute the agreement referred to in
28 Section 26.1 that Lessor reasonably considers necessary to evidence or confirm the

1 subordination or inferiority of this Lease to the lien of any mortgage, deed of trust or
2 other encumbrance of the Premises or any renewal, extension, modification,
3 replacement thereof, provided however, that such Subordination Agreement shall be
4 strictly limited to matters contained in the Agreement referred to in Section 26.1 and no
5 such Subordination Agreement shall materially increase any of County's obligations or
6 materially decrease any of County's rights under this Lease, nor shall the possession
7 of County be disturbed, by reason of any foreclosure, sale or other action under any
8 such trust deed, mortgage or other encumbrance.

9 **26.3 Attornment.** If Lessor's interest in the Premises passes to a
10 successor, and provided County has received the Non-Disturbance agreement referred
11 to in Section 26.1, County shall, within forty-five (45) business days after Lessor's
12 transferee's request, execute the agreement referred to in Section 26.1, thereby
13 agreeing to attorn and to recognize the transferee as the Lessor under this Lease;
14 provided the transfer of Lessor's interest in the Premises was by sale, lease,
15 foreclosure, deed in lieu of foreclosure, exercise of any remedy provided in any
16 encumbrance or operation of law.

17 **27. Breach by Lessor or County.**

18 **27.1 Lessor's Default.** Except as provided to the contrary in this
19 Lease, Lessor's failure to perform any of its obligations under this Lease shall
20 constitute a default by Lessor under the Lease if the failure continues for thirty (30)
21 days after written notice of the failure from County to Lessor. If the required
22 performance cannot be completed within thirty (30) days, Lessor's failure to perform
23 shall constitute a default under the Lease unless Lessor undertakes to cure the failure
24 within thirty (30) days and diligently and continuously attempts to complete this cure as
25 soon as reasonably possible.

26 **27.2 County's Right to Cure Lessor's Default and Deduct Cost.**

27 Except as provided to the contrary in this Lease, if County provides notice to Lessor of
28 Lessor's failure to perform any of its obligations under this Lease and Lessor fails to

1 provide such action as required by the terms of this Lease within the period specified,
2 County may take the required action if: (a) County delivers to Lessor an additional
3 written notice advising Lessor that County intends to take the required action if Lessor
4 does not begin the required action within ten (10) days after the written notice; and (b)
5 Lessor fails to begin the required action within this ten (10) day period.

6 **27.3 Rent Setoff.** If, within thirty (30) days after receipt of County's
7 written demand for payment of County's costs incurred in taking such action on
8 Lessor's behalf, Lessor has not paid the invoice or delivered to County a detailed
9 written objection to it, County may deduct from Rent payable by County under this
10 Lease the amount set forth in the invoice, including transaction costs and attorneys'
11 fees, plus interest at the then legal rate of interest from the date these costs are
12 incurred until the date of County's Rent setoff.

13 **27.4 County Default.** The County shall be in "breach" of this Lease
14 upon the occurrence of any one or more of the following defaults and County fails to
15 cure such Default within the applicable grace period:

16 (a) A failure to pay rent or any other charge when due or to provide
17 reasonable evidence of insurance, where either failure continues for a period of fifteen
18 (15) business days following written notice to County;

19 (b) Abandonment of the Premises or the vacating of the Premises
20 where the coverage of the property insurance described herein is jeopardized as a
21 result thereof, or without providing reasonable assurances to minimize potential
22 vandalism;

23 (c) A Default by County as to the terms, conditions, covenants or
24 provisions of this Lease where such Default continues for a period of thirty (30) days
25 after written notice to County; provided, however, that if the nature of County's Default
26 is such that more than thirty (30) days is required for performance, then County shall
27 not be in default if County commences performance within such thirty (30) day period
28 and thereafter diligently prosecutes the same to completion.

1 **27.5 Lessor Remedies for County Default**

2 (a) In the event of a Breach by County, Lessor may, with or without
3 further notice or demand, and without limiting the Lessor in the exercise of any right or
4 remedy which Lessor may have by reason of such Default;

5 (i) Terminate County's right to possession of the Premises by
6 any lawful means, in which case the Lease shall terminate and County shall
7 immediately surrender possession to Lessor. In such event, Lessor may recover from
8 County: (i) any unpaid rent which has been earned at the time of such termination;
9 plus (ii) the amount by which the unpaid rent which would have been earned after
10 termination until the time of award exceeds the amount of such rental loss that could
11 have not been reasonably avoided by Lessor or

12 (ii) Continue the Lease and County's right to possession and
13 recover the Rent as it becomes due, in which event County may sublet or assign,
14 subject to Landlord's consent as provided herein.

15 **28. Lessor's Representations and Warranties.** Lessor represents and
16 warrants to County that:

17 **28.1 Title.** County's Leasehold interest in the Premises is free and
18 clear of restrictions which would restrict County's rights under this Lease.

19 **28.2 Certificate of Authority.** Lessor covenants that it is a duly
20 constituted under the laws of the state of its organization, and that the person(s) who is
21 acting as its signatory in this Lease is duly authorized and empowered to act for and on
22 behalf of the Lessor. Upon request by County, Lessor shall furnish County with
23 evidence of the authority of the signatory to bind the entity or trust as contemplated
24 herein.

25 **28.3 No Litigation.** There are no judicial, quasi-judicial, administrative
26 or other orders, injunctions, moratoria or pending proceedings against Lessor or the
27 Premises which preclude or interfere with, or would preclude or interfere with, the
28

1 construction contemplated herein or the occupancy and use of the Premises by County
2 for the purposes herein contemplated.

3 **28.4 Easements and Subdivision Rights.** Lessor reserves the right
4 to: (a) subdivide the Project and/or Property; (b) alter the boundaries of the Property;
5 and (c) grant easements on the Property and/or Project and dedicate for public use
6 portions thereof; provided, however, that no such grant or dedication shall materially
7 interfere with County's use of the Premises. County hereby consents to such
8 subdivision, boundary revision, and/or grant or dedication of easements and agrees
9 from time to time, at Lessor's request, to execute, acknowledge and deliver to Lessor,
10 in accordance with Lessor's instructions, any and all documents, instruments, maps or
11 plats necessary to effectuate County's consent thereto.

12 **28.5 Assignment and Subletting.** County shall not assign, mortgage,
13 pledge or otherwise transfer or encumber this Lease, in whole or in part, nor sublet,
14 assign, or permit occupancy by any party other than County of all or any part of the
15 Premises (collectively, a "Transfer"), without the prior written consent of Lessor in each
16 instance, of which approval will not be unreasonably withheld so long as the proposed
17 transferee is another County agency.

18 ///

19 ///

20 ///

21 ///

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23 ///

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1 **29.** This Lease shall not be binding or consummated until its approval by the
2 County.

3 Dated: _____

4 COUNTY OF RIVERSIDE

DBP OFFICE I L.L.C.,
a WASHINGTON limited liability company
(Lessor)

5 By: _____

6 John J. Benoit, Chairman
7 Board of Supervisors

By: IFC California Corporation
its Manager

8
9 By: 
Marsha Vincelette, Vice President

10 ATTEST:

11 Kecia Harper-Ihem
12 Clerk of the Board

13 By: _____

Deputy

14
15 APPROVED AS TO FORM:

16 Pamela J. Walls
17 County Counsel

18 By: 
19 _____

20 Patricia Munroe
21 Deputy County Counsel
22
23
24
25
26

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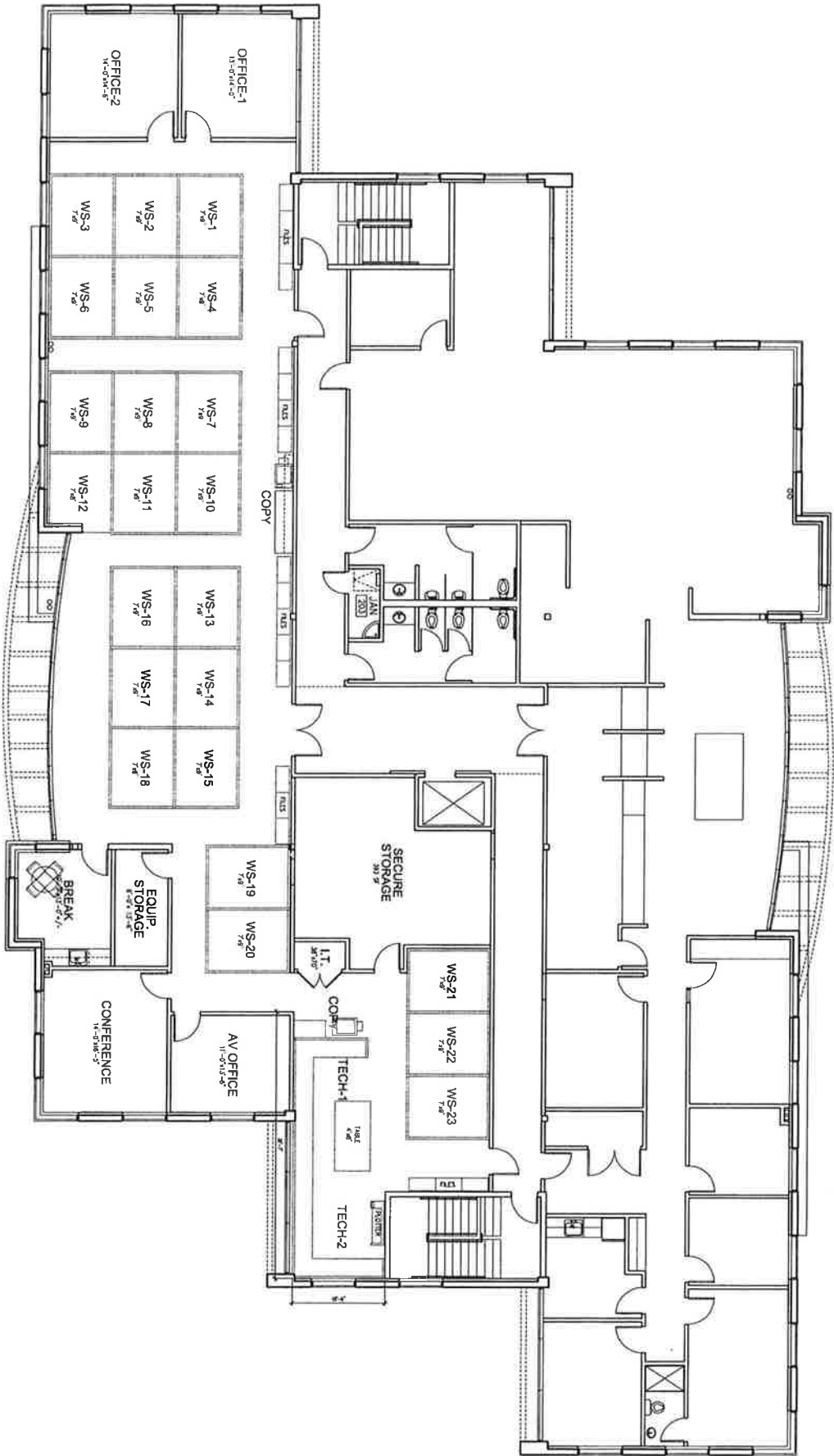


EXHIBIT A

PROPOSED PLAN - OPTION 4b
 SCALE: 3/16" = 1'-0"
 1 12 24 FT

A-1.0

Project:	
Architect:	
Client:	
Check By:	June 24, 2013
Drawn By:	WS
Scale:	AS NOTED
Job Number:	2300

COUNTY of RIVERSIDE
 Coachella Valley Offices
 77-933 Las Montanas Road
 Palm Desert, California 92211

WILLIAM SHARON - ARCHITECT
 77805 LAS MONTANAS DRAN - SUITE A
 PALM DESERT - CALIFORNIA - 92211
 761-712-2931

District Attorney offices
Estimated Tenant Improvement Costs -77933 Las Montanas Road

EXHIBIT B

	County of Riverside	
	PSF	Item Cost
Architectural Fees	2.30	13,600
Building Permits	1.05	6,190
Fire Review	0.17	1,000
CVWD-Meter/Toilet Charge	-	-
TUMF Fees	-	-
Subtotal Soft Costs	3.52	20,790
<u>Division 1 - General Conditions</u>		
Permits & Fees	-	-
Project Management	1.14	6,708
Facilities & Equipment	0.84	4,957
Rough Clean Up	0.48	2,840
Final Clean Up	0.53	3,100
Misc Fees	-	-
Subtotal	2.98	17,605
<u>Division 2 - Demolition/Site Work</u>		
Soft Demolition (remove carpet,walls,etc)	-	-
Hard Demolition (sawcut, patch)	2.08	12,265
Subtotal	2.08	12,265
<u>Division 3 - Concrete</u>		
Patch Slab	-	-
Export Soil	-	-
Subtotal	-	-
<u>Division 4 - Masonry</u>		
Granite Countertops	-	-
Misc	-	-
Subtotal	-	-
<u>Division 5 - Steel</u>		
Structural Steel	-	-
Misc Steel - Roof ladder	-	-
Subtotal	-	-
<u>Division 6 - Woods & Plastics</u>		
Rough Carpentry	-	-
Millwork	0.98	5,812
Misc	-	-
Subtotal	0.98	5,812
<u>Division 7 - Thermal & Moisture Protection</u>		
Insulation	-	-
Roofing-Repair Roof	-	-
Roof Accessories - roof hatch	-	-
Caulking & Sealants	-	-
Subtotal	-	-

EXHIBIT B**Division 8 - Doors & Windows**

Interior Frames/Doors/Hardware	2.14	12,645
Storefronts	-	-
Glass & Glazing	-	-
Subtotal	2.14	12,645

Division 9 - Finishes

Drywall	2.41	14,212
Acoustic Ceiling	1.91	11,264
Flooring	3.12	18,418
Painting	1.47	8,677
Subtotal	8.91	52,571

Division 10 - Specialties

Fire Extinguishers	0.14	850
Signs and Graphics	0.11	675
Subtotal	0.26	1,525

Division 11 - Equipment

Loading Dock Equipment	-	-
Subtotal	-	-

Division 12 - Furnishings

Window Coverings	-	-
Signage-2 ext signs-Int ID signs	-	-
Subtotal	-	-

Division 15 - Mechanical

Fire Protection	0.97	5,720
Plumbing	0.96	5,644
HVAC	1.81	10,655
Title 24	-	-
Subtotal	3.73	22,019

Division 16 - Electrical

Low voltage wiring	-	-
Electrical	2.78	16,423
Subtotal	2.78	16,423

Subtotal Project Costs	23.87	140,865
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Contractor Liability Insurance	0.17	1,006
Contractor Overhead	-	-
Contractors Fee	2.05	12,074
Subtotal	2.22	13,080

Total Project Cost	29.61	174,735
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COUNTY OF RIVERSIDE
ECONOMIC DEVELOPMENT AGENCY
Real Estate Division

**CUSTODIAL SERVICES REQUIREMENTS
FOR LEASED FACILITIES**

1. Background checks shall be performed, in a manner specified by County, of all qualified permanent and temporary employees.
2. Provide all required services and supplies.
3. Perform services five days a week during the hours of 5:00 pm to 1:00 am only.
4. Provide and replace all fluorescent light tubes and incandescent light bulbs using only those types of tubes and bulbs that are energy efficient as indicated by manufacturer. Fixture reflectors shall be wiped clean with each relamping.
5. Lessor and custodial staff shall be responsible for key control. Issuing keys to workers, collecting said keys at shift end and retrieving keys at the end of custodian's employment. If keys are lost, stolen or misplaced, rekeying costs are landlord's responsibility.
6. **SPECIFIC SERVICES** – Frequency and coverage:

A. Daily:

1. Rest Rooms:

Empty all trash containers, refill dispensers, damp mop floors, clean, sanitize and polish all plumbing fixtures, chrome fittings, flush rings, drain and overflow outlets, clean and polish mirrors, clean wall adjacent to hand basins/urinals, dust metal partitions, remove finger prints from walls, switches, etc.

2. Lobby Area – Main Corridors – Stairways:

Remove trash, vacuum, vacuum/damp mop tile, clean lobby and entrance doors, clean and sanitize drinking fountains.

3. Employee Break Rooms/Kitchen:

Remove trash from building and deposit in dumpster, vacuum rugs and carpet, wipe spills, mop tile floor, remove fingerprints from doors, light switches, etc., and refill dispensers.

4. General and Private Areas:

Remove trash, vacuum carpets, mop tile floors, spot clean interior partition glass, clean counter tops and blackboards, dust desks,

conference tables, credenza/file cabinets and bookcases.

5. Building Security:

- a. Turn off all lights (except security and night lights).
- b. Close windows.
- c. Reset alarms and lock all doors.

B. Weekly – All Areas:

Polish buff hard resilient floors in traffic areas, spot clean carpeted areas.

Dust all high and low horizontal surfaces, including sills, ledges, moldings, shelves, locker tops, frames and file cabinets, damp wipe plastic and leather furniture.

Remove fingerprints from doors, elevator walls and controls, frames and light switches in office areas, clean and polish bright metal to 70" height, clean and sanitize waste containers in rest rooms and break rooms.

C. Monthly – All Areas:

Clean interior glass partitions/doors, dry dust wood paneling, remove dust/cobwebs from ceiling areas.

Spray buff resilient/hard floor areas, detail vacuum carpet edges, under desk/office furniture.

D. Quarterly – All Areas:

Spray buff resilient and hard surface floors and apply floor finish.

Clean interior/exterior windows, clean/polish office furniture, damp clean diffuser outlets in ceiling/wall, wash waste containers, clean/dust blinds, wash sanitize.

E. Semi-Annually – All Areas:

1. All Areas:
 - a. Clean and polish all baseboards.
 - b. Damp clean lobby and reception chairs.
 - c. Clean carpeted surfaces-use a water extraction method.

F. Annually – All Areas:

1. All resilient and hard surface floors:
 - a. Move furniture, strip, seal and apply floor finish to all resilient and hard surface floors.

ESTOPPEL CERTIFICATE

1. The County of Riverside, as Tenant, or County, and XXX, as Lessor, entered into a written office lease dated XXX in which Lessor leased to County and County leased from Lessor those certain premises consisting of approximately XXX square feet of office space located at XXX. The office lease, as amended is referred to in this Certificate as the Lease.
2. The Lease has not been amended, modified, nor supplemented, except by XXX.
3. County has paid Rent through XXX. The next payment of Rent is due on XXX. The current rent is XXX. County has not paid Lessor a security deposit.
4. Under the Lease, the term began on XXX, and the expiration date of the Lease is XXX, subject to County's right to terminate the Lease and any options the County may have to extend the term as identified in this Certificate.
5. The Lease provides for no options to extend the term of the Lease.
6. The County has the right of first refusal to renew the Lease, after the original term and any options to extend have expired, on the same terms and conditions received by Lessor as a bona fide offer from a third party to Lease the premises.
7. The County has the right to early termination of this Lease if funding is reduced or becomes unavailable or if the County determines for any reason or cause that the Premises are no longer suitable for its use.
8. There are no oral or written amendments, modifications, or supplements to the Lease except as previously stated in this Certificate. A true, correct, and complete copy of the lease, including all amendments, is attached to this Certificate. The Lease is in full force and effect and represents the entire agreement between Lessor and the County pertaining to the Premises.
9. All space and improvements leased by County have been completed and furnished in accordance with the provisions of the Lease, and County has accepted and taken possession of the Premises. All contributions required to be paid by Lessor to date for improvements to the Premises have been paid in full.
10. Lessor and County are not in default in the performance of any of the terms and provisions of the Lease. To the best knowledge of each Party, no event or condition has occurred that, with the giving of notice or passage of time, or both, would constitute such default by Lessor or County.
11. Lessor has not assigned, transferred, or hypothecated the real property or any interest in the real property.

- 12. The County has not assigned, transferred, or hypothecated the Lease or any interest in the Lease or subleased all or part of the Premises.
- 13. There are no mortgagees, beneficiaries under deeds of trust, or other holders of a security interest in the Real Property, except as follows: XXX
- 14. There are no setoffs or credits against Rent payable under the Lease. No free periods or rental abatements, rebates, or concessions have been granted to County, except as follows: XXX
- 15. There are no pending actions, voluntary or involuntary, under any bankruptcy or insolvency laws of the United States or any state against either Lessor or County
- 16. The execution of this Certificate by Lessor and the County does not amend the Lease or waive any of Lessor's or County's rights under the Lease.
- 17. This Certificate is given to XXX with the understanding that as a lender or purchaser of the above described real property or assignee of either Lessor or XXX may rely on it in connection with either the assignment or acquisition of the above described real property or making a loan secured by the above described real property. Following that acquisition, assignment by Lessor or loan, County intends to keep the Lease full force and effect and shall bind and inure to the benefit of XXX and its successor in interest.

COUNTY:

By: _____
Robert Field,
Assistant County Executive Officer/EDA

APPROVED AS TO FORM:
Pamela J. Walls, County Counsel

By: _____
Patricia Munroe
Deputy County Counsel

RECORDED AT REQUEST OF AND WHEN
RECORDED RETURN TO:

Attention: _____

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-disturbance, and Attornment Agreement ("Agreement") is made as of _____ between _____ (Lender), a _____, having its principal place of business at _____, _____, _____ and the County of Riverside (County), by its authorized representative the Director of Facilities Management having its address for notification at 3133 Mission Inn Avenue, Riverside, California 92507-4199.

Recitals:

A. Lender has agreed to make a loan to _____, a _____ (Lessor), to be secured by a deed of trust, dated _____, _____, and recorded on _____, _____, as Instrument No. _____, in the Official Records of _____ County, California (together with all amendments, increases, renewals, modifications, consolidations, replacements, substitutions, and extensions, either current or future, referred to hereafter as the "Mortgage") encumbering Lessor's ownership interest in real property located in _____, _____, State of California. The legal description of the encumbered real property (the "Mortgage Premises") is set forth in Exhibit A, attached to this Agreement. The Mortgage, together with the promissory note or notes, the loan agreement(s), and other documents executed in connection with it are hereafter collectively referred to as the "Loan Documents".

B. On _____, _____, County and Lessor entered into a lease for the Mortgage Premises (the Lease). The Lease creates a leasehold estate in favor of County for space (the "Premises") located on the Mortgage Premises.

C. In connection with execution of the Mortgage, Lessor also executed and delivered to Lender an Assignment of Leases, Rents and Profits dated _____, _____, and recorded on _____, _____, as Instrument No. _____, in the Official Records of the County Recorder of _____, California concerning all rents, issues and profits from the Mortgage Premises. This document, together with all amendments, renewals, modifications consolidations, replacements, substitutions and extensions, is hereafter referred to as the "Assignment of Rents."

To confirm their understanding concerning the legal effect of the Mortgage and the Lease, in consideration of the mutual covenants and agreements contained in this Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and County, intending to be legally bound, agree and covenant as follows:

1. **Representations and Warranties.** County warrants and represents that the Lease is in full force and effect and that, as of the date of this Agreement and to the best of County's knowledge, there is no default under the Lease by Lessor or County.

2. **County Subordination.**

2.1. Subject to the provisions of Section 3, the Loan Documents shall constitute a lien or charge on the Mortgage Premises that is prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of County under it; by this Agreement, the Lease, the leasehold estate created by it, together with all rights and privileges of County under it, is subordinated, at all times, to the lien or charge of the Loan Documents in favor of Lender.

2.2. By executing this Agreement, County subordinates the Lease and County's interest under it to the lien right and security title, and terms of the Loan Documents, and to all advances or payments made, or to be made, under any Loan Document.

3. **Non-disturbance.**

3.1. Lender consents to the Lease.

3.2. Despite County's subordination under Section 2, County's peaceful and quiet possession of the Premises shall not be disturbed and County's rights and privileges under the Lease, including its right to early termination, its right to extend the term of the Lease, its right of first refusal to lease the property after expiration of the original term and any extensions thereof, shall not be diminished by Lender's exercise of its rights or remedies under the Loan Documents, provided that County has not canceled or terminated the Lease, nor surrendered, or abandoned the Premises.

3.3. If (a) Lender shall acquire title to, and possession of, the Premises on foreclosure in an action in which Lender shall have been required to name County as a party defendant, and (b) County is not in default under the Lease beyond any applicable cure or grace periods, has not canceled or terminated the Lease, nor surrendered, vacated or abandoned the Premises and remains in actual possession of the Premises at the time Lender shall so acquire title to, and possession of, the Premises, Lender and County shall enter into a new lease on the same terms and conditions as were contained in the Lease, except that:

(a) The obligations and liabilities of Lender under a new lease shall be subject to the terms and conditions of this Agreement (including the provisions of Sections 5-7);

(b) Lender shall have no obligations or liabilities to County under any such new lease beyond those of Lessor as were contained in the Lease; and

(c) The expiration date of any new lease shall coincide with the original expiration date of the Lease.

3.4. County shall not be named or joined in any foreclosure, trustee's sale, or other proceeding to enforce the Loan Documents unless such joinder shall be legally required to perfect the foreclosure, trustee's sale, or other proceeding.

4. **Attornment.**

4.1. If Lender shall succeed to Lessor's interest in the Mortgage Premises by foreclosure of the Mortgage, by deed in lieu of foreclosure, or in any other manner, County shall be bound to Lender under all the terms, covenants and conditions of the Lease for the balance of its term with the same force and effect as if Lender were the Lessor under the Lease. County shall be deemed to have full and complete attornment to, and to have established direct privity between County and:

- (a) Lender when in possession of the Mortgage Premises;
- (b) a receiver appointed in any action or proceeding to foreclose the Mortgage;
- (c) any party acquiring title to the Mortgage Premises; or
- (d) any successor to Lessor.

4.2. County's attornment is self-operating, and it shall continue to be effective without execution of any further instrument by any of the parties to this Agreement or the Lease. Lender agrees to give County written notice if Lender has succeeded to the interest of the Lessor under the Lease. The terms of the Lease are incorporated into this Agreement by reference.

4.3. If the interests of Lessor under the Lease are transferred by foreclosure of the Mortgage, deed in lieu of foreclosure, or otherwise, to a party other than Lender (Transferee), in consideration of, and as condition precedent to, County's agreement to attorn to any such Transferee, Transferee shall be deemed to have assumed all terms, covenants, and conditions of the Lease to be observed or performed by Lessor from the date on which the Transferee succeeds to Lessor's interests under the Lease.

5. **Lender as Lessor.** If Lender shall succeed to the interest of Lessor under the Lease, Lender shall be bound to County under all the terms, covenants and conditions of the Lease, and County shall, from the date of Lender's succession to the Lessor's interest under the Lease, have the same remedies against Lender for breach of the Lease that County would have had under the Lease against Lessor; provided, however, that despite anything to the contrary in this Agreement or the Lease, Lender, as successor to the Lessor's interest, shall be:

- (a) liable for any act or omission of the Lessor; provided that the Lender may elect either to perform the pre-existing obligation or to permit the County to perform it and to recover the cost out of Rent;
- (b) subject to any offsets or defenses expressly permitted under the Lease, including abatement rights which County might have had against Lessor;
- (c) bound by any rent or additional rent that County might have paid for more than one month in advance to Lessor; or
- (d) bound by an amendment or modification of the Lease even though made without Lender's written consent and whether or not the amendment or modification materially adversely affect any right of Lessor under the Lease.
- (e) subject to the County 's right to assert continuing claims, such as material interference with the County's use and enjoyment of the premises, against the Lender.

6. **Right To Cure.** County agrees that, before County exercises any of its rights or remedies under the Lease, Lender shall have the right, but not the obligation, to cure the default within the same time given Lessor in the lease to cure the default, plus an additional thirty (30) days or ten (10) days in the case of defaults in the payment of money from Lessor to County. County agrees that the cure period shall be extended by the time necessary for Lender to commence foreclosure proceedings and to obtain possession of the Mortgage Premises, provided that:

- (a) Lender shall notify County of Lender's intent to effect its remedy;
- (b) Lender initiates immediate steps to foreclose on or to recover possession of the Mortgage Premises;
- (c) Lender initiates immediate legal proceedings to appoint a receiver for the Mortgage Premises or to foreclose on or recover possession of the Mortgage Premises within the thirty (30) day period; and
- (d) Lender prosecutes such proceedings and remedies with due diligence and continuity to completion.

7. **Assignment of Rents.** If Lessor defaults in its performance of the terms of the Loan Documents, County agrees to recognize the Assignment of Rents made by Lessor to Lender and shall pay to Lender, as assignee, from the time Lender gives County notice that Lessor is in default under the terms of the Loan Documents, the rents under the Lease, but only those rents that are due or that become due under the terms of the Lease after notice by Lender. Payments of rents to Lender by County under the assignment of rents and Lessor's default shall continue until the first of the following occurs:

- (a) No further rent is due or payable under the Lease;
- (b) Lender gives County notice that the Lessor's default under the Loan Documents has been cured and instructs County that the rents shall thereafter be payable to Lessor;
- (c) The lien of the Mortgage has been foreclosed and the purchaser at the foreclosure sale (whether Lender or a Transferee) gives County notice of the foreclosure sale. On giving notice, the purchaser shall succeed to Lessor's interests under the Lease, after which time the rents and other benefits due Lessor under the Lease shall be payable to the purchaser as the owner of the Mortgage Premises.

8. **County's Reliance.** When complying with the provisions of Section 7, County shall be entitled to rely on the notices given by Lender under Section 7, and Lessor agrees to release, relieve, and protect County from and against any and all loss, claim, damage, or liability (including reasonable attorney's fees) arising out of County's compliance with such notice.

County shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with Section 7 to the same extent as if such rents were paid directly to Lessor. Any dispute between Lender (or Lender's Transferee) and Lessor as to the existence of a default by Lessor under the terms of the Mortgage, the extent or nature of such default, or Lender's right to foreclosure of the Mortgage, shall be dealt with and adjusted solely between Lender (or Transferee)

and Lessor, and County shall not be made a party to any such dispute (unless required by law).

9. **Lender's Status.** Nothing in this Agreement shall be construed to be an agreement by Lender to perform any covenant of the Lessor under the Lease unless and until it obtains title to the Mortgage Premises by power of sale, judicial foreclosure, or deed in lieu of foreclosure, or obtains possession of the Mortgage Premises under the terms of the Loan Documents.

10. **Cancellation of Lease.** County agrees that it will not cancel, terminate, or surrender the Lease, except at the normal expiration of the Lease term or as provided in the Lease.

11. **Special Covenants.** Despite anything in this Agreement or the Lease to the contrary, if Lender acquires title to the Mortgage Premises, County agrees that: Lender shall have the right at any time in connection with the sale or other transfer of the Mortgage Premises to assign the Lease or Lender's rights under it to any person or entity, and that Lender, its officers, directors, shareholders, agents, and employees shall be released from any further liability under the Lease arising after the date of such transfer, provided that the assignee of Lender's interest assumes Lender's obligations under the Lease, in writing, from the date of such transfer.

12. **Transferee's Liability (Non Recourse).** If a Transferee acquires title to the Mortgage Premises:

(a) County's recourse against Transferee for default under the Lease shall be limited to the Mortgage Premises or any sale, insurance, or condemnation proceeds from the Mortgage Premises;

(b) County shall look exclusively to Transferee's interests described in (a) above for the payment and discharge of any obligations imposed on Transferee under this Agreement or the Lease ; and

(i) Transferee, its officers, directors, shareholders, agents, and employees are released and relieved of any personal liability under the Lease;

(ii) County shall look solely to the interests of Transferee set forth in (a) above, and

(iii) County shall not collect or attempt to collect any judgment out of any other assets, or from any general or limited partners or shareholders of Transferee.

13. **Transferee's Performance Obligations.** Subject to the limitations provided in Sections 11 and 12, if a Transferee acquires title to the Mortgage Premises, the Transferee shall perform and recognize all County improvement allowance provisions, all rent-free and rent rebate provisions, and all options and rights of offer, in addition to Lessor's other obligations under the Lease.

14. **Notice.** All notices required by this Agreement shall be given in writing and shall be deemed to have been duly given for all purposes when:

(a) deposited in the United States mail (by registered or certified mail, return receipt requested, postage prepaid); or

(b) deposited with a nationally recognized overnight delivery service such as Federal Express or Airborne.

Each notice must be directed to the party to receive it at its address stated below or at such other address as may be substituted by notice given as provided in this section.

The addresses are:

Lender: _____

Attention: _____

Copy to: _____

Attention: _____

County: _____

Attention: _____

Copy to: _____

Attention: _____

Copies of notices sent to the parties' attorneys or other parties are courtesy copies, and failure to provide such copies shall not affect the effectiveness of a notice given hereunder.

15. Miscellaneous Provisions.

15.1. This Agreement may not be modified orally; it may be modified only by an agreement in writing signed by the parties or their successors-in-interest. This Agreement shall inure to the benefit of and bind the parties and their successors and assignees.

15.2. The captions contained in this Agreement are for convenience only and in no way limit or alter the terms and conditions of the Agreement.

15.3. This Agreement has been executed under and shall be construed, governed, and enforced, in accordance with the laws of the State of California except to the extent that California law is preempted by the U.S. federal law. The invalidity or unenforceability of one or more provisions of this Agreement does not affect the validity or enforceability of any other provisions.

15.4. This Agreement has been executed in duplicate. Lender and County agree that one (1) copy of the Agreement will be recorded.

15.5. This Agreement shall be the entire and only agreement concerning subordination of the Lease and the leasehold estate created by it, together with all rights and privileges of County under it, to the lien or charge of the Loan Documents and shall supersede and cancel, to the extent that it would affect priority between the Lease and the Loan Documents, any previous subordination agreements, including provisions, if any, contained in the Lease that provide for the subordination of the Lease and the leasehold estate created by it to a deed of trust or mortgage. This Agreement supersedes any inconsistent provision of the Lease.

15.6. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which copies, taken together, shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the copies and attached to a single copy of this Agreement to physically form one original document, which may be recorded without an attached copy of the Lease.

15.7 If any legal action or proceeding is commenced to interpret or enforce the terms of this Agreement or obligations arising out of it, or to recover damages for the breach of the Agreement, the party prevailing in such action or proceeding shall be entitled to recover from the non-prevailing party or parties all reasonable attorneys' fees, costs, and expenses it has incurred.

15.8. Word Usage. Unless the context clearly requires otherwise, (a) the plural and singular numbers will each be deemed to include the other; (b) the masculine, feminine, and neuter genders will each be deemed to include the others; (c) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (d) "may" is permissive; (e) "or" is not exclusive; and (f) "includes" and "including" are not limiting.

Executed on the date first above written.

Lender:

a _____

By: ____[signature]_____

Its: ____[state title]_____

County:

a _____

By: ____[signature]_____

Its: ____[state title]_____

Accepted and Agreed To:

Lessor:

a _____

By: _____[signature]_____

Its: _____[state title]_____

[Exhibit A: Legal description of Mortgage Premises]