

FORM APPROVED COUNTY COUNSEL 6/13/16
 BY: GREGORY P. PRIAMOS
 DATE

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

133



FROM: Economic Development Agency

SUBMITTAL DATE:
 June 29, 2016

SUBJECT: Fifth Amendment to Lease, Department of Public Social Services, Banning, Five Year Lease Extension, CEQA Exempt, District 5 [\$3,420,776] Federal 64.1%; State 33.0%; County DPSS Budget 2.9%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 and Section 15061(b)(3);
2. Approve the attached Fifth Amendment to Lease and authorize the Chairman of the Board to execute the same on behalf of the County; and
3. Direct the Clerk of the board to file the attached Notice of Exemption with the County Clerk for posting within five working days.

BACKGROUND:

Summary

(Commences on Page 2)

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: Esteban Hernandez 6/28/16

Robert Field
 Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 41,143	\$ 41,239	\$ 3,420,776	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 4,331	\$ 4,388	\$ 105,198	\$ 0	
SOURCE OF FUNDS: Federal 64.1%; State 33.0%; County DPSS Budget 2.9%;				Budget Adjustment: No	
				For Fiscal Year: 2016/17- 22/23	

C.E.O. RECOMMENDATION:

REVIEWED BY CIP
 Ivan M. Chand
 7/5/2016

APPROVE
 BY: Rohini Dasika
 Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Washington, Benoit and Ashley
 Nays: None
 Absent: Tavaglione
 Date: July 12, 2016
 xc: EDA, DPSS, Recorder

Kecia Harper-Ihem
 Clerk of the Board
 By: Deputy

By: Susan von Zabern
 Susan von Zabern, Director
 Department of Public Social Services

- A-30
- Positions Added
- 4/5 Vote
- Change Order

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

Economic Development Agency

FORM 11: Fifth Amendment to Lease, Department of Public Social Services, Banning, Five Year Lease Extension, CEQA Exempt, District 5 [\$3,420,776] Federal 64.1%; State 33.0%; County DPSS Budget 2.9%

DATE: June 29, 2016

PAGE: 2 of 3

BACKGROUND:

Summary

The County holds a leasehold interest, as Lessee, under a lease between the County and Banning #169, LP, a California limited partnership, for the facility located at 63 South 4th Street, Banning.

The Department of Public Social Services (DPSS) has occupied this location for the Self Sufficiency Division since 1999. This office and location continues to meet the needs of DPSS and this Fifth Amendment to Lease extends the lease five years. Included in the lease renewal is the full remodel of four bathrooms at Lessor's expense, which completes interior upgrades previously undertaken. In addition, Day Porter service will be added.

Lessor:	Banning #169, LP B.A.G. Investments, Inc. 10100 Culver Blvd., Suite D Culver City, CA 90232	
Location:	63 S. Fourth Street Banning, CA 92220	
Size:	24,695 square feet	
Term:	Five year lease extension commencing July 1, 2018 and expiring June 30, 2023.	
Rent:	<u>Current</u>	<u>July 1, 2018</u>
	\$1.74 per sq. ft.	\$1.84 per sq. ft.
	\$43,014.05 per month	\$45,495.22 per month
	\$516,168.60 per year	\$545,942.64 per year
Increases:	2% annually.	
Day Porter:	\$2,995.00 per month in addition to rent commencing July 1, 2016.	
Interior/Exterior Maintenance:	Provided by Lessor	
Utilities:	County pays electric, Lessor provides all others	
Custodial:	Provided by Lessor	
Tenant Improvements:	Lessor to fully renovate four restrooms at Lessor's expense for an estimated cost of \$200,000.00.	

Pursuant to the California Environmental Quality Act (CEQA) the Fifth Amendment to Lease was reviewed and determined to be categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301, Class 1-Existing Facilities and Section 15061 (b)(3), the common sense exemption. The proposed project is the letting of property involving existing facilities with tenant improvements and no expansion of an existing use will occur.

(Continued)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
Economic Development Agency

FORM 11: Fifth Amendment to Lease, Department of Public Social Services, Banning, Five Year Lease Extension, CEQA Exempt, District 5 [\$3,420,776] Federal 64.1%; State 33.0%; County DPSS Budget 2.9%

DATE: June 29, 2016

PAGE: 3 of 3

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

Impact on Citizens and Businesses

DPSS will continue to provide temporary assistance programs at this location, including CalWORKS, Food Stamps, and MediCal, as well as Welfare to Work (GAIN) services to facilitate individuals and families to become self-sufficient.

SUPPLEMENTAL:

Additional Fiscal Information

See attached Exhibit A, B, & C

DPSS will budget these costs in FY2016/17 thru FY2022/23 and will reimburse EDA for all lease costs on a monthly basis.

Contract History and Price Reasonableness

The rent continues as obligated under the terms of the lease and the extended term is deemed market acceptable.

Attachments:

Exhibits A, B, & C

Aerial Image

Fifth Amendment to Lease

Notice of Exemption

Exhibit A

FY 2016/17
Department of Public Social Services Lease Cost Analysis
63 S. Fourth Street, Banning, California

ESTIMATED AMOUNTS

Total Square Footage to be Leased:

Current Office:	24,695	SQFT	
Approximate Cost per SQFT (July - June)	\$	1.77	
Lease Cost per Month (July - June)		\$	43,800.24
Total Lease Cost (July - June)			\$ 525,602.88
Total Estimated Lease Cost for FY 2016/17			\$ 525,602.88

Estimated Additional Costs:

Utility Cost per Square Foot	\$	0.12	
Estimated Utility Costs per Month		\$	<u>2,963.40</u>
Total Estimated Utility Cost			\$ 35,560.80
Day Porter		\$	<u>2,995.00</u> \$ 35,940.00
EDA Lease Management Fee - 4.92%			\$ 25,859.66
TOTAL ESTIMATED COST FOR FY 2016/17			\$ <u>622,963.34</u>
TOTAL COUNTY COST: 2.89%			\$ 18,003.64
Amount Previously Approved - Total Cost - 4th Amendment			\$ 581,819.87
Amount Previously Approved - Total County Cost at 2.35% - 4th Amendment			\$ 13,672.77
Amount of FY 2016/17 - Total Cost - 5th Amendment			\$ 41,143.47
Amount of FY 2016/17 - Total County Cost - 5th Amendment			\$ 4,330.87

Exhibit B

FY 2017/18

Department of Public Social Services Lease Cost Analysis

63 S. Fourth Street, Banning, California

ESTIMATED AMOUNTS

Total Square Footage to be Leased:

Current Office:	24,695	SQFT	
Approximate Cost per SQFT (July - June)	\$	1.81	
Lease Cost per Month (July - June)		\$	44,603.16
Total Lease Cost (July - June)			\$ 535,237.92
Total Estimated Lease Cost for FY 2017/18			\$ 535,237.92

Estimated Additional Costs:

Utility Cost per Square Foot	\$	0.12	
Estimated Utility Costs per Month		\$	<u>2,963.40</u>
Total Estimated Utility Cost			\$ 35,560.80
Day Porter		\$	<u>2,995.00</u> \$ 35,940.00
EDA Lease Management Fee - 4.92%			\$ 26,333.71
TOTAL ESTIMATED COST FOR FY 2017/18			\$ <u>633,072.43</u>
TOTAL COUNTY COST: 2.89%			\$ 18,295.79
Amount Previously Approved - Total Cost - 4th Amendment			\$ 591,833.57
Amount Previously Approved - Total County Cost at 2.35% - 4th Amendment			\$ 13,908.09
Amount of FY 2017/18 - Total Cost - 5th Amendment			\$ 41,238.86
Amount of FY 2017/18 - Total County Cost - 5th Amendment			\$ 4,387.70

Exhibit C

FY 2018/19 - 2022/23
Department of Public Social Services Lease Cost Analysis
63 S. Fourth Street, Banning, California

ESTIMATED AMOUNTS

Total Square Footage to be Leased:

Current Office: 24,695 SQFT

	FY 2018/19	FY 2019/20	FY 2020/21 to FY 2022/23
Approximate Cost per SQFT (July - June)	\$ 1.84	\$ 1.88	
Lease Cost per Month (July - June)	\$ 45,495.22	\$ 46,405.12	
Total Lease Cost (July - June)	\$ 545,942.64	\$ 556,861.49	\$ 1,738,303.29
Total Estimated Lease Cost for FY 2018/19 - 2022/23	\$ 545,942.64	\$ 556,861.49	\$ 1,738,303.29

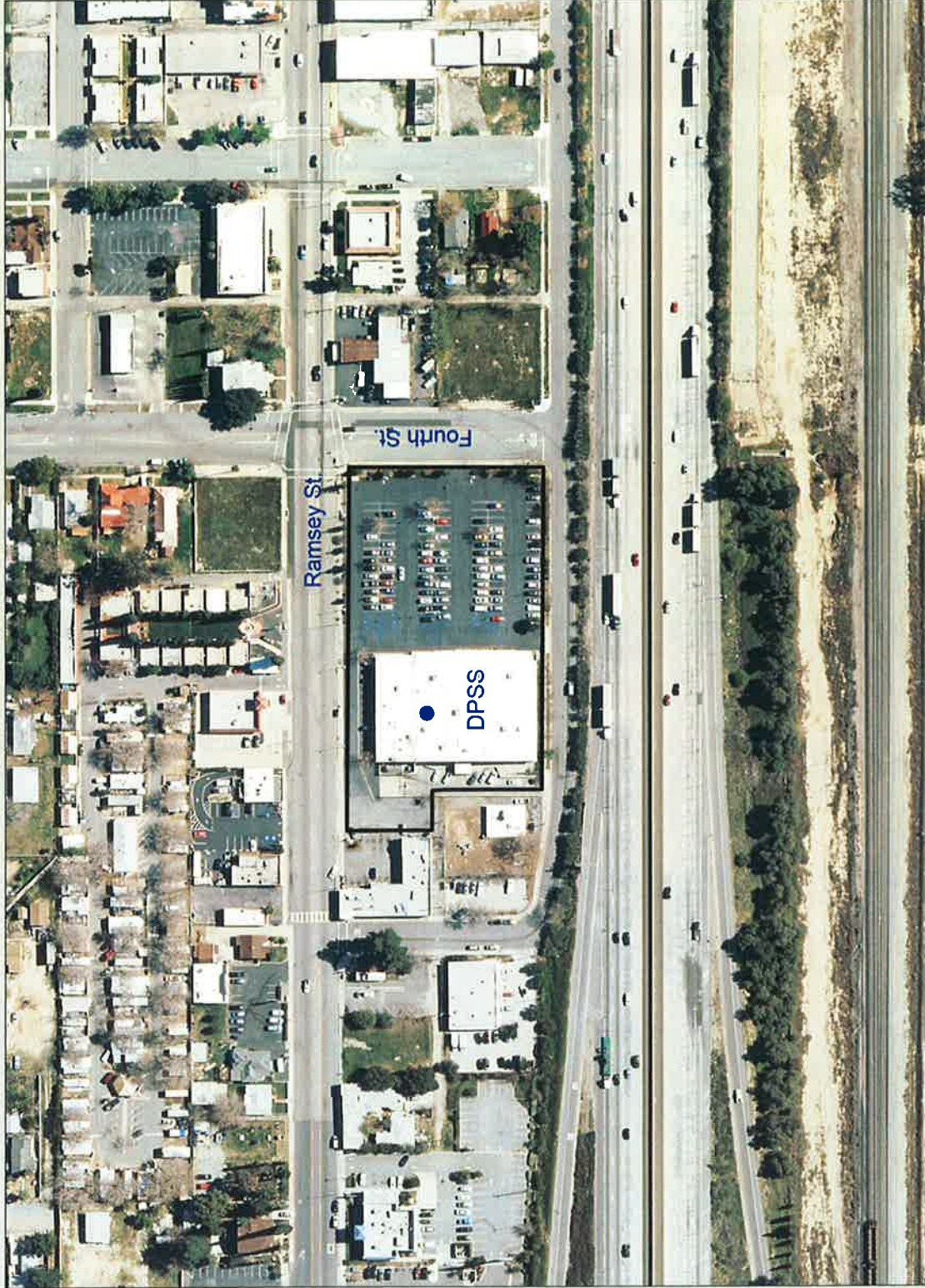
Estimated Additional Costs:

Utility Cost per Square Foot	\$ 0.12	\$ 0.12	\$ 0.12
Estimated Utility Costs Per Month	\$ 2,963.40	\$ 2,963.40	\$ 2,963.40
Total Estimated Utility Cost	\$ 35,560.80	\$ 35,560.80	\$ 106,882.40
Day Porter - \$2,995 per Month	\$ 35,940.00	\$ 35,940.00	\$ 107,820.00
EDA Lease Management Fee - 4.92%	\$ 26,860.38	\$ 27,397.59	\$ 85,524.52
TOTAL ESTIMATED COST FOR FY 2018/19 - 2022/23	\$ 644,303.82	\$ 655,759.88	\$ 2,038,330.21
TOTAL COUNTY COST: 2.89%	\$ 18,620.38	\$ 18,951.46	\$ 58,907.74

F11: Cost - Total Cost \$ 3,420,776.23
 F11: Net County Cost - Total Cost \$ 105,198.16

Department of Public Social Services

63 S. Fourth Street, Banning



Legend



0 235 471 Feet



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Notes

District 5
APN: 540-192-002

IMPORTANT Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.



Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on.

7/13/16 Date

KB Initial

NOTICE OF EXEMPTION

May 23, 2016

Project Name: Fifth Amendment to Lease, Department of Public Social Services, 4th Street, Banning

Project Number: FM042130001900

Project Location: 63 South Fourth Street, Banning, California 92220; Assessor's Parcel Number (APN) 540-192-002 (See attached exhibits)

Description of Project: The County of Riverside (County) proposes to amend and extend the term of the lease with the Banning #169, LP (Lessor), commencing on July 1, 2018 and ending June 30, 2023. The Department of Public Social Services (DPSS) has occupied the location for the Self Sufficiency Division since November 9, 1999. The office and location continues to meet the needs of DPSS and this Fifth Amendment to the Lease Agreement extends the lease five years. Included in the lease renewal is a full remodel of four bathrooms at Lessor's expense. The extension of the lease and tenant improvements is identified as the proposed Project under California Environmental Quality Act (CEQA). The leased premise consists of approximately 24,695 square feet and the proposed Project is the letting of property involving existing facilities with a remodel of the existing four bathrooms; no expansion of an existing use will occur. The operation of the facility will continue to provide public services for the Self Sufficiency Division and will not result in an increase in the intensity of the use of the site. No additional direct or indirect physical environmental impacts are anticipated.

Name of Public Agency Approving Project: County of Riverside, Economic Development Agency

Name of Person or Agency Carrying Out Project: County of Riverside, Economic Development Agency, Banning #169, LP

Exempt Status: State CEQA Guidelines, Section 15301, Class 1, Existing Facilities Exemption; Section 15061(b) (3), General Rule or "Common Sense" Exemption, Codified under Title 14, Articles 5 and 19, Sections 15061 and 15300 to 15301.

Reasons Why Project is Exempt: The proposed Project is categorically exempt from the provisions of CEQA specifically by the State CEQA Guidelines as identified below. The Project will not result in any specific or general exceptions to the use of the categorical exemption as detailed under State CEQA Guidelines Section 15300.2. The Project will not cause an impact to an environmental resource of hazardous or critical concern nor would the Project include a reasonable possibility of having a significant effect on the environment due to unusual circumstances. The Project would not result in impacts to scenic highways, hazardous waste sites, historic resources, or other sensitive natural environments, or have a cumulative effect to the environment. No significant environmental impacts are anticipated to occur with the Fifth Amendment to the Lease.

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- Section 15301 – Class 1 Existing Facilities Exemption:** This categorical exemption includes the operation, repair, maintenance, leasing, or minor alteration of existing public or private structures or facilities, provided the exemption only involves negligible or no expansion of the previous site’s use. The Project, as proposed, is limited to an amendment to a lease and is limited to interior alterations of existing bathrooms. The Project will not increase or expand the use of the site, and is limited to the continued use of the site in a similar capacity; therefore, the Project is exempt as the Project meets the scope and intent of the Class 1 Exemption identified in Section 15301, Article 19, Categorical Exemptions of the CEQA Guidelines.
- Section 15061 (b) (3) – “Common Sense” Exemption:** In accordance with CEQA, the use of the Common Sense Exemption is based on the “general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.” State CEQA Guidelines, Section 15061(b) (3). The use of this exemption is appropriate if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” *Ibid.* This determination is an issue of fact and if sufficient evidence exists in the record that the activity cannot have a significant effect on the environment, then the exemption applies and no further evaluation under CEQA is required. See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68. The ruling in this case stated that if a project falls within a category exempt by administrative regulation or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment', no further agency evaluation is required. With certainty, there is no possibility that the Project may have a significant effect on the environment. The proposed Fifth Amendment to the Lease will not result in any direct or indirect physical environmental impacts. The use and operation of the facility will be substantially similar to the existing use and will not create any new environmental impacts to the surrounding area. Alterations to the facility are limited to a remodel of existing bathrooms and no expansion or increase in intensity of use would occur. No impacts beyond the ongoing, existing use of the site would occur. Therefore, in no way, would the Project as proposed have the potential to cause a significant environmental impact and the Project is exempt from further CEQA analysis.

Based upon the identified exemptions above, the County of Riverside, Economic Development Agency hereby concludes that no physical environmental impacts are anticipated to occur and the Project as proposed is exempt under CEQA. No further environmental analysis is warranted.

Signed:  Date: 5/23/16

Mike Sullivan, Senior Environmental Planner
 County of Riverside, Economic Development Agency

RIVERSIDE COUNTY CLERK & RECORDER

**AUTHORIZATION
TO BILL
BY JOURNAL VOUCHER**

Project Name: DPPS Fifth Amendment to Lease 4th Street, Banning

Accounting String: 524830-47220-7200400000 - FM042130001900

DATE: May 23, 2016

AGENCY: Riverside County Economic Development Agency

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO BILL FOR FILING AND HANDLING FEES FOR THE ACCOMPANYING DOCUMENT(S).

NUMBER OF DOCUMENTS INCLUDED: One (1)

AUTHORIZED BY: Mike Sullivan, Senior Environmental Planner, Economic Development Agency

Signature: 

PRESENTED BY: Heidi Rigler, Senior Real Property Agent, Economic Development Agency

-TO BE FILLED IN BY COUNTY CLERK-

ACCEPTED BY: -

DATE: -

RECEIPT # (S) -



Date: May 23, 2016

To: Mary Ann Meyer, Office of the County Clerk

From: Mike Sullivan, Senior Environmental Planner, Project Management Office

Subject: **County of Riverside Economic Development Agency Project # FM042130001900**
DPPS Fifth Amendment to Lease 4th Street, Banning

The Riverside County's Economic Development Agency's Project Management Office is requesting that you post the attached Notice of Exemption. Attached you will find an authorization to bill by journal voucher for your posting fee.

After posting, please return the document to:

Mail Stop #1330

Attention: Mike Sullivan, Senior Environmental Planner,

Economic Development Agency,

3403 10th Street, Suite 400, Riverside, CA 92501

If you have any questions, please contact Mike Sullivan at 955-8009.

Attachment

cc: file

1 **FIFTH AMENDMENT TO LEASE**

2 63 S. Fourth Street, Banning, California

3
4 This **FIFTH AMENDMENT TO LEASE** ("Fifth Amendment") dated as of
5 July 12, 2016, is entered into by and between the **COUNTY OF**
6 **RIVERSIDE**, a political subdivision of the State of California ("County"), as Lessee, and
7 **BANNING #169, LP**, a California limited partnership, ("Lessor") and sometimes
8 collectively referred to as the "Parties."

9 **RECITALS**

10 **A.** **BANNING #169, LLC**, as Lessor, predecessor-in-interest to Banning #169,
11 LP, and County, entered into that certain Lease dated May 11, 1999, ("Original Lease")
12 pursuant to which Lessor has agreed to lease to County and County has agreed to
13 lease from Lessor that certain building located at 63 S. Fourth Street, Banning,
14 California, as more particularly described in the Original Lease.

15 **B.** The Original Lease has been amended by:

16 1. That certain First Amendment to Lease dated, November 9, 1999, by
17 and between County of Riverside and Banning #169, LLC, ("First Amendment")
18 whereby the Parties amended the Lease to modify the premises with tenant
19 improvements.

20 2. That certain Second Amendment to Lease dated July 27, 2010, by and
21 between County of Riverside and Banning #169, LP, ("Second Amendment") whereby
22 the Parties amended the Lease to extend the term of the Lease and modify the rent.

23 3. That certain Third Amendment to Lease dated August 16, 2011, by
24 and between County of Riverside and Banning #169, LP, ("Third Amendment")
25 whereby the Parties amended the Lease to increase the square footage and modify the
26 premises with tenant improvements.

27 4. That certain Fourth Amendment to Lease, dated March 19, 2013, by
28 and between County of Riverside and Banning #169, LP, ("Fourth Amendment")

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1 whereby the Parties amended the Lease to increase the square footage and modifying
2 the premises with tenant improvements.

3 **C.** The Original Lease, together with this Fifth Amendment, is collectively
4 referred to as the "Lease."

5 **D.** County and Lessor desire to further amend the Lease by extending the
6 lease term and modifying the premises with tenant improvements defined herein.

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

9 **1. Term.** Section 3 of the Lease shall be amended as follows:

10 The term of this Lease shall be extended for a period of five (5) years
11 commencing July 1, 2018, and expiring June 30, 2023 (the "Extension Term").

12 **2. Rent.** Section 5 of the Lease shall be deleted in its entirety during the
13 Extension Term and replaced as follows:

14 **5(a)** Commencing July 1, 2018, County shall pay the sum of \$45,495.22
15 per month to Lessor as rent for the Leased Premises, payable, in advance, on the first
16 day of the month or soon thereafter as a warrant can be issued in the normal course of
17 County's business.

18 **5(b)** Notwithstanding the provisions of Section 5(a) herein, commencing
19 July 1, 2019, the monthly rent shall be increased on each anniversary of this Fifth
20 Amendment to Lease by an amount equal to two percent (2%) of such monthly rental
21 for the preceding Lease year.

22 **3. Custodial Services.** Section 6 of the Lease shall be amended to add
23 subsection 6(a), Day Porter Services as follows:

24 Commencing July 1, 2016, Lessor shall provide a Day Porter on site at the Premises
25 Monday through Friday during the hours of 9 a.m. to 5 p.m. Such services shall be
26 provided as set forth in the attached Exhibit H and by this reference incorporated
27 herein. The cost for this service is \$2,995.00 per month and shall be reimbursed by
28 County in addition to the monthly rent as stated herein. If the contract cost for the Day

1 Porter increases, County will be responsible for the increase once Lessor provides at
2 least thirty (30) days advance notice. County may request the Day Porter service
3 contract be modified or terminated upon not less than thirty (30) days advance notice to
4 Lessor. The monthly Day Porter cost will not be included in the annual rent increase
5 calculation.

6 **4. Improvements.** Section 9 shall be amended to add subsection 9 (I) as
7 follows:

8 **9 (I). Additional Improvements by Lessor.** Lessor shall, at Lessor's
9 sole expense not subject to reimbursement, complete the following improvements as
10 stated in Exhibit I. Work to commence within 60 days upon Board approval of this Fifth
11 Amendment to Lease or a mutually agreeable date by County and Lessor.

12 **5. Exculpation, Indemnification, and Insurance.** Section 11 of the Lease
13 shall be deleted in its entirety and replaced with the following:

14 **11.1 Exculpation.** To the fullest extent permitted by law, Lessor, on its
15 behalf and on behalf of all Lessor Parties, as hereinafter defined, waives all claims (in
16 law, equity, or otherwise) against County Parties, as hereinafter defined, arising out of,
17 knowingly and voluntarily assumes the risk of, and agrees that County Parties shall not
18 be liable to Lessor Parties for any of the following: (1) injury to or death of any person;
19 or (2) loss of, injury or damage to, or destruction of any property, including the resulting
20 loss of use, economic losses, and consequential or resulting damage. County Parties
21 shall not be liable under this Section regardless of whether the liability results from any
22 active or passive act, error, omission, or negligence of any of County Parties; or is
23 based on claims in which liability without fault or strict liability is imposed or sought to
24 be imposed on any of County Parties. This exculpation Section shall not apply to
25 claims against County Parties to the extent that a final judgment of a court of
26 competent jurisdiction establishes that the injury, loss, damage, or destruction was
27 proximately caused by County Parties' fraud, willful injury to person or property, or
28 violation of law.

1 **11.1.1 Definition of “County Parties” and “Lessor Parties.”**

2 For purposes of this Section 11, the term “County Parties” refers singularly and
3 collectively to County, Special Districts, their respective Directors, Officers, Board of
4 Supervisors, agents, employees, and independent contractors as well as to all persons
5 and entities claiming through any of these persons or entities. The term “Lessor
6 Parties” refers singularly and collectively to Lessor and the partners, venturers,
7 trustees, and ancillary trustees of Lessor and the respective officers, directors,
8 shareholders, members, parents, subsidiaries, and any other affiliated entities,
9 personal representatives, executors, heirs, assigns, beneficiaries, agents, servants,
10 employees, and independent contractors of these persons or entities.

11 **11.1.2 Survival of Exculpation.** The paragraphs of this Section

12 11 shall survive the expiration or earlier termination of this Lease until all claims within
13 the scope of this Section 11 are fully, finally, and absolutely barred by the applicable
14 statutes of limitations.

15 **11.1.3 Lessor’s Acknowledgment of Fairness.** Lessor

16 acknowledges that this Section 11 was negotiated with County, that the consideration
17 for it is fair and adequate, and that Lessor had a fair opportunity to negotiate, accept,
18 reject, modify, or alter it.

19 **11.2 Hold Harmless.**

20 Lessor shall indemnify and hold harmless the County of Riverside, its
21 Agencies, Districts, Special Districts and Departments, their respective directors,
22 officers, Board of Supervisors, elected and appointed officials, employees, agents and
23 representatives (individually and collectively hereinafter referred to as Indemnitees)
24 from any liability whatsoever, based or asserted upon any acts or omissions of services
25 of Lessor, its officers, employees, subtenants, agents or representatives arising out of
26 or in any way relating to this Agreement, including but not limited to property damage,
27 bodily injury, or death or any other element of any kind or nature whatsoever arising
28 from the performance of Lessor, its officers, employees, subtenants, agents or

1 representatives Indemnitors from this Agreement. Lessor shall defend, at its sole
2 expense, all costs and fees including, but not limited, to attorney fees, cost of
3 investigation, defends and settlements or awards against the Indemnitees in any claim
4 or action based upon such alleged acts or omissions

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

11 Lessor's obligation hereunder shall be satisfied when Lessor has
12 provided to County the appropriate form of dismissal release or satisfaction relieving
13 County from any liability for the action or claim involved.

14 The specified insurance limits required in this Agreement shall in no way
15 limit or circumscribe Lessor's obligation to indemnify and hold harmless the Indemnities
16 herein from third party claims.

17 In the event there is conflict between this clause and California Civil Code
18 Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such
19 Interpretation shall not relieve the Lessor from indemnifying the Indemnitees to the
20 fullest extent allowed by law.

21 **11.3 Insurance**

22 Without limiting or diminishing the Lessor's obligation to indemnify or hold
23 the County harmless, Lessor shall procure and maintain or cause to be maintained, at
24 its sole cost and expense, the following insurance coverage's during the term of this
25 Agreement. As respects to the insurance section only, the County herein refers to the
26 County of Riverside, its Agencies, Districts, Special Districts and Departments, their
27 respective directors, officers, Board of Supervisors, employees, elected or appointed
28 officials, agents or representatives as Additional Insureds.

1 A. Workers' Compensation:

2 If the Lessor has employees as defined by the State of California,
3 the Lessor shall maintain statutory Workers' Compensation. Insurance (Coverage A)
4 as prescribed by the laws of the State of California. Policy shall include Employers'
5 Liability (Coverage B) including Occupational Disease with limits not less than
6 \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation
7 in favor of The County of Riverside.

8 B. Commercial General Liability:

9 Commercial General Liability insurance coverage, including but
10 not limited to, premises liability, unmodified contractual liability, products and
11 completed operations liability, personal and advertising injury, and cross liability
12 coverage, covering claims which may arise from or out of Lessor's performance of its
13 obligations hereunder. Policy shall name the County as Additional Insured. Policy's
14 limit of liability shall not be less than \$1,000,000 per occurrence combined single limit.
15 If such insurance contains a general aggregate limit, it shall apply separately to this
16 agreement or be no less than two (2) times the occurrence limit.

17 C. Vehicle Liability:

18 If vehicles or mobile equipment are used in the performance of the
19 obligations under this Agreement, then Lessor shall maintain liability insurance for all
20 owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000
21 per occurrence combined single limit. If such insurance contains a general aggregate
22 limit, it shall apply separately to this agreement or be no less than two (2) times the
23 occurrence limit. Police shall name the County as Additional Insureds.

24 D. General Insurance Provisions – All lines:

25 1) Any insurance carrier providing insurance coverage
26 hereunder shall be admitted to the State of California and have an A M BEST rating of
27 not less than A: VIII (A:8) unless such requirements are waived, in writing, by the
28 County Risk Manager. If the County's Risk Manager waives a requirement for a

1 particular insurer such waiver is only valid for that specific insurer and only for one
2 policy term.

3 2) The Lessor must declare its insurance self-insured retention
4 for each coverage required herein. If any such self-insured retention exceeds \$500,000
5 per occurrence each such retention shall have the prior written consent of the County
6 Risk Manager before the commencement of operations under this Agreement. Upon
7 notification of self-insured retention unacceptable to the County, and at the election of
8 the County's Risk Manager, Lessor's carriers shall either; 1) reduce or eliminate such
9 self-insured retention as respects this Agreement with the County, or 2) procure a bond
10 which guarantees payment of losses and related investigations, claims administration,
11 and defense costs and expenses.

12 3) Lessor shall cause Lessor's insurance carrier(s) to furnish
13 the County of Riverside with either 1) a properly executed original Certificate(s) of
14 Insurance and certified original copies of Endorsements effecting coverage as required
15 herein, and 2) if requested to do so orally or in writing by the County Risk Manager,
16 provide original Certified copies of policies of insurance shall contain the covenant of
17 the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given
18 to the County of Riverside prior to any material modification, cancellation, expiration or
19 reduction in coverage of such insurance. If Lessor's insurance carrier(s) policies does
20 not meet the minimum notice requirement found herein, Lessor shall cause Lessor's
21 insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.

22 4) In the event of a material modification, cancellation,
23 expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless
24 the County of Riverside receives, prior to such effective date, another properly
25 executed original Certificate of Insurance and original copies of endorsements or
26 certified original policies, including all endorsements and attachments thereto
27 evidencing coverage's set forth herein and the insurance required herein is in full force
28 and effect. Lessor shall not commence operations until the County has been furnished

1 original Certificate(s) of Insurance and certified original copies of endorsements and if
2 requested, certified original policies of insurance including all endorsements and any
3 and all other attachments as required in this Section. An individual authorized by the
4 insurance carrier to do so on its behalf shall sign the original endorsements for each
5 policy and the Certificate of Insurance.

6 5) It is understood and agreed to by the parties hereto that the
7 Lessor's insurance shall be construed as primary insurance, and the County's
8 insurance and/or deductibles and/or self-insured retention's or self-insured programs
9 shall not be construed as contributory.

10 6) If, during the term of this Agreement or any extension
11 thereof, there is a material change in the scope of services; or, there is a material
12 change in the equipment to be used in the performance of the scope of work; or, the
13 term of the Agreement, including any extensions thereof, exceeds five (5) years; the
14 County reserves the right to adjust the types of insurance and the monetary limits of
15 liability required under this Agreement, if in the County Risk Manager's reasonable
16 judgment, the amount or type of insurance carried by the Lessor has become
17 inadequate.

18 7) Lessor shall pass down the insurance obligations contained
19 herein to all tiers of subcontractors working under this Agreement.

20 8) The insurance requirements contained in this Agreement
21 may be met with a program(s) of self-insurance acceptable to the County.

22 9) Lessor agrees to notify County of any claim by a third party
23 or any incident or event that may give rise to a claim arising from the performance of
24 this Agreement.

25 E. Property (Physical Damage).

26 (a) All-Risk real property insurance coverage, including
27 earthquake and flood, if applicable, for the full replacement cost value of buildings,
28 structures, fixtures, all improvements therein, and building systems on the Project as

1 the same exists at each early anniversary of the term. Policy shall include Business
2 Interruption, Extra Expense, and Expediting Expense coverage as well as coverage for
3 off-premises power failure. Policy shall name the County as a Loss Payee as their
4 interests may appear.

5 (b) Boiler and Machinery insurance providing coverage
6 for at least but not limited to, all high voltage electrical and rotating mechanical
7 equipment on a full replacement cost value basis. Policy shall provide Business
8 Interruption, Extra Expense, and Expediting Expense coverage as well as coverage for
9 off-premises power failure. Policy shall name the County as a Loss Payee as their
10 interests may appear.

11 (c) During such time, prior to the commencement of this
12 Lease while Lessor is preparing the Premises in accordance with Exhibit "B," Lessor
13 shall keep or require its Contractor to keep in full force and effect, a policy of Course of
14 Construction Insurance covering loss or damage to the Premises for the full
15 replacement value of such work. The Named Insured shall include the Lessor, County
16 and Contractor as their interests appear. Lessor or their Contractor shall be
17 responsible for any deductible payments that result from a loss at the Premises under
18 this coverage. If, at the time of any loss to the property described on Exhibit "B," it is
19 determined that the insurance has not been carried or the insurance does not cover the
20 loss of property being installed, the Lessor shall be responsible to pay the loss without
21 contribution from the County.

22 **11.3.1 County's Insurance:** County maintains funded programs
23 of Self-Insurance. County shall provide to Lessor a Certificate of Self-
24 Insurance evidencing the County's Self-Insurance for the following coverage, if so
25 requested by Lessor as follows:

- 26 11.3.1.1 Workers' Compensation \$1,000,000 per occurrence
- 27 11.3.1.2 Commercial General Liability \$1,000,000 per occurrence
- 28 11.3.1.3 Automobile Liability \$1,000,000 per occurrence

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

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

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1 **8. Effective Date.** This Fifth Amendment to Lease shall not be binding or
2 consummated until its approval by the County's Board of Supervisors and fully
3 executed by the Parties.

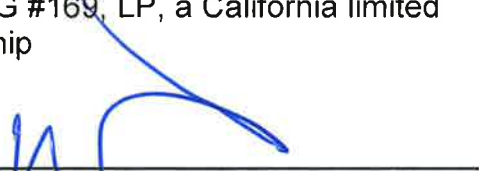
4 **IN WITNESS WHEREOF,** the Parties have executed this Amendment as of the
5 date first written above.

6 Dated: JUL 12 2016

7 LESSEE:
8 COUNTY OF RIVERSIDE

LESSOR:
BANNING #169, LP, a California limited
partnership

9
10 By: 
11 John J. Benoit, Chairman
12 Board of Supervisors

By: 
Alan J. Gindi, President of B.A.G.
Investments, Inc., General Partner

13 ATTEST:
14 Kecia Harper-Ihem
15 Clerk of the Board

16 By: 
17 Deputy

18
19 APPROVED AS TO FORM:
20 Gregory P. Priamos, County Counsel

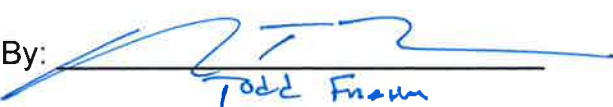
21 By: 
22 Todd Fraum
23 Deputy

EXHIBIT "H"

Day Porter to be provided Monday through Friday during the hours of 9:00 am to 5:00 pm.

Duties shall include:

- a. Empty all trash in restrooms as needed.
- b. Clean, sanitize and stock restrooms as needed.
- c. Check lobby areas for debris and remove.
- d. Touch up door glass as needed.
- e. Keep entrances free from debris.
- f. Be available by phone for emergency spills or cleanups.
- g. Sanitize customer counters and walk up areas as needed.
- h. Pick up and empty outside trash cans and in lobby areas as needed.
- i. Inspect lunchrooms and stock as needed.



Terms of cleaning contract

Adjustment Clause: if your facility becomes altered in any way, through construction or reconstruction so as to cause an increase or decrease in the cost of cleaning services the contract may be amended by mutual consent

Cancellation Clause: Either party may cancel this contract with a 30 day written notice

Keys: We will require 3 sets of access keys and cards, we will acquire and handle this with the County

Supplies: We furnish all cleaning equipment and cleaning supplies, including all paper products and receptacle supplies

Insurance: ASM will provide and maintain General liability (1,000,000 and workers comp at all times) and will provide this when contract is signed.

Terms: All payments are due and payable (EOM) end of month services are rendered

BAG Investments hereby authorizes **All Service Maintenance** to provide cleaning services for the amount of:

Total monthly billing will be:

\$2995.00 per month including all labor, supplies, taxes and fees

All Service Maintenance

BAG Investments

Date: _____

Date: _____

Exhibit "H"

www.asmjanitorial.com

EXHIBIT "I"

Restroom remodel proposal for:
63 S. Fourth St.
Banning, CA 92220

Banning #169, LP proposes to do the following work with respect to the restroom remodel project at 63 S. Fourth St., Banning CA 92220:

1. Demolition: Remove vinyl flooring, restroom partitions, toilets, urinals, sinks, countertop, baby changing stations, florescent lighting, all restroom dispensers, mirrors, and exhaust fans. All removed materials shall be removed from property and disposed of.
2. Backer board: new ½" backerboard will be installed on walls from floor to 8' in lobby restrooms and from floor to 4' in employee restrooms.
3. Floor tile: Floor will be prepped and waterproofed as necessary. Dal tile 12"x24" and 6"x12" cove base, Neighborhood Walk CY05 will be installed with 1/8" grout joints.
4. Wall tile: Dal tile 4"x8" Urban Putty will be installed on a brick pattern from floor to ceiling with a double band of Elemental tan at approximately 5' from the floor in the lobby restrooms. The same tile will be installed up to 5' in the employee restrooms, with the double band of Elemental Tan being the top two rows.
5. Partitions: Hiney Hiders solid plastic black or almond in color will be installed in the same basic layout as existing partitions. Small adjustments will be made to ensure the new partitions comply with current ADA accessibility Codes.
6. Electrical: 48 new LED can lights will be installed throughout the restrooms as necessary to provide even lighting. One light fixture over each plumbing fixture will be the basic layout with additional lighting being in the walkway areas. Power will be provided to each new toilet valve, urinal valve, faucet, and soap dispenser. New exhaust fans will be installed in each restroom. Occupancy sensors will be installed in each restroom and will control new lighting and new exhaust fans.
7. Countertops: new Formica solid surface countertops will be installed with the same basic layout as existing. Ebony mosaics 650 will be the color for the men's and women's lobby restrooms and Mokka graniti 387 will be the color for the two employee restrooms.
8. Mirrors: New mirrors will be installed in the employee restrooms. The new mirrors will extend from the backsplash to the ceiling. There will be no mirrors in the lobby restrooms.
9. Paint: Restroom ceilings and walls above new tile will be painted with Dunn Edwards Suprema paint in County specified color.

10. Plumbing: New toilets will be American Standard Madera with new Sloan automatic flush valve S3450055. New urinals will be Pro Flo PF1815PTWH with Sloan auto flush valve S3452643. New under mount sinks will be American Standard A0495221020 with Sloan S3346057 auto soap dispenser and Sloan S3335005 automatic faucet.
11. Restroom dispensers: New Bobrick TP dispensers will be installed in each stall. Women's stalls will have BB3574 or BB357 and Men's stalls will have BB3474 or BB347. New stainless steel grab bars will also be installed in ADA stalls as required. Two new Koala Kare KB200-00 (Cream) changing stations will be installed in the two lobby restrooms.
12. HVAC Vent: Add one HVAC vent to women's employee restroom.
13. Walk off mats: Remove tile as necessary at each doorway (3) into lobby from outside to create a pit for new walk off mats. Trim out with aluminum frame, and install new mill aluminum mat with brown vinyl abrasive treads.
14. Provide portable toilets as necessary. Every effort will be made to keep restroom available for use during construction.

Note: All work will be done on weekends and after hours of normal operation for Riverside County employees.