



Contract Number

09-1087 A3

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	ABO Enterprises, Inc.
Contractor Representative	Jack Katzman
Telephone Number	909-886-4123
Contract Term	2 Years
Original Contract Amount	\$956,160.00
Amendment Amount	\$234,232
Total Contract Amount	\$1,190,392
Cost Center	
GRC/PROJ/JOB No.	65002631
Internal Order No.	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, COUNTY and LANDLORD have previously entered into a Lease Agreement Contract No. 09-1087, as amended by the First Amendment dated October 7, 2014 and the Second Amendment dated March 20, 2018 (collectively, the "Lease"), wherein LANDLORD agreed to lease certain premises located at 2035 and 2037 N. D. Street, San Bernardino, as more specifically described in the Lease, to the COUNTY for a term that expired on March 31, 2020 and is currently on a month to month holdover term; and,

WHEREAS, COUNTY and LANDLORD now desire to amend Lease to reflect a five (5) month holdover period from April 1, 2020 to August 31, 2020 with LANDLORD'S express consent, extend, following said holdover, the term of the Lease two (2) years from September 1, 2020 through August 31, 2022, add two (2) two-year options to extend the term of the lease, adjust the rental rate schedule, and amend certain other terms of the Lease as more specifically as set forth in this amendment ("Third Amendment"); and,

NOW, THEREFORE, in consideration of the mutual covenants and conditions, the parties hereto agree that the Lease is amended as follows:

1. Pursuant to **Paragraph 8, HOLDING OVER**, COUNTY shall, with LANDLORD's express consent granted herein, occupy the Premises on a holdover tenancy for the period from April 1, 2020 through August 31, 2020 at a monthly rental amount of \$7,880.00 per month.

2. Effective September 1, 2020, , DELETE in its entirety the existing **Paragraph 3, TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 3, TERM**:

3. **TERM:** The term of the Lease between COUNTY and LANDLORD for the Premises is extended for two (2) years, commencing from September 1, 2020 and expiring on August 31, 2022 (the "Third Extended Term")

3. Effective September 1, 2020, DELETE in its entirety the existing **Paragraph 4, RENT**, and SUBSTITUTE therefore the following as a new **Paragraph 4, RENT**:

4. **RENT:**

A. COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears no later than the last day of each month, commencing when the Third Extended Term commences and continuing for the duration of the Third Extended Term, as more specifically set forth below:

Lease Year	Total Monthly Rental Payments
September 1, 2020 thru August 31, 2021	\$8,038.00
September 1, 2021 thru August 31, 2022	\$8,198.00

B. Rent for any partial month shall be prorated based on the actual number of days of the month. LANDLORD shall accept all rent and other payments from COUNTY under this Lease via electronic funds transfer (EFT) directly deposited into the LANDLORD's designated checking or other bank account. LANDLORD shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

4. Effective September 1, 2020, DELETE in its entirety the existing **Paragraph 6, OPTION TO EXTEND TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 6, OPTION TO EXTEND TERM**:

6. **OPTION TO EXTEND TERM:**

A. LANDLORD gives COUNTY the option to extend the term of the Lease on the same provisions and conditions, except for the monthly rent, for two (2) two-year option periods (each an "extended term") following expiration of the Third Extended Term, by COUNTY giving notice of its intention to exercise the option to LANDLORD prior to the expiration of the preceding term or during any holding over pursuant to **Paragraph 8, HOLDING OVER**. The rent for each extended term, if exercised by COUNTY, shall be adjusted by good faith negotiation of the parties to the fair market rental rate then prevailing based upon the rental rates of comparable leased premises in the County of San Bernardino.

If the parties have been unable to agree upon the said fair market rental rate within five (5) months of COUNTY's notice to exercise an option for an extended term, said fair market rental rate shall be determined through arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. During the period between the expiration of the then current term of the Lease and the determination of the monthly rent for the Premises by arbitration, COUNTY shall continue to pay the monthly rent for the Premises in effect for the month immediately preceding the expiration of the then current term of the Lease. If the fair market rental rate is determined by arbitration, COUNTY has the right, for any reason, to terminate the Lease by giving termination notice to the LANDLORD within thirty (30) days after COUNTY receives notice of the new fair market rental rate. In the event COUNTY does not so terminate the Lease, COUNTY shall commence paying the arbitration-determined fair market rental rate for the month immediately following COUNTY's receipt of the arbitration-determined fair market rental rate and for the duration of the extended term.

5. Effective September 1, 2020, DELETE in its entirety **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 addresses set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) the date of actual receipt if such notice is served personally, provided if such date is not a business day, said notice shall be effective as of the immediately following business day; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is delivered by reputable overnight courier service or sent by postage pre-paid, United States first-class 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: ABO Enterprises, Inc.
2130 N Arrowhead Avenue, Suite 203
San Bernardino, CA 92405
Attention Jack Katzman

COUNTY's address: County of San Bernardino
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 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 a transfer of controlling interest in the Premises, LANDLORD and the new owner of the Premises shall provide COUNTY with documentation evidencing the completion of such transfer; in which case, the new owner, as successor landlord, and COUNTY shall document by written amendment to reflect the new owner as the successor landlord under this Lease. In addition, the new owner, as the successor landlord, shall, within five (5) days of acquiring the Premises, provide COUNTY with documentation evidencing that it has obtained insurance in compliance with **Paragraph 17, HOLD HARMLESS** 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 each new owner solely for the purposes of reflecting the new owner as the successor landlord and updating its notice address under the Lease. The new owner, as the successor landlord, acknowledges and agrees that its execution of such COUNTY standard amendment is a pre-requisite for Rents under this Lease to be paid to the new owner as the successor landlord.

6. Effective September 1, 2020, DELETE in its entirety the existing **Paragraph 44, FORMER COUNTY OFFICIALS**, and the existing **EXHIBIT "C"** and SUBSTITUTE therefore the following as a new **Paragraph 44, FORMER COUNTY OFFICIALS** and SUBSTITUTE a new **EXHIBIT "C"** attached hereto and incorporated herein by reference:

44. FORMER COUNTY OFFICIALS: LANDLORD has set forth on Exhibit "C" of the Lease, which is attached hereto and incorporated herein by reference, certain information on former COUNTY administrative officials (as defined below) who are employed by or represent LANDLORD. The information provided includes a list of the full names of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of LANDLORD. The information should also include the title/description of the official's last position with COUNTY,

the date the official terminated COUNTY employment, the official's current employment and/or representative capacity with LANDLORD, and the date the official entered LANDLORD's employment and/or representation. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

7. Effective September 1, 2020, DELETE in its entirety the existing **Paragraph 46, ESTOPPEL CERTIFICATES**, and the existing **EXHIBIT "D"** and SUBSTITUTE therefore the following as a new **Paragraph 46, ESTOPPEL CERTIFICATES** and SUBSTITUTE a new **EXHIBIT "D"** attached hereto and incorporated herein by reference:

46. **ESTOPPEL CERTIFICATES:** In the event of a sale or financing of the Property by LANDLORD or an assignment of the Lease or leasehold financing by COUNTY, the LANDLORD or COUNTY, as the case may be, shall execute an estoppel certificate to the requesting party's purchaser, assignee, or lender, as the case may be, which estoppel certificate shall substantially be in the form of Exhibit "D", attached hereto and incorporated herein, to confirm those certain terms of the Lease. COUNTY's RESD Director shall have the authority on behalf of COUNTY to execute an estoppel certificate substantially in the form of Exhibit "D".

8. Effective September 1, 2020, DELETE in its entirety the existing **Paragraph 47, SUBORDINATION AND ATTORNMENT** and the existing **EXHIBIT "E"**, and SUBSTITUTE therefore the following as a new **Paragraph 47, SUBORDINATION AND ATTORNMENT** and SUBSTITUTE a new **EXHIBIT "E"** attached hereto and incorporated herein by reference:

47. **SUBORDINATION AND ATTORNMENT:**

A. As a condition precedent to COUNTY's obligations under the Lease, LANDLORD shall obtain from each holder of a lien or encumbrance on the Premises which is senior to the Lease either an executed recordable subordination agreement which subordinates such lien or encumbrance to the Lease, or a non-disturbance agreement, substantially in the form of the attornment provisions in Exhibit "E", attached hereto and incorporated herein by reference.

B. If, after execution of the Lease, a subsequent lienor requires that the Lease be subordinate to any such encumbrance, the Lease shall be subordinate to that encumbrance if, and only if, LANDLORD first obtains from the subsequent lienor an executed subordination, nondisturbance and attornment agreement ("SNDA"), substantially in the form of Exhibit "E". COUNTY's RESD Director shall have the authority on behalf of COUNTY to execute a SNDA substantially in the form of Exhibit "E".

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

END OF THE THIRD AMENDMENT.

COUNTY OF SAN BERNARDINO

ABO ENTERPRISES , INC.

(Print or type name of corporation, company, contractor, etc.)

▶

Curt Hagman, Chairman, Board of Supervisors

By ▶ _____
(Authorized signature - sign in blue ink)

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

Name Jack Katzman
(Print or type name of person signing contract)

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

Title President
(Print or Type)

By _____
Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form
▶

Agnes Cheng, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
▶

Date _____

Reviewed/Approved by Department
▶

Jim Miller, Real Property Manager, RESD
Date _____

EXHIBIT "C"

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full names of former COUNTY Administrative Officials, the title/description of the Official's last position with COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with LANDLORD, and the date the Official entered LANDLORD's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

LANDLORD hereby certifies the information it has provided in this Exhibit "C" is true, complete, and accurate.

LANDLORD:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "D"

FORM OF ESTOPPEL CERTIFICATE

Date: _____

To: _____

Re: _____, _____
(address) (city)

The undersigned, on behalf of the County of San Bernardino ("County"), hereby certifies, to the best of his or her knowledge as of the date of this Estoppel Certificate ("Certificate"), to Lender the following:

1. County, as tenant, leases certain Premises, comprising _____ square feet at _____ from Landlord, as landlord pursuant to Lease Agreement, Contract No. _____ dated _____ ("Lease").
2. The Lease Term commenced on _____, 20____, and is scheduled to expire _____, 20___. County has no options to extend the Lease Term, except as follows: _____ (____) _____-year options.
4. The current Monthly Rent for the Premises is \$_____.____, payable monthly in arrears, and has been paid through _____.
5. County has not provided a security deposit to Landlord.
6. County is current not in default beyond any applicable notice and cure period under the terms of the Lease.

COUNTY OF SAN BERNARDINO

By: _____
Director
Real Estate Services Department

EXHIBIT "E"

**FORM OF SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

RECORDED AT REQUEST OF
AND TO BE RETURNED TO:

Attn: _____

SUBORDINATION, NO DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is entered into by and between the County of San Bernardino ("Tenant"), _____ ("Landlord") and, _____ ("Lender").
(Name and type of entity)

Recitals

A. Landlord, as landlord, and Tenant, as tenant, have entered into a certain Lease Agreement, County Contract No. ____ - ____ dated on _____, 20__ ("Lease") for the lease of certain premises, comprising approximately _____ square feet ("Premises") located at the building with an address of _____, _____, California _____ (zip code), which is situated on certain real property located in the County of San Bernardino, State of California, commonly known as APN _____ ("Property").

B. Landlord represents to County that it has executed and delivered or is about to execute and deliver to Lender a certain promissory note dated substantially contemporaneously herewith ("Note"), in the original principal sum of \$ _____. The obligations evidenced by the Note shall be referred to as the "Loan". Landlord further represents to COUNTY that the Note is executed pursuant to the terms of a certain Construction Loan Agreement dated substantially contemporaneously herewith (the "Loan Agreement") between Lender and Landlord.

C. Landlord represents to County that has executed and delivered or is about to execute and deliver to Lender a certain Deed of Trust and Assignment of Rents dated substantially contemporaneously herewith ("Deed of Trust"), encumbering the Property to secure the Loan.

D. Landlord represents that it is a condition precedent to the Loan that the Deed of Trust shall remain at all times a lien upon the Property, prior and superior to the Lease.

E. Landlord represents that it is a condition precedent to the Loan that County will subordinate and subject the Lease, together with all rights and privileges of County thereunder, to the lien of the Deed of Trust.

Covenants

In consideration of the recitals set forth above, which are incorporated herein, and the covenants and agreements contained herein, the parties agree as follows:

1. Subordination: Tenant hereby subordinates all of Tenant's right, title, interest in the leasehold estate of the Premises to the Deed of Trust, subject to the terms of this Agreement.

2. Nondisturbance: Tenant's peaceful and quiet possession of the Premises shall not be disturbed and Tenant's rights and privileges under the Lease, including but not limited to the provisions of the Lease set forth under the headings "TERM," "OPTION TO EXPAND," "OPTION TO EXTEND TERM," "INSURANCE REQUIREMENTS AND SPECIFICATIONS," "DESTRUCTION OF PREMISES," "COUNTY'S EARLY TERMINATION RIGHT," and "CONDEMNATION," shall not be altered or diminished by Lender's foreclosure, acceptance of a deed in lieu of foreclosure, or any other exercise of Lender's rights or remedies under the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans. In the event of any conflict among the Lease and the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans, the Lease shall prevail. Tenant shall not be named or joined in any foreclosure, trustee's sale, or other proceeding or action to enforce the Deed of Trust, the Note, the Loan Agreement, or any other loan document, unless such joinder shall be legally required to perfect such foreclosure, trustee's sale, or other proceeding or action.

3. Attornment: If the Deed of Trust is foreclosed for any reason, or Landlord deeds the Property to Lender in lieu of foreclosure, the Lease shall not be extinguished and Tenant shall be bound to Lender under all the terms, covenants, and conditions of the Lease for the balance of the Lease Term, including any options to extend thereunder, with the same force and effect as if Lender was the landlord under the Lease. Tenant shall attorn to Lender as Tenant's landlord, and agrees to recognize Lender as the new landlord and promises to pay the Monthly Rent to Lender as landlord. Lender shall assume the interest of Landlord and fulfill all of Landlord's obligations thereunder. This attornment shall be effective and self-operative, without the execution of any other instruments on the part of any of the parties to this Agreement, immediately upon Lender succeeding to the interest of Landlord under the Lease.

4. Disbursements: Lender is under no obligation or duty to monitor the application of the proceeds of the Loan. Any application of such proceeds for purposes other than those provided for in the Loan Agreement or any of the other Loan Documents shall not defeat the effect of this Agreement in whole or in part.

5. Acknowledgment of Assignment: Tenant acknowledges the assignment of Landlord's rights to collect Monthly Rent due under the Lease to Lender pursuant to a certain Assignment of Leases (the "Assignment"). Tenant shall, without duty of inquiry or investigation, pay Monthly Rent to Lender upon receipt of written notice from Lender that Lender has revoked the waiver of Landlord's right to collect the Monthly Rent from the Premises pursuant to the Assignment, notwithstanding the fact that Lender has not foreclosed the Deed of Trust, nor succeeded to the interest of Landlord under the Lease. Landlord hereby releases Tenant and Tenant shall not be liable to Landlord for any payments made to Lender hereunder.

6. Assignment or Sublease: Tenant may assign the Lease or sublease the Premises or any portion thereof in accordance with the Lease, but no such assignment, transfer, or subletting shall relieve Tenant of any of its obligations under the Lease.

7. Notices: Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party, 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 addresses set forth in the Basic Lease Provisions. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt if such notice is personally delivered on a COUNTY business day; (ii) the date of delivery if such notice is delivered by a reputable overnight courier service on a COUNTY business day; otherwise on the next COUNTY business day; or (iii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by

postage pre-paid, first-class United States mail, certified or registered, return receipt requested, if on a COUNTY business day; otherwise on the next COUNTY business day:

to Tenant: County of San Bernardino
Attn: Director, Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, California 92415-0180

to Landlord: _____

Attn: _____

to Lender: _____

Attn: _____

Notwithstanding the foregoing, any notice under or pertaining to this Agreement, given and effective in accordance with applicable law, shall be effective for purposes hereof. Any party may change the address at which it is to receive notices hereunder to another business address within the United States (but not a post office box or similar mail receptacle) by giving notice of such change of address in accordance herewith.

8. Landlord's Default: Tenant hereby agrees that Tenant will notify Lender in writing, in accordance with Paragraph 7, Notices, above, of any default by Landlord under the terms of the Lease, provided that Lender shall have the same time period as Landlord is given under the Lease to remedy a remedy.

9. Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors, assigns, heirs, executors, and administrators.

10 Attorneys' Fees and Costs: I If any legal action is instituted to enforce or declare a party's rights hereunder, each party, including the prevailing party, must bear its own attorneys' fees and costs. This paragraph shall not apply to those attorneys' fees and costs directly arising from any third party legal action against COUNTY, including such attorneys' fees and costs payable under Paragraph 19, INDEMNIFICATION, Paragraph 13, HAZARDOUS SUBSTANCES, Paragraph 31 PUBLIC RECORDS DISCLOSURE, and Paragraph 32, CONFIDENTIALITY of the Lease.

11. Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Venue: The parties acknowledge and agree that the Agreement was entered into and intended to be performed in the County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to the 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 the 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

LANDLORD:

COUNTY:

Date: _____

Date: _____