

LEASE

Contra Costa County Public Defender s Office
Alternate Defender s Division
627 Ferry Street
Martinez, California

This lease is dated _____, and is between Jane L. Bisio and Pamela Bisio Despres, Trustees of the Amended and Restated Bart A. Bisio and Jane L. Bisio Revocable Trust dated November 8, 2000, and Earl D. Dunivan, Jr. (together, the **Lessor**) and the County of Contra Costa, a political subdivision of the State of California (the **County**).

Recitals

- A. Lessor is the owner of that certain real property commonly known as 627 Ferry Street, Martinez, County of Contra Costa, State of California that is more particularly described in Exhibit A (APN 373-161-012) (the **Property**). The Property has been improved with a two-story office building of approximately 6,525 square feet.
- B. Lessor desires to lease to County and County desires to lease from Lessor the Property.

The parties therefore agree as follows:

Agreement

- 1. Lease of Property. 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 Property.
- 2. Term. The **Term** of this lease is comprised of an Initial Term and, at County s election, a Renewal Term, each as defined below.
 - a. Initial Term. The **Initial Term** is two years, commencing on July 1, 2014 (the **Commencement Date**) and ending June 30, 2016.
 - b. Renewal Term. County has one option to renew this lease for a two-year term (the **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 one hundred twenty 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 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 the 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 (**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 Term, in the amounts set forth below:

a. Initial Term.

| <u>Time Period</u> | <u>Monthly Rent</u> |
|------------------------------------|---------------------|
| July 1, 2014 through June 30, 2015 | \$6,525 |
| July 1, 2015 through June 30, 2016 | \$6,655 |

b. Renewal Term.

| <u>Time Period</u> | <u>Monthly Rent</u> |
|------------------------------------|---------------------|
| July 1, 2016 through June 30, 2017 | \$6,790 |
| July 1, 2017 through June 30, 2018 | \$6,925 |

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. Payments are to be mailed to: Dunivan/Bisio, P. O. Box 747, Martinez, CA 94553.

4. Use. County may use the Property for the purpose of conducting various functions of County and any other purpose permitted by law.
5. Obligation to Pay Utilities. County shall pay for all gas, electricity, water, telephone, janitorial and garbage services provided to the Property.
6. Maintenance and Repairs.
- a. Roof and Exterior of Building. Lessor shall maintain the structural integrity of the building. County shall keep the roof and exterior of the building in good order, condition and repair, and shall maintain all interior and exterior doors and their fixtures, closers and hinges, exterior windows, glass and glazing, and all locks and key systems used in the building.
 - b. Interior of Building. County shall keep and maintain the interior of the building in good order, condition, and repair, and shall repair damage to the interior caused by its failure to maintain the exterior in good repair, including damage to the interior caused by roof leaks and/or interior or exterior wall leaks. The County may install and maintain an alarm system, if deemed necessary by County.
 - c. Utilities. County shall repair and maintain the electrical, lighting, water and plumbing systems in good order, condition and repair.

- d. HVAC. County shall maintain and repair the heating, ventilating, and air-conditioning (HVAC) systems. County may request that Lessor obtain a quarterly maintenance contract for the HVAC systems. Said quarterly maintenance shall include maintenance on the HVAC units and components, including motor, belts, damper and drainage system and changing of air filters. County will reimburse Lessor one hundred percent (100%) of the cost of said quarterly maintenance contract plus fifteen percent (15%) for management, supervision and administrative costs.
- e. Services by Lessor. If County determines that the building is in need of maintenance, construction, remodeling or similar service that is beyond Lessor's responsibilities under this lease, at County's request, Lessor shall perform such service at County's expense. In performing the service, Lessor shall consult with County and use either licensed insured contractors or employees of Lessor. Lessor shall obtain County's prior written approval of the scope, terms, and cost of any contracts. County 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. County shall pay to Lessor, as additional rental, one hundred percent (100%) of the costs of the service plus fifteen percent (15%) for management, supervision and administration expenses. County is aware that Lessor has contracted with Earl D. Dunivan and Associates to provide the services it is obligated to perform under this Section 6. Reimbursement for such services shall be payable to either the Lessor or Earl D. Dunivan and Associates, P. O. Box 747, Martinez, CA 94553.
7. 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 Property during the Term.
8. 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 Property, 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.
9. Assignment and Sublease. County shall not have the right to assign this lease or sublease the Property or any part thereof at any time during the Term without the written consent of Lessor, which shall not be unreasonably withheld.
10. Alterations; Fixtures and Signs. County may (i) make any lawful and proper minor alterations to the building and (ii) attach fixtures and signs (**County Fixtures**) to the building. Any County Fixtures will remain the property of County and may be removed from the building 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.

11. Property Taxes. County shall pay to Lessor within thirty days after being requested to do so by Lessor, as additional rent, a sum equal to Real Property Taxes levied against the Property upon which the building is located in any year during the Term of the lease.

Real Property Taxes means and includes all taxes, assessments levied or assessed upon the building and the real property upon which it is situated, any state or local business taxes or fees measured by or assessed by gross rentals or receipts, and other governmental charges, general and special, including, without limitation, assessments for public improvements or benefits, that are assessed, levied, and imposed by any governmental authority on the building during the Term. Real Property Taxes do not include any late fees or penalties, any municipal, County, or state or federal net income, estate, succession, inheritance, sales, use or franchise taxes of Lessor or documentary transfer taxes, or tax increases of any kind in connection with the transfer, sale or change in ownership of all or part of the building.

Real Property Taxes are to be prorated between Lessor and County according to the number of months during the tax year the County has possession of the Property.

12. Insurance.

- a. Lessee 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 aforementioned self-insurance program, and shall name Lessor as an additional insured.
- 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.
- c. Lessor Liability and Property Insurance. Lessor may obtain and may keep in force during the term of this lease a policy or policies of insurance for the benefit of Lessor covering both Lessor liability and loss or damage to the building, and the Property but excluding coverage of merchandise, fixtures, equipment and leasehold improvements of County, which are not considered part of the real estate for insurance purposes, in the amount of the full replacement value thereof, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), boiler and machinery coverage (if applicable) and an inflation endorsement. In addition, Lessor may obtain and keep in force, during the term of the lease, a policy of rental loss covering a period of one year, commencing on the date of loss, with proceeds payable to Lessor, which insurance may also cover all Real Property Taxes, operating expenses, and other sums payable by County to Lessor hereunder for said period. The insurance coverage may include sprinkler leakage insurance if the building contains fire sprinklers. All proceeds under such policies of insurance shall be payable to Lessor, and County shall have no interest in or right to such proceeds. However, any portion of a claim

that Lessor makes against its insurance carrier that would be considered a reimbursable expense by the County to the Lessor shall be credited to the County.

- d. Payment. County shall pay to Lessor during the Term all premiums for any insurance obtained by Lessor pursuant to subsection 12.c. Lessor Liability and Property Insurance upon a written request for reimbursement from Lessor. Lessor and County expressly agree that County is not obligated to reimburse Lessor for any premium for earthquake coverage and is obligated to reimburse Lessor for flood insurance only if such coverage is required by a lender in conjunction with any loan secured by all or any part of the Property. Any uninsured or excluded perils and all deductibles shall be borne entirely by the Lessor.
13. Waiver of Subrogation. County and Lessor each hereby waives any and all rights of recovery against the other, and against the officers, employees, agents and representatives of the other, for loss of or damage to the property of the waiving party or the property of others under its control, to the extent such loss or damage is covered by proceeds received under any insurance policy carried by Lessor or County and in force at the time of such loss or damage. County and Lessor, shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this lease.
14. Surrender of Property. On the last day of the Term, or sooner termination of this lease, County shall peaceably and quietly leave and surrender to Lessor the Property, along with appurtenances and fixtures at the building (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 the interior of the building, or for replacing any floor coverings in the building upon the expiration or earlier termination of this lease. The County is responsible for the repair of any floorcoverings.
15. Waste. County may not commit, or suffer to be committed, any waste upon the Property.
16. Inspection. Lessor, or its proper representative or contractor, may enter the building by prior appointment between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted, to determine that (i) the building is being reasonably cared for, (ii) no waste is being made and that all actions affecting the building are done in the manner best calculated to preserve the building, and (iii) County is in compliance with the terms and conditions of this lease.
17. Perilous Conditions. If the County's Public Works Director becomes aware of a perilous condition on the Property that, in his or her reasonable opinion, substantially and significantly threatens the health and safety of County employees and/or invitees (a **Perilous Condition**), the Public Works Director, or his or her designee, will immediately notify Lessor of the Perilous Condition and Lessor shall use best efforts to immediately eliminate the Perilous Condition.

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 (24) hours after County's notice or to immediately address an emergency situation, County may 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.

18. Destruction. If damage occurs that causes a partial destruction of the building during the Term from any cause and repairs can be made within one hundred twenty 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 building.

If repairs cannot be made in one hundred twenty 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.

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 Property 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 Property that was not brought to the Property 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 Property 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 for Third Party Claims.

- 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 Property 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 Property, or Lessor's performance under this lease, or the Lessor's performance, delivery or supervision of services at the Property, 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. In the event that a failure to pay occurs that is due to circumstances beyond its reasonable control, once the condition no longer exists, County shall pay all rents in arrears as soon as reasonably possible.
 - 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. Lessor's failure to perform any 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 Property and remove all persons and property from the Property.
- b. County. Upon the occurrence of a default by Lessor, County may (i) terminate this lease by giving written notice to Lessor and quit the Property 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 promptly upon receipt.

23. Notices. Any notice required or permitted under this lease shall 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: Jane L. Bisio and Pamela B. Depres, Trustees of the Amended and Restated Bart A. Bisio and Jane L. Bisio Revocable Trust, and Earl D. Dunivan, Jr.
c/o Earl D. Dunivan and Associates
P. O. Box 747
Martinez, CA 94553
Facsimile: (925) 228-3789

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

Either party may upon five (5) days written notice to the other, at any time designate in writing a substitute address for that set forth above and thereafter notices are to be directed to such new 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. Time is of the Essence. In fulfilling all terms and conditions of this lease, time is of the essence.
27. Governing Law. The laws of the State of California govern all matters arising out of this lease.
28. 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.
29. This lease may be executed in counterparts.

[Remainder of Page Intentionally Left Blank]

30. Entire Agreement; Construction; Modification. Neither party has relied on any promise or representation not contained in this lease. 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

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

By: _____
Julia R. Bueren
Public Works Director

RECOMMENDED FOR APPROVAL:

By: _____
Karen Laws
Principal Real Property Agent

By: _____
Steven B. Van Horn
Senior Real Property Agent

APPROVED AS TO FORM:

SHARON L. ANDERSON, County Counsel

By: _____
Kathleen M. Andrus
Deputy County Counsel

LESSOR

JANE L. BISIO AND PAMELA BISIO DESPRES, TRUSTEES OF THE AMENDED AND RESTATED BART A. BISIO AND JANE L. BISIO REVOCABLE TRUST; and EARL D. DUNIVAN, JR.

By: _____
Jane L. Bisio, Trustee

By: _____
Pamela Bisio Depres, Trustee

By: _____
Earl D. Dunivan, Jr.