

## Alameda County Public Defender

Lakeside Plaza Office  
1401 Lakeside Dr., Fourth Floor  
Oakland, CA 94612-4305  
(510) 272-6622



Diane A. Bellas  
Public Defender  
Harold G. Friedman  
Chief Assistant

July 8, 2009

Honorable Board of Supervisors  
County of Alameda County  
1221 Oak Street, Suite 536  
Oakland, California 94612-4305

Dear Board Members:

**SUBJECT: FIRST AMENDMENT TO LEASE FOR THE PUBLIC DEFENDER'S OFFICES  
AT 312 CLAY STREET, OAKLAND, CALIFORNIA, MASTER CONTRACT NO.  
900649; AMOUNT: \$452,418**

**RECOMMENDATION:**

Approve a First Amendment to Lease between Pico Madeira AFG LLC, a California Limited Liability Corporation (Tax ID 54-2062817) and Pico Madeira Mag, LLC, a California Limited Liability Corporation (Tax ID 54-2062793) (POC: Sara May, Metrovation, 580 Second Street, Suite 260, Oakland, CA 94607) and the County of Alameda for 17,334 s.f. of office space for the Public Defender's Oakland Branch Office at 312 Clay Street, Suites 150, 190, 200, and 290, Oakland, California, extending the lease ten years. The lease rate is \$2.90 per s.f. per month, or \$50,269 per month, with a term from approximately October 1, 2009, to September 30, 2019. The total lease cost for FY 2009-10 will be \$452,418. Master Contract No. 900649.

**DISCUSSION/SUMMARY:**

The Public Defender's Office ceased operating its Dependency Division at this location on the first floor on June 30, 2009. The space will be backfilled and used for client interviews which will move from 380 Washington Ave. allowing that lease to be terminated. At 312 Clay Street, a client waiting room and three interview rooms will be constructed in the existing space to accommodate the interviews and staff, along with modifications to the entrance to comply with local codes. The tenant improvement costs will be fully amortized in the rent during the ten-year term.

The following terms and conditions of the lease have been agreed to:

1. The term of the lease is 120 months for 17,334 s.f. commencing upon completion of construction, expected to be approximately October 1, 2009.
2. The rent schedule as follows:
 


Year 1: \$2.90 per s.f.	\$50,268.60 per month
Year 2: \$3.00 per s.f.	\$52,002.00 per month
Year 3: \$3.30 per s.f.	\$57,202.20 per month
Year 4-10: CPI Increase	
3. County separately meters electrical/gas costs.
4. The Landlord will construct the tenant improvements to County Work Letter requirements based on a mutually agreed upon space plan. The amortized cost for the tenant improvements is included in the \$2.90 per s.f. rental rate.
5. A total of fifteen parking spaces will be made available to the County at the current market rate which shall not exceed \$120 per stall per month.

FINANCING:

Funds have been budgeted for FY 2009/10 and will be requested for subsequent years. There will be no increase in net County cost for this lease.

Respectfully submitted,

  
 Diane Bellas  
 Public Defender

  
 Aki K. Nakao  
 Director, General Services Agency

AKN:PK/rlp I:\BOARD LETTERS\REAL PROPERTY\LETTERS1<sup>ST</sup> AMEND-PUBLIC DEFENDER-312 CLAY.DOC

Attachment

cc: Susan S. Muranishi, County Administrator  
 Patrick J. O'Connell, Auditor-Controller  
 Richard E. Winnie, County Counsel

**FINANCIAL RECOMMENDATION**

**AGENDA DATE:** 7/21/2009

**Subject of Board Letter:**

Renew lease at 312 Clay St. for 10 years

**BY:** 2009-10

**FUND:** 31030

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT

The increase (decrease) in anticipated revenue, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
410100	441010	00000		\$550,000
<b>ORG TOTAL</b>				\$550,000

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
<b>ORG TOTAL</b>				\$0

**GRAND TOTAL ANTICIPATED REVENUE** \$550,000

The increase (decrease) in appropriations, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
410100	610000	00000		\$550,000
<b>ORG TOTAL</b>				\$550,000

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
<b>ORG TOTAL</b>				\$0

**GRAND TOTAL APPROPRIATION** \$0

## FIRST AMENDMENT TO FULL SERVICE OFFICE LEASE

This First Amendment to the Full Service Office Lease (the "First Amendment") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between Pico Madeira AFG LLC and Pico Madeira MAG LLC (collectively "Lessor") and the County of Alameda ("County"), a political subdivision of the State of California, with reference to the following facts.

### RECITALS

A. Whereas, 312 Clay Street Associates and County entered into that certain Full Service Office Lease dated December 4, 2001, (the "Lease") whereby County is leasing from Lessor and Lessor is leasing to County that certain real property located at 312 Clay Street, Oakland, California, totaling approximately 17,334 square feet consisting of Suites 150 and 200 on the first and second floors of the building (being more fully described in Part One, Fundamental Lease Provisions, paragraph 3 of the Lease); and

B. Whereas, 312 Clay Street Associates subsequently sold the Building and assigned its interest in the Lease to Lessor; and

C. Whereas, Lessor and County mutually desire to extend the term of the Lease and to modify and amend certain provisions of the Lease as more particularly defined below;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency which is acknowledged, Lessor and County agree as follows:

A. The following Part One, Fundamental Lease Provisions of the Lease shall be amended as follows:

- 4.a. Duration of Term: Ten (10) years (120 calendar months).
- 4.b. Commencement Date of the Term: Lessor shall deliver the Premises to County, and county shall accept the Premises upon Substantial Completion of the Improvements detailed in Exhibit "A-1" (subject to punch list items). If County accepts the Premises and the Punch list items are agreed upon, the Commencement Date of the Term of the Lease shall be deemed to have occurred on the first business day following County's acceptance of such Substantial Completion.
5. Modified Gross Monthly Rent Schedule: Rent shall continue to be computed by multiplying the square foot rental rate times 17,334 Rentable Square Feet, and adjusted annually as follows:

<u>Year</u>	<u>Rent/Sq. Ft./Month</u>	<u>Monthly Rent</u>
Year 1	\$2.90/sq ft.	\$50,268.60/month
Year 2	\$3.00/sq ft.	\$52,002.00/month
Year 3	\$3.30/sq. ft.	\$57,202.20/month

Year 4-10 CPI Increase. The percentage of annual rent increase for years four through ten shall be equal to the cost of living reflected in the Consumer Price Index (CPI) urban wage earners and clerical workers, all items (1982-84 = 100) for the San Francisco-Oakland-San Jose area, published by the U.S. Department of Labor, Bureau of Labor Statistics by dividing the Base Index into the difference determined by subtracting the Base Index from the Index of the Anniversary month. The Base Index shall be the aforesaid Consumer Price Index as it exists ninety (90) days prior to the commencement of the third (3<sup>rd</sup>) year of the lease Term. The Anniversary month shall be the Index month which is ninety (90) days prior to the commencement of years four through ten of the Lease Term respectively. If the Index is not published at any time during the Term of this Lease then another index generally recognized as authoritative shall be selected by the Lessor.

6. Permitted Use: Office, administrative, meeting space for Alameda County Defender, or any other County of Alameda office, administrative, and meeting space as may substituted during the Term, with Lessor's approval which shall not be unreasonably withheld. County shall only advertise its 4<sup>th</sup> Street address to its clients and client services. Interviews, correspondence and notifications regarding client services shall be restricted to the first floor of the Building through the 4<sup>th</sup> Street entrance.
  
7. Address for Notices and Payment of Rent: Lessor's address for payment of rent is c/o Metrovation, P.O. Box 530, Alameda, CA 94501 and its address for Notices is c/o Metrovation, 580 Second Street, Suite 260, Oakland, CA 94607.
  
8. Exhibits and Other Attachments: The following exhibits and other attachments are attached to this Lease and made part of this Lease for all purposes.
 

Exhibit "A" -	Premises and Space Plan
Exhibit "A-1" -	Premises and Space Plan Remodel
Exhibit "B" -	Work Letter
Exhibit "C" -	Commencement of Term
Exhibit "D" -	Insurance Requirements
Exhibit "E" -	Subordination Agreement
  
9. A total of fifteen (15) parking spaces shall be available to the County at in the 312 Clay garage at market rate, all other references to parking in the Lease are hereby deleted.

B. The following Part Two, Lease provisions shall be amended as follows:

1. PREMISES.

Lessor leases to County, and County leases from Lessor, the real property described in Paragraph 3 of the Fundamental Lease Provisions and crosshatched in Exhibit A (the Premises). Lessor shall construct the improvements to the Premises as provided in Exhibit "A-1" (Premises and Space Plan Remodel) and Exhibit "B" (Work Letter), which exhibit sets forth the obligations of Lessor and County to perform work and supply materials in connection with the construction of the Premises. County shall have access to the Premises twenty-four (24) hours a day, three hundred sixty-five (365) days a year.

2. TERM.

The Term of this Lease shall be for the period stated in paragraph 4(a.) of the Fundamental Lease Provisions commencing on the Commencement Date as provided in Paragraph 4(b.) of the Fundamental Lease Provisions, subject to renewal or termination rights hereinafter set forth.

3. TENANT IMPROVEMENTS.

Prior to the commencement of the Term, Lessor shall construct the improvements to the Premises as detailed on Exhibits "A-1" and "B" at Lessor's sole cost and expense (Lessor's Work). The Premises shall be delivered as specified in Exhibit 'B'.

4. RENT.

- A. Modified Gross Monthly Rent. County shall pay Modified Gross Monthly Rent, net of gas/electricity separately metered, as set forth in Paragraph 5 of the Fundamental Lease Provisions ("Modified Gross Monthly Rent") commencing with the second month (30 days) following the Commencement Date. County shall pay the Modified Gross Monthly Rent in arrears for each calendar month during which County has had possession of the Premises as provided in the Lease. The term "in arrears" shall be construed to mean Modified Gross Monthly Rent will be paid no later than the 7<sup>th</sup> (seventh) day of the month subsequent to the month for which rent is due. If the Commencement Date or the date of expiration of the Term of this Lease occurs on a day other than the first or last day of a calendar month, the Modified Gross Monthly Rent shall be prorated as the number of lease days in the month bears to the total number of days in the month. The term "Rent" and "Rental" as used in this Lease shall be deemed to mean Modified Gross Monthly Rental.

B. Modified Gross Monthly Rent includes:

(1) All labor, materials, equipment, design fees, professional fees, permit fees, inspection fees, construction costs and services and all other similar costs and expenses related thereto or necessitated thereby in association with making the space, common areas, and related facilities ready for occupancy in accordance with the requirements of this Lease and the County improvements outlined in Exhibits A-1 and B.

(2) Operating and maintenance costs relating to the Building, Property and leased Premises. This includes, but is not limited to, costs for property taxes, special assessment taxes, rental taxes, insurance, janitorial services, supplies, materials, maintenance, repairs, replacements, trash removal, landscaping, water, sewer charges, heating, electricity, security service, HVAC maintenance, parking lot maintenance and repair, property management fee, administrative costs, other services which may be provided to other tenants in the Building, or typically provided to other tenants in the Building, or typically provided to tenants in a similar building, and all other costs related to maintaining the leased Premises and common areas in tenantable condition.

5. SERVICES, UTILITIES, MAINTENANCE: GENERAL.

A. As part of the Modified Gross Monthly Rent, the County shall have access to the Premises at all times without additional payment, including the use, during other than normal hours, of necessary services and utilities such as elevators and freight elevators, toilets, lights, and electric power.

B. As part of the Modified Gross Monthly Rent, Lessor shall provide services, utilities (except County shall pay for separately metered electricity to its Premise), maintenance and repairs described in Paragraph 9 below. The Lessor shall have the building superintendent or a locally designated representative available to manage and coordinate services, and to promptly correct deficiencies.

6. SERVICES, UTILITIES, MAINTENANCE AND REPAIRS.

A.3. County shall pay for separately metered electrical services serving the leased premises


Exhibit "B", Work Letter: Is hereby replaced in entirety with the following:

Lessor agrees to complete, at its sole cost, work in substantial accordance with the approved and permitted drawings described in Exhibit A-1.

C. Except as otherwise set forth herein, all other terms and conditions of the Lease, including both Part One and Part Two, shall remain unmodified and in full force and effect except any references to 475 4<sup>th</sup> Street are deleted effective upon the Commencement Date of this Amendment. In the event of any conflict between the terms and conditions of the Lease, this First Amendment shall prevail.

LESSOR:

COUNTY OF ALAMEDA

By:   
Mary Alice Gonsalves  
Pico Madeira AFG LLC  
Pico Madeira MAG LLC

By: \_\_\_\_\_  
President, Board of Supervisors  
County of Alameda, State of California

Its: Manager

Date: \_\_\_\_\_

Date: July 7, 2009

Approved as to Form:  
Richard E. Winnie, County Counsel

By: 

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on the \_\_\_\_ day of \_\_\_\_\_, 2009, and that a copy has been delivered to the President as provided by Government Code Section 25103.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Crystal Hishida Graf, Clerk of the Board  
County of Alameda, State of California