



ORIGINAL

Contract Number
02-159 A-5

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director Real Estate Services Department
Telephone Number	(909) 387-5252
Contractor	1330 COOLEY DRIVE, LLC
Contractor Representative	Jian Torkan
Telephone Number	(323) 932-7777
Contract Term	9/9/2002 – 7/31/2023
Original Contract Amount	\$4,574,064
Amendment Amount	\$1,292,224
Total Contract Amount	\$5,866,288
Cost Center	
GRC/PROJ/JOB No.	6200 1767
Internal Order No.	

Briefly describe the general nature of the contract: The COUNTY and LANDLORD desire to amend existing Lease to reflect a permitted holdover period from October 1, 2019 through July 31, 2020, to extend the Lease term for three years from August 1, 2020 through July 31, 2023 by exercising an existing option to extend the term of the Lease, to adjust the rental rate schedule, and to modify certain other provisions.

FOR COUNTY USE ONLY

Approved as to Legal Form ► SEE SIGNATURE PAGE Agnes Cheng, Deputy County Counsel Date _____	Reviewed for Contract Compliance ► _____ Date _____	Reviewed/Approved by Department ► <i>Keith Beahm</i> <i>for Jim Miller</i> Jim Miller, Real Property Manager, RESD Date <u>7/10/20</u>
--	--	--

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the COUNTY and LANDLORD have previously entered into Lease Agreement, Contract No. 02-159 dated February 12, 2002, as amended by the First Amendment dated July 9, 2002, the Second Amendment dated September 22, 2009, the Third Amendment dated November 6, 2012, and the Fourth Amendment dated June 14, 2016, (collectively, the "Lease"), wherein LANDLORD agreed to lease certain premises to the COUNTY, which Lease expired on September 30, 2019 and is currently on a permitted holdover; and,

WHEREAS, the COUNTY and LANDLORD now desire to amend Lease to reflect a permitted holdover period from October 1, 2019 through July 31, 2020, to extend the Lease term for three years from August 1, 2020 through July 31, 2023 by exercising an existing option to extend the term of the Lease, to adjust the rental rate schedule, and to modify certain other provisions as more specifically set forth in this amendment ("Fifth Amendment").

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

1. Pursuant to **Paragraph 7, HOLDING OVER**, COUNTY shall, with LANDLORD's express consent granted herein, occupy the Premises on a holdover tenancy for the period from October 1, 2019 through July 31, 2020 at a rental rate of \$26,578.00 per month.

2. Effective August 1, 2020, pursuant to Paragraph 5, **OPTION TO EXTEND TERM**, **EXTEND** the term of the Lease, as provided in **Paragraph 3, TERM**, for a period of three (3) years, commencing from August 1, 2020 and continuing through July 31, 2023 ("Fourth Extended Term").

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

4. **RENT**:

a. COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears on the last day of each month, commencing when the Fourth Extended Term commences and continuing during the Fourth Extended Term, subject to an approximate three percent (3%) annual increase, as more specifically reflected and included in the amounts set forth below:

August 1, 2020 through July 31, 2021 – monthly payments of \$27,674.00 = \$332,088 annually
August 1, 2021 through July 31, 2022 – monthly payments of \$28,504.00 = \$342,048 annually
August 1, 2022 through July 31, 2023 – monthly payments of \$29,359.00 = \$352,308 annually

4. Effective as of August 1, 2020, **DELETE** in its entirety the existing **Paragraph 22. LANDLORD'S REMEDIES ON COUNTY'S DEFAULT**, and **SUBSTITUTE** therefore the following as a new **Paragraph 22. LANDLORD'S REMEDIES ON COUNTY'S DEFAULT**:

22. **LANDLORD'S REMEDIES ON COUNTY'S DEFAULT**: LANDLORD may, at any time after COUNTY is in default beyond any applicable notice and cure period, exercise any and all remedies available pursuant to law or granted pursuant to the Lease; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any

circumstances to accelerate the Monthly Rent or other sums due or otherwise declare any Monthly Rent or other sums due to be immediately payable. Each and every covenant hereof to be kept and performed by COUNTY is expressly made a condition and upon the default thereof LANDLORD may, at its option, terminate the Lease, provided that LANDLORD shall use reasonable efforts to mitigate its damages. In the event of such default beyond any applicable notice and cure period, COUNTY shall continue to remain liable for the payment of the Monthly Rent, other sums due, and/or damages for default of the Lease; in which case, such Monthly Rent, other sums, and/or damages shall be payable to LANDLORD only at the same time and in the same manner as provided for the payment of Monthly Rent.

5. Effective as of August 1, 2020, DELETE in its entirety the existing **Paragraph 36, VENUE**, and SUBSTITUTE therefore the following as a new **Paragraph 36, VENUE**:

36. **VENUE**: The parties acknowledge and agree that the Lease 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.

6. Effective as of August 1, 2020, DELETE in its entirety the existing **Paragraph 39, COUNTY'S RIGHT TO TERMINATE LEASE**, and SUBSTITUTE therefore the following as a new **Paragraph 39, COUNTY'S RIGHT TO TERMINATE LEASE**:

39. **COUNTY'S RIGHT TO TERMINATE LEASE**: In the event the term of the Lease is extended beyond July 31, 2023, the COUNTY shall have the right to terminate this Lease at any time and for any reason on or after August 1, 2023, whenever COUNTY, in its sole discretion, determines it would be in COUNTY's best interests to terminate this Lease. COUNTY shall 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 be entitled only to the rent that will have been earned at the date of termination of this Lease. The COUNTY's Director of the Real Estate Services Department (RESA) shall have the authority, on behalf of the COUNTY, to give notice of any termination pursuant to this paragraph.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

7. 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 Fifth Amendment, the provisions and terms of this Fifth Amendment shall control.

END OF FIFTH AMENDMENT.

COUNTY:
COUNTY OF SAN BERNARDINO

By: _____

Curt Hagman, Chairman
Board of Supervisors

Date: _____

JUL 28 2020

LANDLORD:
1330 COOLEY DRIVE, LLC

By: _____

Jian Torkan

Title: _____

Member

Date: _____

6-30-20

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIR OF THE BOARD

LYNNA MONELL, Clerk of the Board of
Supervisors

By: _____

Deputy

Date: _____

JUL 28 2020

Approved as to Legal Form:

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By: _____

Agnes Cheng, Deputy County Counsel

Date: _____

6/23/2020