

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

669



FROM: Economic Development Agency / Facilities Management

SUBMITTAL DATE:

August 28, 2013

SUBJECT: Fourth Amendment to Lease – Department of Public Social Services

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Fourth Amendment to Lease and authorize the Chairman to execute the same on behalf of the County; 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)

FISCAL PROCEDURES APPROVED
PAUL ANGULO, CPA, AUDITOR-CONTROLLER
BY: Lisette Rose 8/27/13
Lisette Rose

Lisa Brandl for
Robert Field
Assistant County Executive Officer/EDA
By: Lisa Brandl, Managing Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ (9,014)	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ (202)	Budget Adjustment:	No
	Annual Net County Cost:	\$ 38,925	For Fiscal Year:	2013/14

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: Federal 56.09%; State 24.92%; County 2.24%; Realignment 4.53%; Realignment 2011 12.22%	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. Sargen
Jennifer L. Sargen

County Executive Office Signature

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

Policy
Policy

By:

Susan Loew, Director
Department of Public Social Services

REVIEWED BY: CIP APPROVED COUNTY COUNSEL
DATE: 8/27/13
BY: Christopher Hans
Departmental Concurrence

Prev. Agn. Ref.: 3.46 of 2/27/07; 3.3 of 10/23/07; 3.20 of 11/04/08; 3.48 of 6/02/09

District: 1/1

Agenda Number: 3-28

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

BACKGROUND:

The County of Riverside has been under lease at this location since 2007 for use by the Department of Public Social Services (DPSS). The facility and location meet the needs of DPSS for the foreseeable future, and this Fourth Amendment to Lease extends the term and modifies the reimbursable rent language of the lease. In addition, the annual percentage rent increases have been reduced.

Location: 1400 Minthorn Street
Lake Elsinore, CA 92530

Lessor: Lake Elsinore Office Park, L.P.
13795 Blaisdell Place, #203
Poway, CA 92064

Size: 56,006 square feet

Rent: \$2.32 per square foot
\$130,005.87 per mo. (Base rent - \$96,402.27; Op. Expense rent-
\$33,603.60)
\$1,580,314.92 per year

Increases: Commencing January, 2014, through 2018, rent escalations will be reduced from 3.5% annual increases to 2% annual increases for two years, and 1% annual increases for three years (Base rent only).

Term: Extends the lease five years through December 31, 2023.

Utilities: Paid by County.

Custodial: Provided by Lessor.

Interior/Exterior Maintenance: Provided by Lessor.

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

FINANCIAL DATA:

DPSS has budgeted these costs in FY 2013/14 and will reimburse EDA for all lease costs on a monthly basis.

Attachments:
Exhibit A, Exhibit B
Fourth Amendment to Lease

Exhibit A

DPSS Lease Cost Analysis FY 2013/14 1400 Minthorn, Lake Elsinore, California

Total Square Footage to be Leased:

EXPECTED AMOUNTS

Current office:	56,006 SQFT	
Total Expected Lease Cost for FY 2013/14		\$1,580,314.92

ACTUAL AMOUNTS

Current Office:	56,006 SQFT	
-----------------	-------------	--

Approximate Cost per SQFT (July - Dec)	\$ 2.32	
Approximate Cost per SQFT (Jan - June)	\$ 2.36	

Lease Cost per Month (July - Dec)	\$ 130,005.87	
Lease Cost per Month (Jan - June)	\$ 131,933.92	

Total Lease Cost (July - Dec)	\$ 780,035.22		
Total Lease Cost (Jan - June)	\$ 791,603.52		
Total Actual Lease Cost for FY 2013/14		\$1,571,638.74	
Total Lease Cost Variance for FY 2013/14			\$ (8,676.18)

Estimated Additional Costs:

EXPECTED AMOUNTS

Utility Cost per Square Foot	\$ 0.12	
Estimated Utility Costs per Month (July - June)	\$ 6,720.72	

Total Estimated Utility Cost for FY 2013/14	\$ 80,648.64	
---	--------------	--

RCIT	\$ -	
------	------	--

Tenant Improvements	\$ -	
---------------------	------	--

EDA Lease Management Fee (Based @ 3.89%)	\$ 61,474.25	
Total Estimated Expected Cost for FY 2013/14		\$ 142,122.89

ACTUAL AMOUNTS

Utility Cost per Square Foot	\$ 0.12	
Costs per Month (July - June)	\$ 6,720.72	

Total Estimated Actual Utility Cost for FY 2013/14	\$ 80,648.64	
--	--------------	--

RCIT	\$ -	
------	------	--

Tenant Improvements	\$ -	
---------------------	------	--

EDA Lease Management Fee (Based @ 3.89%)	\$ 61,136.75	
Total Estimated Actual Cost for FY 2013/14		\$ 141,785.39

Total Estimated Cost Variance for FY 2013/14			\$ (337.50)
---	--	--	--------------------

TOTAL ESTIMATED COST FOR FY 2013/14			\$ (9,013.68)
--	--	--	----------------------

TOTAL COUNTY COST: 2.24%			\$ (201.91)
---------------------------------	--	--	--------------------

Exhibit B

DPSS Lease Cost Analysis FY 2014/15 1400 Minthorn, Lake Elsinore, California

Current Square Feet Occupied:

Current Office:	56,006 SQFT	
Approximate Cost per SQFT (July - Dec)	\$2.36	
Approximate Cost per SQFT (Jan - June)	\$2.39	
Lease Cost per Month (July - Dec)	\$ 131,933.92	
Lease Cost per Month (Jan - June)	\$ 133,900.53	
Total Lease Cost (July - Dec)	\$	791,603.52
Total Lease Cost (Jan - June)	\$	803,403.16
Total Expected Lease Cost for FY 2014/15	\$	1,595,006.68

Estimated Additional Costs:

Utility Cost per Square Foot	\$	0.12	
Estimated Utility Costs per Month (July - June)		<u>\$</u>	<u>6,720.72</u>
Total Estimated Utility Cost for FY 2014/15	\$		80,648.64
EDA Lease Management Fee (Based @ 3.89%)	\$		<u>62,045.76</u>
TOTAL ESTIMATED COST FOR FY 2014/15	\$		<u>1,737,701.08</u>
TOTAL COUNTY COST: 2.24%	\$		38,924.50

1 **FOURTH AMENDMENT TO LEASE**

2 (Department of Public Social Services,
3 1400 Minthorn Street
4 Lake Elsinore, California)
5

6 This FOURTH AMENDMENT to Lease ("Fourth Amendment") is made as of
7 _____, 2013 by and between the **COUNTY OF RIVERSIDE**, a
8 political subdivision of the State of California ("County"), as Lessee, and **LAKE**
9 **ELSINORE OFFICE PARK, L.P.**, a limited partnership, successor-in-interest to CBC1,
10 L.P. ("Lessor") and, sometimes collectively referred to as the Parties.

11 **Recitals**

12 a. CBC1, L.P., as Lessor, predecessor-in-interest to Lake Elsinore
13 Office Park, L.P., and County, have entered into that certain Lease dated February 27,
14 2007, ("Original Lease") pertaining to the premises located at 1400 Minthorn, Lake
15 Elsinore, California, as more particularly described in the Lease.

16 b. The Original Lease has been amended by:

17 i. That certain First Amendment to Lease dated, July 15,
18 2008, by and between County of Riverside and CBC1, L.P., ("First Amendment").

19 ii. That certain Second Amendment to Lease dated November
20 4, 2008, by and between County of Riverside and Lake Elsinore Office Park, L.P.,
21 ("Second Amendment").

22 iii. The certain Third Amendment to Lease dated June 2, 2009,
23 by and between County of Riverside and Lake Elsinore Office Park, L.P. ("Third
24 Amendment").

25 c. The Original Lease, as heretofore, currently, or hereafter
26 amended, shall hereafter be referred to as the "Lease."

27 d. County and Lessor desire to further amend the Lease by extending
28 the lease term, modifying the rent and modifying the reimbursable language.

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

3 **1. Term.** Section 4.1 of the Lease shall be amended as follows: The term
4 of this Lease shall be extended for a period of five (5) years commencing January 1,
5 2019, and expiring December 31, 2023 (the "Extension Term").

6 **2. Percentage Increase.** Section 5.2 of the Lease shall be amended as
7 follows: Provided, however, that on each of the sixth (6th) through tenth (10th)
8 anniversaries of the Lease, the monthly Base Rent increase shall be as follows:

9 January 1, 2014 - two percent (2%)

10 January 1, 2015 - two percent (2%)

11 January 1, 2016 - one percent (1%)

12 January 1, 2017 - one percent (1%)

13 January 1, 2018 - one percent (1%)

14 **3. Rent.** Section 5.3 of the Lease shall be deleted in its entirety and
15 replaced with the following:

16 **5.3 Reimbursable Rent: Taxes, Insurance, Operating Expenses**
17 **and Capital Improvements.** In addition to Base Rent, County shall reimburse Lessor,
18 without notice, demand, counter-claim, set off, or abatement, except as otherwise set
19 forth in this Lease, all expenses associated with the operation of the Premises
20 including, (1) Taxes and Insurance (defined below) and (2) Operating Expenses
21 (defined below) for the Premises and Capital Improvements as defined below. The
22 Term "Reimbursable Rent" means Taxes and Insurance, Operating Expenses, and
23 Capital Improvements collectively. The purpose of Section 5.3 is to reflect that the
24 County shall be responsible for all taxes, insurance, operating expenses, and capital
25 improvement expenses connected with the Premises. The Lessor shall contract,
26 manage, and pay for all Premises services for the County and County shall reimburse
27 Lessor for all costs as outlined below. Lessor shall pay for Taxes and Insurance as
28 defined below and County shall reimburse Lessor for said expenses.

1 Lessor shall develop an annual operating budget (herein the "Annual
2 Budget") for the Premises and shall submit a copy of such Annual Budget to County
3 prior to execution of this Lease Amendment for the purpose of determining the amount
4 of Reimbursable Rent expected to be incurred in connection with the Premises for the
5 upcoming fiscal year (Fiscal years start each July 1st, and end June 30th of each year
6 during the term of this Lease.) The Annual Budget shall provide separate line-item
7 budgets for each of the Reimbursable Rent categories including taxes, insurance,
8 operating expenses and capital improvements. The operating expense budget shall
9 provide a complete line-item breakdown on all operating expenses. If County does not
10 approve the Annual Budget within thirty (30) days from receipt of the Annual Budget,
11 Lessor and County will resolve the dispute per Exhibit J. Until such time as such
12 dispute is resolved, County shall continue to pay Reimbursable Rent in accordance
13 with the actual previous fiscal year Reimbursable Rent.

14 Thereafter, within ninety (90) days prior to the commencement of each
15 fiscal year during the term of this Lease, Lessor shall develop an Annual Budget for
16 review and written approval by County for the purpose of determining the amount of
17 Reimbursable Rent expected to be incurred in connection with the Premises for the
18 upcoming fiscal year. If County does not approve the Annual Budget by the thirtieth
19 (30th) day prior to the commencement of the following fiscal year, Lessor and County
20 will resolve the dispute per Exhibit J. Until such time as such dispute is resolved,
21 County shall continue to pay Reimbursable Rent in accordance with the previously
22 approved Annual Budget.

23 In addition, Lessor shall establish and maintain a Capital Improvement
24 Reserve Account which shall be separate and apart from the Operating Expense
25 account for the sole purpose of accounting for the Capital Improvement Reserve funds
26 provided as set forth in section 5.5.5 of this lease.

27 **5.3.1 Taxes and Insurance:** The term "Taxes and Insurance" means all
28 ad valorem taxes, special assessments (including dues and assessments by means of

1 deed and restrictions and owners' associations) lawfully levied or assessed against the
2 Premises, and any and all insurance required herein or which is standard for similar
3 projects (specifically including, but not limited to, fire and casualty, commercial general
4 liability and rent loss insurance.) Landlord agrees to work with County to reduce
5 property tax liability.

6 **5.3.2 Operating Expenses:** The term "Operating Expenses" includes
7 all expenses incurred by Lessor with respect to the maintenance and operation of the
8 Premises, including, but not limited to, costs for the following: all services, janitorial,
9 utilities, supplies, repairs, replacement, third party services to the extent their duties are
10 directly connected with the operation and maintenance of the Premises, and other
11 expenses for maintaining and operating the Premises, including the parking areas; and
12 the cost, amortized over its useful life, of the purchase and installation of any device or
13 other equipment for the purpose of improving the operating efficiency of any system in
14 the Premises and thereby reducing Operating Expenses.

15 The term "**Operating Expenses**" does **not** include the following: Capital
16 Improvements that are funded from the Capital Improvement Reserve Account.
17 Capital Improvements funded from the Capital Improvement Reserve Account are
18 defined as (a) major improvements to the facility including but not limited to major roof
19 repair or replacement, parking lot repairs including slurry seal and restripe, major
20 extensive HVAC replacement of units, and other related extensive improvements, (b)
21 the acquisition of a prior non-existing asset or the repair or replacement of a pre-
22 existing asset, (c) not characterized as an operating cost or expense under generally
23 accepted accounting principles, (d) which maintains the value of the Premises over its
24 useful life and is permanently affixed to the real estate, and (e) does not include
25 personal property, or removable trade fixtures. In addition, Operating Expenses do not
26 include the following: Income and franchise taxes of Lessor; interest or principal
27 payments on any mortgage or other indebtedness of Lessor; compensation paid to any
28 employee of Lessor, other than maintenance and property management personnel to

1 the extent these services are directly associated with the operation and maintenance of
2 the Premises; any depreciation allowance or expense; expenses which are the direct
3 responsibility of County; or expenses (herein called "Defect Expenses") incurred as a
4 result of latent defects or punch list items for improvements constructed by Lessor, or
5 Lessor's failure to construct the Premises or County Improvements (hereinafter
6 defined) in accordance with the requirements of this Lease and substantially in
7 accordance with the attached Leasehold Improvement Agreement, Exhibit "B" (such
8 items being herein called "Defects").

9 Funds from the Capital Improvement Reserve Account shall not be used
10 to fund Operating Expenses.

11 **5.3.2(a) Mediation of Disputes.** Lessor and County have the
12 option, but not the obligation, to follow the independent dispute mediation process set
13 forth in the attached Exhibit J to attempt to resolve disputes regarding the definition of
14 Capital Improvements in an economic and time efficient manner and without resorting
15 to litigation so that any Capital Improvements to the Premises conform to the
16 requirements of this Lease and any Capital Expenditures made to the building are
17 made in a cost effective, appropriate and timely manner.

18 **5.3.2(b) Warranties.** During the term of this Lease, Lessor shall
19 exert its good faith and diligent efforts to enforce any and all applicable warranties,
20 express or implied, in connection with defects which may arise in the original design,
21 materials or workmanship of the Premises as originally constructed. Lessor shall
22 assess maintenance, repairs, and replacements for potential warranty coverage and
23 comply with warranty requirements, including but not limited to notices to the warrantor
24 and requests for warranty service.

25 If Lessor fails to take actions reasonably requested by County to enforce
26 or otherwise obtain the benefit of any such warranty, County shall have the right, but
27 not the obligation, to perform required work and shall have the right to be reimbursed
28 by Lessor for the sum it actually expends in the performance of such work. If Lessor

1 does not reimburse County within thirty (30) days after demand from County, County
2 shall have the right to pursue any and all remedies available at law or equity or to offset
3 the rent accordingly.

4 **5.3.2(c) County Review.** Operating Expenses and all
5 Reimbursable Rent items shall be subject to County's review, and County shall have
6 the right to object to (i) any cost or expense which exceeds the prevailing price for such
7 goods or services in the market and (ii) any cost or expense which has been
8 improperly included under Section 5.2.

9 **5.3.3 Pro Rata Share and Payment of Reimbursable Rent:** County's
10 pro rate share of the Reimbursable Rent is 100%. County shall pay it's pro rata share
11 of Reimbursable Rent monthly (prorated on a per month basis) in advance, along with
12 Base Rent, on or before the first day of every month commencing as of the
13 Commencement Date. The monthly payments shall be based upon Lessor's estimate
14 of Reimbursable Rent for the then current operating year, which amount may be
15 adjusted from time to time based upon Lessor's estimate of anticipated Reimbursable
16 Rent. If Lessor is required under a mortgage, deed of trust, underlying lease, or loan
17 agreement covering the Premises to escrow ad valorem taxes, assessments or
18 insurance, Lessor may, but shall not be obligated to, use the required escrow amount
19 as a basis for its estimate for Taxes and Insurance. As of the Effective Date of this
20 Fourth Amendment to Lease, the current Reimbursable Rent (including taxes and
21 insurance) for 12 months is approximately \$0.65 per Rentable Square Foot per month,
22 (\$36,434.00 per month/\$437,208.00 per year) based on 56,006 square feet.

23 **5.3.4 Reconciliation.** Within ninety (90) days after the end of each
24 fiscal year occurring during the lease term, (or, if applicable, the Expiration Date),
25 Lessor shall furnish to County a reconciliation statement of the actual Operating
26 Expenses for the preceding fiscal year and County's actual payment of Reimbursable
27 Rent based upon the parties' approved Annual Budget. The reconciliation statement
28 shall be prepared, signed, and certified to be correct by Lessor. If the actual Operating

1 Expenses for that fiscal year exceed the monthly payments of estimated Reimbursable
2 Rent made by County, County shall pay Lessor the deficiency within thirty (30) days
3 after receipt of the reconciliation statement. If County's payments of Reimbursable
4 Rent made during the fiscal year exceed the actual Operating Expenses, the excess
5 shall be credited by Lessor to the Reimbursable Rent next due and payable; provided
6 however, that such excess sum which is more than three (3) months of then estimated
7 Operating Expenses shall be paid to County in cash via Lessor's check within thirty
8 (30) days after the date of the reconciliation statement.

9 **5.3.5 Audit of Operating Expenses.** If County is not in default under
10 this Lease, County may, at its sole expense, audit Lessor's books relevant to accuracy
11 of the computation of Operating Expenses and related information. The audit shall be
12 commercial real estate standards. With respect to such audit, County: (i) must request
13 the audit within six (6) months after receipt of the annual accounting of Operating
14 Expenses, (ii) may review Lessor's books only during Lessor's office hours and at the
15 location of Lessor's books, (iii) may take no more than ten (10) business days to review
16 Lessor's books, (iv) must deliver to Lessor a copy of the results of its audit, and (v) may
17 not audit the same operating year more than one time. If the audit, as approved by
18 Lessor, reveals that Operating Expenses were overstated by three percent (3%) or
19 more, then Lessor shall reimburse County the excess amount paid by County (or
20 County shall pay to Lessor the deficiency), if any, and if such discrepancy exceeds
21 three percent (3%) or more, Lessor shall pay for the cost of such audit.

22 **5.3.6 Cap on Certain Operating Expenses.** Anything in this Lease to
23 the contrary notwithstanding, Lessor represents and warrants that, after the second
24 anniversary of the Commencement Date, the amount of Controllable Operating
25 Expenses will not increase during any particular operating year thereafter to an amount
26 which is greater than the amount which would be included in Controllable Operating
27 Expenses had Controllable Operating Expenses increased at a rate of five percent
28 (5%) per operating year (the "Cap") beginning with the first fiscal year following

1 execution of this Amendment. As used in this Section the phrase "Controllable
2 Operating Expenses" means those constituent elements of Operating Expenses (other
3 than Non-Controllable Operating Expenses) that are within the reasonable control of
4 Lessor. Non-Controllable Operating Expenses (herein so called) include, but are not
5 limited to taxes, utility costs charged by any utility company and insurance premiums.

6 **4. County's Right to Early Termination.** Section 1 of the 6.3 of the Lease
7 shall be deleted in its entirety and replaced with the following: The Parties hereto
8 recognize and understand that the rental consideration hereunder originates from
9 County, State, and/or Federal sources, and therefore County shall have the right to
10 terminate this Lease after December 31, 2018 (a) if such funding is reduced or
11 otherwise becomes unavailable, based on County's annual fiscal budget, or (b) if any
12 law, rule or regulation precludes, prohibits or materially adversely impairs County's
13 ability to use the Premises for the use permitted herein, or (c) if County in its sole
14 discretion determines that the Premises are no longer suitable for its use for any
15 reason or cause.

16 **6.3.1 Notice.** County shall provide Lessor with written notification
17 of its election to terminate this Lease at least one hundred twenty (120) days prior to
18 the date of termination. County's notice shall state the reason for its termination of this
19 Lease. County's obligation to pay Rent shall continue through the termination date.

20 **5. Notice.** Section 19.18 of the Lease shall be amended as follows:

County's Notification Address:	Lessor's Notification Address:
County of Riverside	Lake Elsinore Office Park, L.P.
Economic Development Agency	13795 Blaisdell Place, #203
3403 Tenth Street, Suite 500	Poway, CA 92064
Riverside, CA 92501	Attn: Edward Stoughton
Attn: Deputy Director of Real Estate	Telephone: (858) 748-5090
Telephone: (951) 955-4876	

1 **6. Fourth Amendment to Prevail.** The provisions of this Fourth
2 Amendment shall prevail over any inconsistency or conflicting provisions of the Lease,
3 as heretofore amended, and shall supplement the remaining provisions thereof.
4 Unless defined herein or the context requires otherwise, all capitalized terms herein
5 shall have the meaning defined in the Lease, as heretofore amended.

6 **7. Miscellaneous.** Except as amended or modified herein, all the terms of
7 the Original Lease shall remain in full force and effect and shall apply with the same
8 force and effect. If any provisions of this Amendment or the Lease shall be determined
9 to be illegal or unenforceable, such determination shall not affect any other provision of
10 the Lease and all such other provisions shall remain in full force and effect. The
11 language in all parts of the Lease shall be construed according to its normal and usual
12 meaning and not strictly for or against either Lessor or Lessee. Neither this
13 Amendment, nor the Original Lease, nor any notice nor memorandum regarding the
14 terms hereof, shall be recorded by Lessee.

15 **8. Effective Date.** This Fourth Amendment to Lease shall not be binding or
16 consummated until its approval by the Riverside County Board of Supervisors and fully
17 executed by the Parties.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

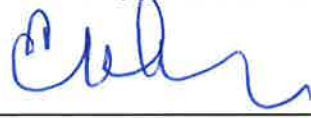
28 ///

1 **IN WITNESS WHEREOF**, the Parties have executed this Amendment as of the
2 date first written above.

3 LESSEE:
4 COUNTY OF RIVERSIDE

LESSOR:
LAKE ELSINORE OFFICE PARK, L.P.

5
6 By: _____
7 John J. Benoit, Chairman
8 Board of Supervisors

By:  _____
Edwin Stoughton, Managing Partner

9 ATTEST:
10 Kecia Harper-Ihem
11 Clerk of the Board

12 By: _____
13 Deputy

14 APPROVED AS TO FORM:
15 Pamela J. Walls
16 County Counsel

17 By:  _____
18 Patricia Munroe
19 Deputy County Counsel