



Contract Number

12-831 A-3

SAP Number

Real Estate Services Department

Department Contract Representative	<u>Terry W. Thompson, Director</u>
Telephone Number	<u>(909) 387-5000</u>
Contractor	<u>Luxor Properties, LLC, a California limited liability company.</u>
Contractor Representative	<u>Hank Dayani, Managing Member</u>
Telephone Number	<u>(323) 935-1544</u>
Contract Term	<u>1/1/2013-12/31/2030</u>
Original Contract Amount	<u>\$3,561,972</u>
Amendment Amount	<u>\$1,630,812</u>
Total Contract Amount	<u>\$5,192,784</u>
Cost Center	<u>7810001000</u>
GRC/PROJ/JOB No.	<u>65003033</u>
Internal Order No.	<u></u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS 71-81 Cowan Building, LP ("Original Landlord"), and San Bernardino County ("COUNTY") are parties to Lease Agreement, Contract No. 12-831 dated November 27, 2012, as amended by the First Amendment dated December 15, 2015, and the Second Amendment dated May 3, 2016 (collectively the "Lease"), wherein LANDLORD leases certain premises at 1505 South "D" Street in San Bernardino, as more specifically set forth in the Lease, to the COUNTY for a term that is currently scheduled to expire on December 31, 2025; and,

WHEREAS, Luxor Properties, LLC, a California limited liability company, represents and warrants to the COUNTY that on December 1, 2021, it acquired all right, title, and interest to the real property on which the Premises under the Lease is situated and the Lease from the Original Landlord, and as such Luxor Properties, LLC, a California limited liability company, as the successor-in-interest to the Original Landlord, shall hereinafter be referred to as "LANDLORD"; and,

WHEREAS, the LANDLORD and COUNTY desire to amend the Lease to reflect LANDLORD as the successor landlord under this Lease, extend the term of the Lease from January 1, 2026 through December 31, 2030 through the concurrent exercise of the existing three-year and two-year extension options, adjust the rental rate, and amend certain other terms of the Lease as set forth in this amendment ("Third Amendment").

NOW, THEREFORE, in consideration of mutual covenants and conditions and the foregoing recitals which are hereby incorporated by reference, the parties hereto agree the Lease is amended as follows:

1. Effective as of December 1, 2021, DELETE in its entirety the existing **Paragraph 1, PARTIES**, and SUBSTITUTE therefore the following as a new **Paragraph 1, PARTIES**:

1. **PARTIES**: This lease ("Lease") is made between Luxor Properties, LLC, a California limited liability company ("LANDLORD"), as landlord, and San Bernardino County ("COUNTY"), as tenant, who agree on the terms and conditions contained in this Lease. LANDLORD hereby represents and warrants to COUNTY that LANDLORD is the legal owner with sole title to the Premises and the real property on which the Premises is situated and has the right to enter into this Lease without consent or approval from any other parties. In the event of a breach of the foregoing representation and warranty, COUNTY shall have the right to terminate this Lease with immediate effect upon written notice to LANDLORD and LANDLORD shall indemnify, defend (with counsel reasonably approved by COUNTY), and hold COUNTY and its officers, employees, contractors, volunteers, and agents harmless from any and all claims, actions, losses, damages, and/or liability arising out of said breach.

2. Effective March 1, 2022, pursuant to COUNTY's concurrent exercise of the existing three-year and two-year extension options in **Paragraph 6, OPTION TO EXTEND TERM**, EXTEND the term of the Lease as provided in **Paragraph 3, TERM**, for a period of five (5) years from January 1, 2026 through December 31, 2030 (the "Second Extended Term").

3. Monthly Rent pursuant to Paragraph 4, RENT, subparagraph A, is affirmed in part and amended in part, as more specifically set forth below:

A. The parties affirm the following monthly rent payments that are payable to LANDLORD pursuant to Paragraph 4, RENT, subparagraph A of the First Amendment for the period from December 1, 2021, the date LANDLORD became the successor landlord pursuant to Paragraph 1, PARTIES, through December 31, 2022:

December 1, 2021 thru December 31, 2021 monthly payments of \$24,353.00
January 1, 2022 thru December 31, 2022 monthly payments of \$25,083.00

B. Due to the parties' agreement to amend the monthly rent payments in Paragraph 4, RENT, subparagraph A of the First Amendment for the period from January 1, 2023 through the remainder of existing term and to set forth the monthly rent payments for the Second Extended Term, effective January 1, 2023, DELETE in its entirety the existing **Paragraph 4, RENT, subparagraph A**, and SUBSTITUTE therefore the following as a new **Paragraph 4, RENT, subparagraph A**:

4. **RENT**:

A. COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears by no later than the last day of each month, commencing on January 1, 2023 and continuing for the remainder of the existing term ending on December 31, 2025 and for the duration of the Second Extended Term, based on approximately 12,888 square feet of leased space, as more specifically reflected and included in the amounts set forth below:

Remainder of Existing Term:

January 1, 2023 thru December 31, 2023 – monthly payments of \$25,083.00
January 1, 2024 thru December 31, 2024 – monthly payments of \$25,083.00
January 1, 2025 thru December 31, 2025 – monthly payments of \$25,083.00

Second Extended Term:

January 1, 2026 thru December 31, 2026 – monthly payments of \$27,600.00
January 1, 2027 thru December 31, 2027 – monthly payments of \$27,600.00
January 1, 2028 thru December 31, 2028 – monthly payments of \$27,600.00
January 1, 2029 thru December 31, 2029 – monthly payments of \$28,428.00

January 1, 2030 thru December 31, 2030 – monthly payments of \$29,280.00

4. Effective as of March 1, 2022, DELETE in its entirety the existing **Paragraph 8, HOLDING OVER**, and SUBSTITUTE therefore the following as a new **Paragraph 8, HOLDING OVER**:

8. **HOLDING OVER**: In the event the COUNTY shall hold over and continue to occupy the Premises, with the consent of the LANDLORD, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent (but excluding any payments for amortized improvements), as existed and prevailed at the time of the expiration of the term of this Lease. Notwithstanding **Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE**, either party shall have the right to terminate Lease with not less than ninety (90) days prior written notice to the other party during any holdover tenancy.

5. Effective as of March 1, 2022, DELETE in its entirety the existing **Paragraph 17, INDEMNIFICATION**, and SUBSTITUTE therefore the following as a new **Paragraph 17, INDEMNIFICATION**:

17. **INDEMNIFICATION**: The LANDLORD agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Lease from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The LANDLORD's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. The LANDLORD's indemnity obligations shall survive the expiration or earlier termination of this Lease.

6. Effective as of March 1, 2022, DELETE in its entirety the existing **Paragraph 18, INSURANCE REQUIREMENTS AND SPECIFICATIONS**, and SUBSTITUTE therefore the following as a new **Paragraph 18, INSURANCE REQUIREMENTS AND SPECIFICATIONS**:

18. **INSURANCE REQUIREMENTS AND SPECIFICATIONS**:

A. The LANDLORD agrees to provide insurance set forth in accordance with the requirements herein. If the LANDLORD uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the LANDLORD agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the lease hereunder. Without in anyway affecting the indemnity herein provided and in addition thereto, the LANDLORD shall secure and maintain throughout the Lease term the following types of insurance with limits as shown:

(1) **Workers' Compensation/Employers Liability** – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the LANDLORD and all risks to such persons under this lease agreement.

If LANDLORD has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Director of Risk Management.

If, LANDLORD is a non-profit corporation, organized under California or Federal law, volunteers for LANDLORD are required to be covered by Workers' Compensation insurance.

(2) **Commercial/General Liability Insurance** – The LANDLORD shall carry General Liability Insurance covering all operations performed by or on behalf of the LANDLORD providing

coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, Collapse, and underground hazards
- (e) Personal injury
- (f) Contractual liability.

(3) \$2,000,000 general aggregate limit Commercial Property Insurance providing all risk coverage for the leased premises, building, fixtures, equipment and all property constituting a part of the premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If LANDLORD is transporting one or more non-employee passengers in relation to the Lease, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If LANDLORD owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(5) Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

B. If LANDLORD performs any construction of the Premises on behalf of the COUNTY, LANDLORD shall also procure and maintain coverages as follows:

(1) For construction contracts for projects over One Million Dollars (\$1,000,000) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars in General Liability and Auto Liability coverage.

(2) For construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

(3) For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (10,000,000) in General Liability and Auto Liability coverage.

(4) Subcontractor Insurance Requirements. The LANDLORD agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Lease to provide insurance covering the contracted operation with the requirements in this Paragraph 18, (including waiver of subrogation rights) and naming the COUNTY as an additional insured. The LANDLORD agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(5) Course of Construction/Installation (Builder's Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

C. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this lease hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

D. Waiver of Subrogation Rights – The LANDLORD shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the LANDLORD and LANDLORD's employees or agents from waiving the right of subrogation prior to a loss or claim. The LANDLORD hereby waives all rights of subrogation against the COUNTY.

E. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

F. Severability of Interests – The LANDLORD agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the LANDLORD and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

G. Proof of Coverage – The LANDLORD shall furnish Certificates of Insurance to the COUNTY's Real Estate Services Department (RESA) administering the lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and LANDLORD shall maintain such insurance from the time the Lease is executed until the expiration or earlier termination of this Lease. Within fifteen (15) days of the commencement of this Lease, the LANDLORD shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

H. Acceptability of Insurance Carrier – Unless otherwise approved by the COUNTY Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

I. Insurance Review – Insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the COUNTY's Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, the COUNTY's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this lease. LANDLORD agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RESA or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESA or the COUNTY.

K. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by COUNTY's Director of Risk Management.

L. Failure to Procure Insurance. All insurance required must be maintained in force at all times by LANDLORD. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the COUNTY to give notice to immediately suspend all LANDLORD's business activities on the Premises. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this agreement, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by LANDLORD to COUNTY upon demand but only for the pro rata period of non-compliance.

M. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with LANDLORD in LANDLORD's operations.

N. The LANDLORD agrees to require all parties or subcontractors, or others it hires or contracts with related to LANDLORD's performance of its obligations in this Lease to provide insurance covering such performance with the same requirements as this Paragraph 18, including but not limited to waiver of subrogation and naming the COUNTY as additional insured. LANDLORD agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

7. Effective as of March 1, 2022, DELETE in its entirety the existing **Paragraph 23, LANDLORD'S REMEDIES ON COUNTY DEFAULT**, and SUBSTITUTE therefore the following as a new **Paragraph 23, LANDLORD'S REMEDIES ON COUNTY DEFAULT**:

23. **LANDLORD'S REMEDIES ON COUNTY'S DEFAULT:** Whenever any Event of Default referred to in Paragraph 22 hereof shall have happened and be continuing, it shall be lawful for the LANDLORD to exercise any and all remedies available pursuant to law or granted pursuant to this Lease; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Rent or otherwise declare any Rent not then in Default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the COUNTY is expressly made a condition and upon the breach thereof the LANDLORD may exercise any and all rights of entry and re-entry upon the Premises, and also, at its option, with or without such entry, may terminate this Lease. In the event of such Event of Default and notwithstanding any re-entry by the LANDLORD, the COUNTY shall continue to remain liable for the payment of the Rent and/or damages for breach of this Lease and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to the LANDLORD only at the same time and in the same manner as provided for the payment of Rent.

8. Effective as of December 1, 2021, DELETE in its entirety the existing **Paragraph 25, NOTICES**, and SUBSTITUTE therefore the following as a new **Paragraph 25, NOTICES**:

25. **NOTICES:**

A. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person shall be in writing and either served personally, delivered by a reputable overnight courier service, or sent by postage prepaid, first-class United States mail, certified or registered, return receipt requested. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective upon the earlier of: (i) actual receipt if such notice is personally delivered; (ii) the date of delivery or refusal to accept delivery if such notice is delivered by a reputable overnight courier service; or (iii) the date of delivery or refusal to accept delivery if such notice is sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested, provided that in all of the foregoing instances, any notices received after 5 pm local time on a business day shall be deemed delivered on the immediately following business day.

LANDLORD'S Address: Luxor Properties, LLC, a California limited liability company
4751 Wilshire Boulevard, Suite 203
Los Angeles, CA 90010

COUNTY'S Address: San Bernardino County
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

B. If LANDLORD intends to transfer its ownership interest (whether controlling or non-controlling) in the Premises and the real property on which the Premises is situated to a third party, LANDLORD shall notify COUNTY of such transfer at least fifteen (15) COUNTY working days prior to completion of such transfer. In the event of such a transfer of controlling interest, LANDLORD shall provide COUNTY with evidence of completion of transfer, including but not limited to a grant deed and an assignment of this Lease; in which case, the new property owner and COUNTY shall reflect by written amendment the new property owner as the successor landlord. In addition, the new property owner, as the successor landlord, shall, within five (5) days of acquiring the subject real property and becoming the successor landlord, provide COUNTY with evidence that it has obtained insurance in compliance with **Paragraph 17, INDEMNIFICATION** and **Paragraph 18, INSURANCE REQUIREMENTS AND SPECIFICATIONS**. The COUNTY's RESD Director shall have the authority on behalf of COUNTY to execute a COUNTY standard amendment to this Lease with any successor landlord solely for the purposes of reflecting the successor landlord as the LANDLORD under the Lease and to update the LANDLORD's notice address. The successor landlord's execution of such COUNTY standard amendment and submission of a valid W-9 are pre-requisites for Rents under this Lease to be paid to the successor landlord.

9. Effective March 1, 2022, DELETE in its entirety the existing **Paragraph 37, VENUE**, and SUBSTITUTE therefore the following as a new **Paragraph 37, VENUE**:

37. **VENUE**: The parties acknowledge and agree that this Lease was entered into and intended to be performed in County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be the Superior Court of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Lease, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino.

10. Effective March 1, 2022, DELETE in its entirety the existing **Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE**, and SUBSTITUTE therefore the following as a new **Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE**:

40. **COUNTY'S RIGHT TO TERMINATE LEASE**: If the term of the Lease continues beyond the Second Extended Term, the COUNTY shall have the right to terminate this Lease at any time after December 31, 2030, whenever COUNTY, in its sole discretion, determines it would be in COUNTY's best interests to terminate this Lease. The COUNTY's Director of the Real Estate Services Department (RESA) shall have the authority on behalf of COUNTY to give LANDLORD notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. In the event COUNTY terminates this Lease pursuant to this paragraph, the LANDLORD shall have the right to receive from COUNTY only the amount of rent due at the date of termination.

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11. All other provisions and terms of the Lease shall remain the same and are hereby incorporated by reference. In the event of any conflict between the Lease and this Third Amendment, the terms of this Third Amendment shall control.

END OF THIRD AMENDMENT.

SAN BERNARDINO COUNTY

**LUXOR PROPERTIES, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY**

►
Curt Hagman, Chairman
Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

By ► _____

Name Hank Dayani

Title Managing Member

Dated: _____

Address 4751 Wilshire Boulevard, Suite 203
Los Angeles, CA 90010

FOR COUNTY USE ONLY

Approved as to Legal Form

►
Agnes Cheng, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

►
Lyle Ballard, Real Property Manager, RESD

Date _____