

LEASE

HEALTH SERVICES DEPARTMENT – VOCATIONAL REHABILITATION 1430 WILLOW PASS ROAD, SUITE 230 AND SUITE 240 CONCORD, CALIFORNIA

This lease is dated _____ and is between the Madden Family Trust (“**Lessor**”) and the County of Contra Costa, a political subdivision of the State of California (“**County**”).

Recitals

- A. Lessor is the owner of the real property located at 1430 Willow Pass Road, Concord, which has been improved with a 2-story building (the “**Building**”).
- B. Lessor desires to lease to the County and the County desires to lease from Lessor a portion of the Building known as Suite 230 and Suite 240, which, together, consist of approximately 2,889 square feet of floor space (the “**Premises**”), along with the non-exclusive use of eight full size, non-compact parking spaces in the Building’s parking lot. The location of the Premises is shown on Exhibit A – Premises.
- C. Simultaneous with the execution of this lease, Lessor and the County are entering into a Work Letter that sets forth how tenant improvements in the Premises (the “**Tenant Improvements**”) are to be constructed, who will undertake the construction of the tenant improvements, who will pay for the construction of the tenant improvements, and the time schedule for completing construction of the Tenant Improvements (the “**Work Letter**”). The Work Letter is a part of this lease.

The parties therefore agree as follows:

Agreement

- 1. Lease of Premises. In consideration of the rents and subject to the terms herein set forth, Lessor hereby leases to County and County hereby leases from Lessor, the Premises.
- 2. Term. The “**Term**” of this lease is comprised of an Initial Term and, at County’s election, Renewal Terms, each as defined below.
 - a. Initial Term. The “**Initial Term**” is ten (10) years, commencing on the Commencement Date. The “**Commencement Date**” is the earlier to occur of the date (1) County occupies all or any part of the Premises, provided such date is on or after the Substantial Completion Date, and (2) that is the first business day of the week following the date that is five business days after the earlier of (x) the date Lessor delivers to County a factually correct written notice stating that the Tenant Improvements are Substantially Complete, and (y) the date Lessor delivers to County a factually correct written notice stating the date the Tenant Improvements would

have been Substantially Complete were it not for a Tenant Delay. The Commencement Date will be extended by one day for each day of delay in the completion of the Tenant Improvements, or Tenant's move into the Premises, that is caused by any Landlord Delay. The terms "**Tenant Improvements**," "**Substantially Complete**," "**Substantial Completion Date**," "**Tenant Delay**," and "**Landlord Delay**" are defined in the Work Letter.

- b. Renewal Terms. County has two options to renew this lease for a term of five years for each option (each, a "**Renewal Term**") upon all the terms and conditions set forth herein.
 - i. County will provide Lessor with written notice of its election to renew the lease sixty days prior to the end of the Term. However, if County fails to provide such notice, its right to renew the lease will not expire until fifteen (15) working days after County's receipt of Lessor's written demand that County exercise or forfeit the option to renew.
 - ii. Upon the commencement of a Renewal Term, all references to the Term of this lease will be deemed to mean the Term as extended pursuant to this Section.
3. Rent. County shall pay rent, as adjusted pursuant to this lease ("**Rent**"), to Lessor monthly in advance beginning on the Commencement Date. Rent is payable on the tenth day of each month during the Initial Term and, if applicable, the Renewal Terms, in the amounts set forth below:
 - a. Initial Period. For the period beginning on the Commencement Date and ending on the last day of the twelfth month thereafter (the "**Initial Period**"), Rent is Four Thousand Seven Hundred Seventy Dollars (\$4,770) per month.
 - b. CPI Increase. In each year during the Term that follows the Initial Period, Rent will increase over the preceding year, based on the CPI Factor.

The "**CPI Factor**" means the percentage by which the "**Index**," as defined below, for the most recent twelve-month period immediately preceding the date the revised rent is to commence, has increased over the Index in effect for the immediately preceding twelve-month period, calculated to the nearest one-tenth of one percent. The term "Index" means the Consumer Price Index, all urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or its successor or a substitute index published as a replacement for that index by said Department or by any other United States government agency.

The adjustment in Rent based on the CPI Factor may not be by less than two percent (2%) or by more than five percent (5%) of Rent then in effect.

Lessor will notify the County of the increase in the Rent, and provide a copy of the calculation to the County, when Lessor completes the calculation of increased Rent. If such notice is given after the effective date of the increase, the County shall pay increased Rent retroactively to the effective date of the increase.

- c. Fractional Month. Rent for any fractional month will be prorated and computed on a daily basis with each day's rent equal to one-thirtieth (1/30) of the monthly Rent.
4. Extension Remodeling Allowance. If the County elects to extend the lease through the first Renewal Term, the County shall determine, in its sole reasonable discretion, the remodeling or refurbishment needed in the Premises (the "**Remodeling Improvements**"). Lessor shall reimburse the County for the cost of the Remodeling Improvements, up to Twenty-Eight Thousand Eight Hundred Ninety Dollars (\$28,890) ("**Lessor's Remodeling Allowance**") within thirty days after receipt of the County's written invoice for same. Along with its invoice, the County shall provide Lessor with copies of invoices for labor and materials and proof of payment for all Remodeling Improvements completed by County.
5. Use. County may use the Premises for the purpose of conducting various functions of the County and any other purpose permitted by law.
6. Obligation to Pay Utilities and Janitorial. Lessor shall pay for all, janitorial, water, sewer, gas, electricity, and refuse collection services provided to the Premises at no cost to County. County shall pay for all telephone service.
7. Maintenance and Repairs.
 - a. Roof and Exterior of Premises. Lessor shall keep the roof and exterior of the Premises in good order, condition, and repair, and shall maintain the structural integrity of the Building, including the exterior doors and their fixtures, closers and hinges, exterior windows, glass and glazing used in the Premises.
 - b. Interior of Premises. County shall keep and maintain the interior of the Premises in good order, condition and repair, but Lessor shall repair damage to the interior caused by Lessor's failure to maintain the exterior in good repair, including damage to the interior caused by roof leaks and/or interior and exterior wall leaks.
 - c. Utilities; Pest Control. Lessor shall repair and maintain the electrical, lighting, water and plumbing systems in good order, condition and repair. Lessor shall provide and pay for pest and rodent control to the Building.
 - d. Operating Systems. Lessor shall maintain and repair all operating systems in the Building, including the heating, ventilating, and air-conditioning (HVAC) systems. Lessor shall cause the HVAC to be serviced quarterly, which service is to include the replacement of all HVAC filters.

- e. Parking; Exterior Lighting; Landscaping. Lessor shall maintain the parking lot, exterior lighting system, and landscaping in good order, condition and repair.
 - f. Services by Lessor. If at any time during the Term, the County's Principal Real Property Agent, or his or her designee (the "**County Representative**") determines that the Premises is in need of maintenance, construction, remodeling or similar service that is beyond Lessor's responsibilities under this lease, the County Representative will notify Lessor of such determination in writing. Upon receipt of such notice, Lessor shall perform such service at an agreed-upon cost to the County. In performing the service, Lessor shall consult with County Representative and use either licensed insured contractors or employees of Lessor. Lessor shall obtain the prior written approval of the scope, terms, and cost of any contracts from the County Representative. The County Representative may, by giving Lessor thirty (30) days prior written notice, change the level of service, terminate any or all service, or require that a service be performed by a different contractor.
 - g. Building Code. Lessor shall correct any code violations that exist in the Premises, provided Lessor is not liable for correcting code violations that arise out of and are directly related to a change in County's occupancy or use of the Premises.
 - h. Fire Extinguishers. Lessor shall provide fire extinguishers in the Premises as directed by the Fire Marshall. Lessor shall maintain, repair and replace the fire extinguishers and smoke alarms as needed.
 - i. Alarm System. The County may install and maintain an alarm system in the Premises. County shall provide and maintain all locks and key systems used in the Premises.
8. Inspection and Maintenance. The County shall permit Lessor, or its agent, to enter the interior of the Premises at any reasonable time by appointment, which appointment must be scheduled at least 24 hours in advance, for the purpose of inspecting the interior of the Premises or performing maintenance or repair services; provided that in the case of an emergency, where there is an immediate threat of significant injury to persons or damage to property, a prior appointment is not required.
9. Perilous Conditions. If the County Representative becomes aware of a perilous condition on the Premises that, in his or her opinion, substantially and significantly threatens the health and safety of County employees and/or invitees (a "**Perilous Condition**"), the County Representative will immediately notify Lessor of the Perilous Condition and Lessor shall use best efforts to immediately eliminate the Perilous Condition. The County Representative's notice of a Perilous Condition may be delivered to Lessor by telephone or email as follows:

Contact: Richard Madden
Phone: 925/788-4223
Email: maddenram@sbcglobal.net

Lessor shall immediately address any condition reasonably constituting an emergency, whether Lessor learns of the condition through County or otherwise.

If Lessor fails to address a Perilous Condition within twenty-four hours after County Representative's notice or to immediately address an emergency situation, the County may, but is not obligated to, attempt to resolve the Perilous Condition or emergency situation. Lessor shall reimburse County for any costs incurred by County in addressing the Perilous Condition or emergency situation promptly upon receipt of County's invoice. If Lessor fails to reimburse County within ten business days of the receipt of County's invoice, County may deduct the amount of the invoice from Rent.

10. Quiet Enjoyment. Provided County is in compliance with the material terms of this lease, Lessor shall warrant and defend County in the quiet enjoyment and possession of the Premises during the Term.
11. Subordination, Non-Disturbance and Attornment. If at any time Lessor has a loan that is secured by a lien of a mortgage or deed of trust encumbering the Building, Lessor shall cause the lender(s) holding such lien to execute and deliver to County a Subordination, Non-Disturbance and Attornment Agreement that is in substantial conformity with Exhibit B hereto.
12. Assignment and Sublease. With Lessor's prior written consent, which may not be unreasonably withheld, conditioned or delayed, County may assign this lease or sublease the Premises, in whole or in part, at any time during the Term. Upon the assignment of the lease in whole by the County, the County will have no further obligation under the lease.
13. Alterations; Fixtures and Signs. County may (i) make any lawful and proper minor alterations to the Premises and (ii) attach fixtures and signs ("**County Fixtures**") in or upon the Premises. Any County Fixtures will remain the property of County and may be removed from the Premises by County at any time during the Term. County is responsible for the cost of all alterations and County Fixtures. All alterations and County Fixtures are subject to Lessor's approval and must comply with existing code requirements.
14. Fixture Installation. Upon the execution of this lease, and prior to the Commencement Date, County has the right to install fixtures, telephones, alarm systems, and other items required to prepare the Premises for County's occupancy, and to store furniture, supplies and equipment, provided such work and storage can be effected without unduly interfering with Lessor's completion of any Tenant Improvements. Such work and storage do not constitute occupancy of the Premises for the purpose of determining the Commencement Date.

15. Insurance.

a. Liability Insurance. Throughout the Term, County shall maintain in full force and effect, at its sole expense, a general self-insurance program covering bodily injury (including death), personal injury, and property damage, including loss of use. County shall provide Lessor with a letter of self-insurance affirming the existence of the self-insurance program.

b. Self-Insurance Exclusion. County's self-insurance does not provide coverage for (i) areas to be maintained by Lessor under this lease, or (ii) negligence, willful misconduct, or other intentional act, error or omission of Lessor, its officers, agents, or employees.

16. Surrender of Premises. On the last day of the Term, or earlier termination of this lease, County shall peaceably and quietly leave and surrender to Lessor the Premises, along with appurtenances and fixtures at the Premises (except County Fixtures), all in good condition, ordinary wear and tear, damage by casualty, condemnation, acts of God and Lessor's failure to make repairs required of Lessor excepted. County is not responsible for painting or for repairing or replacing any floor coverings in the Premises upon the expiration or earlier termination of this lease.

17. Waste, Nuisance. County may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the Building.

18. Destruction. If damage occurs that causes a partial destruction of the Premises during the Term from any cause and repairs can be made within sixty days from the date of the damage under the applicable laws and regulations of governmental authorities, Lessor shall repair the damage promptly. Such partial destruction will not void this lease, except that County will be entitled to a proportionate reduction in Rent while such repairs are being made. The proportionate reduction in Rent will be calculated by multiplying Rent by a fraction, the numerator of which is the number of square feet that are unusable by County and the denominator of which is the total number of square feet in the Premises.

If repairs cannot be made in sixty days, County will have the option to terminate the lease or request that Lessor make the repairs within a reasonable time, in which case, Lessor will make the repairs and Rent will be proportionately reduced as provided in the previous paragraph.

This lease will terminate in the event of a total destruction of the Building or the Premises.

19. Hazardous Material. Lessor warrants to County that Lessor does not have any knowledge of the presence of Hazardous Material (as defined below) or contamination of the Building or Premises in violation of environmental laws. Lessor shall defend, save, protect and hold County harmless from any loss arising out of the presence of any

Hazardous Material on the Premises that was not brought to the Premises by or at the request of County, its agents, contractors, invitees or employees. Lessor acknowledges and agrees that County has no obligation to clean up or remediate, or contribute to the cost of clean up or remediation, of any Hazardous Material unless such Hazardous Material is released, discharged or spilled on or about the Premises by County or any of its agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this lease.

“Hazardous Material” means any substance, material or waste, including lead based paint, asbestos and petroleum (including crude oil or any fraction thereof), that is or becomes designated as a hazardous substance, hazardous waste, hazardous material, toxic substance, or toxic material under any federal, state or local law, regulation, or ordinance.

20. Indemnification.

- a. County. County shall defend, indemnify and hold Lessor harmless from County’s share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys’ fees, caused by the willful misconduct or the negligent acts, errors, or omissions of County, its officers, agents or employees in using the Premises pursuant to this lease, or the County’s performance under this lease, except to the extent caused or contributed to by (i) the structural, mechanical, or other failure of buildings owned or maintained by Lessor, and/or (ii) the negligent acts, errors, or omissions of Lessor, its officers, agents, or employees.
- b. Lessor. Lessor shall defend, indemnify and hold County harmless from Lessor’s share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys’ fees, caused by the willful misconduct or the negligent acts, errors or omissions of Lessor, its officers, agents, employees, with respect to the Premises, or Lessor’s performance under this lease, or the Lessor’s performance, delivery or supervision of services at the Premises, or by the structural, mechanical or other failure of buildings owned or maintained by Lessor, except to the extent caused or contributed to by the negligent acts, errors, or omissions of County, its officers, agents, or employees.

21. Default.

The occurrence of any of the following events is a default under this lease:

- a. County.
 - i. County’s failure to pay Rent within ten business days after receipt of a written notice of failure (a “**Notice**”) from Lessor to County; provided, however, that County will have additional time if its failure to pay Rent is due to circumstances beyond its reasonable control, including, without limitation,

failure of the County's Board of Supervisors to adopt a budget. In no event may such additional time exceed seventy-five days from receipt of a Notice.

- ii. County's failure to comply with any other material term or provision of this lease if such failure is not remedied within thirty days after receipt of a Notice from Lessor to County specifying the nature of the breach in reasonably sufficient detail; provided, however, if such default cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of County's failure to comply within the period of time that may be reasonably required to remedy the default, up to an aggregate of ninety days, provided County commences curing such default within thirty days and thereafter diligently proceeds to cure such default.

b. Lessor.

- i. Lessor's failure to complete the Tenant Improvements in accordance with the Work Letter.
- ii. Lessor's failure to perform any other obligation under this lease if such failure is not remedied within thirty days after receipt of a Notice from County to Lessor specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of Lessor's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of ninety days, provided Lessor commences curing such breach within thirty days and thereafter diligently proceeds to cure such breach.

22. Remedies.

- a. Lessor. Upon the occurrence of a default by County, Lessor may, after giving County written notice of the default, and in accordance with due process of law, reenter and repossess the Premises and remove all persons and property from the Premises.
- b. County. If Lessor fails to complete the Tenant Improvements in accordance with the Work Letter, County may terminate this lease by giving written notice to Lessor with no cost or obligation to County. Such termination is effective on the effective date of the written notice. Upon the occurrence of any other default by Lessor, County may, at its sole option, (i) terminate this lease by giving written notice to Lessor and quit the Premises without further cost or obligation to County or (ii) proceed to repair or correct the failure and, at County's option, either deduct the cost thereof from Rent due to Lessor, or invoice Lessor for the cost of repair, which invoice Lessor shall pay in full promptly upon receipt.

23. Notices. Except as herein provided in Section 7 – Maintenance and Repairs and Section 9 – Perilous Conditions, any notice required or permitted under this lease must be in

writing and sent by facsimile with written transmission confirmation, overnight delivery service or registered or certified mail, postage prepaid and directed as follows:

To Lessor: Richard and Donna Madden
(P.O. Box 308)
2381 Alameda Diablo
Diablo, CA 94528-0308
maddenram@sbcglobal.net

To County: Real Estate Manager
Contra Costa County
Public Works Department
255 Glacier Drive
Martinez, CA 94553
Facsimile: (925) 646-0288

Either party may at any time designate in writing a substitute address for that set forth above, and thereafter notices are to be directed to such substituted address. If sent in accordance with this Section, all notices will be deemed effective (i) upon confirmed facsimile transmission, (ii) the next business day, if sent by overnight courier and (iii) three days after being deposited in the United States Postal system.

24. Successors and Assigns. This lease binds and inures to the benefit of the heirs, successors, and assigns of the parties hereto.
25. Holding Over. Any holding over after the Term of this lease is a tenancy from month to month and is subject to the terms of this lease.
26. Accessibility. As of the date of this lease, the Building has not been inspected by a Certified Access Specialist.
27. Time is of the Essence. In fulfilling all terms and conditions of this lease, time is of the essence.
28. Governing Law. The laws of the State of California govern all matters arising out of this lease.
29. Severability. In the event that any provision herein contained is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this lease will not in any way be affected or impaired.
30. Recording. Upon the execution of this lease, the parties shall execute and record a Memorandum of Lease in substantial conformity with Exhibit C, in lieu of recording the entire lease. Upon the expiration or earlier termination of this lease, County shall execute a Memorandum of Lease Termination or Quitclaim Deed discharging any recording made pursuant to this Section.

31. Entire Agreement; Construction; Modification. Neither party has relied on any promise or representation not contained in this lease or the Work Letter. All previous conversations, negotiations, and understandings are of no further force or effect. This lease is not to be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. This lease may be modified only by a writing signed by both parties.

The parties are executing this lease on the date set forth in the introductory paragraph.

COUNTY OF CONTRA COSTA, a
political subdivision of the State of
California

THE MADDEN FAMILY TRUST

By: _____
Julia R. Bueren
Public Works Director

By: _____
Richard A. Madden, Trustee

By: _____
Donna G. Madden, Trustee

RECOMMENDED FOR APPROVAL:

By: _____
Karen Laws
Principal Real Property Agent

By: _____
Gail Myers
Associate Real Property Agent

APPROVED AS TO FORM:

SHARON L. ANDERSON, County Counsel

By: _____
Kathleen M. Andrus
Deputy County Counsel