

# REAL ESTATE SERVICES DEPARTMENT



COUNTY OF SAN BERNARDINO  
INTERNAL SERVICES GROUP

825 East Third Street • San Bernardino, CA 92415-0832 • Fax (909) 387-7833  
Administration (909) 387-7813  
Property Management (909) 387-7832/7825  
Right-of-Way (909) 387-7829/7843

DAVID H. SLAUGHTER  
Director

June 1, 2005

**Rialto City Clerk's Office**  
150 South Palm Avenue  
Rialto, CA 92376

Attention: Barbara A. McGee, City Clerk

Re: **Rialto – Library – 251 W. First Street - Lease Agreement No. 05-294**

Dear Ms. McGee:

Enclosed is an approved copy of the lease agreement on the above-referenced property for your file.

Thank you for the City's cooperation in negotiating this lease agreement. If you have any questions, please call me at (909) 387-7814.

Sincerely,

Sharon Davis, CPM  
Real Property Agent

SD:mf

Enclosure

cc: Rick Erickson, Library

SL-02

CITY OF RIALTO  
RECEIVED  
CITY CLERK  
2005 JUN - 6 AM 11:04

# INTEROFFICE MEMO

DATE : June 1, 2005

PHONE: 387-7825

FROM: **SHARON DAVIS, Real Property Agent**  
Real Estate Services Department

MAIL CODE: 0832



TO: **JOSIE MORALES, Fiscal Specialist**  
Real Estate Services Department

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SUBJECT: **RIALTO – LIBRARY - 251 W. FIRST STREET – LEASE AGREEMENT NO. 05-294**

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Attached is a copy of the subject lease agreement for your action and file.

On May 17, 2005, the Board approved a new lease agreement for the above-referenced County facility. This new agreement replaces prior Lease Agreement No. 97-377.

The new five-year Lease Agreement No. 05-294 commences May 1, 2005 and terminates April 30, 2010. Monthly rent decreased from \$3,720 to \$3,350 commencing May 1, 2005. Please commence the new monthly rent of \$3,350 effective May 1, 2005. Rent will be adjusted annually based upon changes in the Consumer Price Index.

If you have any questions, please let me know.

SD:mf

Attachment

cc: Rick Erickson, Library  
City of Rialto, Landlord

SL-01

2005 JUN -6 AM 11:03  
RECEIVED  
CITY CLERK  
CITY OF RIALTO

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

May 17, 2005

CITY OF RIALTO  
2005 JUN -6 AM 11:03

**FROM:**                   **DAVID H. SLAUGHTER**, Director  
Real Estate Services Department

**ED KIECZYKOWSKI**, County Librarian  
Library

RECEIVED  
CITY CLERK

**SUBJECT: LEASE      AGREEMENT WITH CITY OF RIALTO**

**RECOMMENDATION:** Approve a five-year lease **Agreement No. 05-294** with the City of Rialto (City) for 10,000 square feet of library and office space for the Library in Rialto from May 1, 2005 through April 30, 2010 in the amount of \$201,000.

**BACKGROUND INFORMATION:** On September 3, 1965, the Board approved a 20-year lease agreement with the City for 10,000 square feet of library and office space at 251 W. First Street in Rialto. The original term of the lease was from May 1, 1966 through April 30, 1986. The building was constructed specifically for use as a library that would be operated by the County. In the 31 years following the original approval, the lease was amended on five occasions. Included in the amendments were extensions of the expiration date. The original lease expired on April 30, 1996, at which time the City and County agreed to negotiate and enter into a new lease agreement. On June 3, 1997, the Board approved a new two-year lease agreement (No. 97-377) with one one-year option to extend. Although the lease was approved on June 3, 1997, the City and County agreed to make the agreement retroactive to August 1, 1996, which was the date additional tenant improvements were completed and the date on which the amortization of the cost of those tenant improvements commenced.

On August 1, 1998, the lease went into holdover and has continued in holdover status until now. There were numerous reasons for the lease having continued in holdover status for such an inordinate time, but the main reasons were several turnovers of City staff between August 1998 and August 2002, followed by protracted negotiations and a lengthy period of review by the City's attorney. The new lease document was finally approved by the City's attorney in April of this year.

The new lease terms are summarized as follows:

Lessor:	City of Rialto (Grace Vargas, Mayor)
Location:	251 W. First Street, Rialto
Size:	10,000 sq. ft. of office and library space
Term:	Five years commencing May 1, 2005

cc: RESD – Slaughter w/agreement  
Contractor c/o RESD w/agreement,  
IDS w/agreement  
A/C-R – Valdez w/agreement  
Risk Management  
CC – Luke  
CAO – Forster, Kopp  
Library – Erickson, Kieczkowski  
File w/agreement

mo

Record of Action of the Board of Supervisors

**Agreement No. 05-294**  
**APPROVED (CONSENT CALENDAR)**

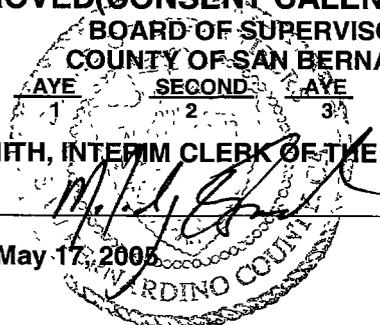
**BOARD OF SUPERVISORS**  
**COUNTY OF SAN BERNARDINO**

MOTION	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>AYE</u>	<u>MOVE</u>
	1	2	3	4	5

**DENA SMITH, INTERIM CLERK OF THE BOARD**

BY \_\_\_\_\_

DATED: May 17, 2005



**BOARD OF SUPERVISORS  
LEASE AGREEMENT WITH CITY OF RIALTO  
May 17, 2005  
Page Two of Two**

		<u>Cost per sq. ft. per month</u>	<u>Monthly</u>	<u>Annual</u>
Rent:	(old)	\$0.37 (modified gross)	\$3,720	\$44,640
	(new)	\$0.34* (modified gross)	\$3,350	\$40,200

\*Low-range for the Rialto area

Annual increases: Based on the percentage change to the Consumer Price Index (CPI) not to exceed 4%

Options: One three-year and two one-year option to extend

Improvement costs: None

Custodial: Provided by County

Maintenance: Provided by Lessor

Utilities: Provided by Lessor

Right to terminate: Either party has the right to terminate with 180-days notice

Parking: Sufficient for County needs

**REVIEW AND APPROVAL BY OTHERS:** This item has been reviewed by Library (Rick Erickson, Assistant County Librarian, 387-5725) on April 6, 2005; County Counsel (Fiona Luke, Deputy County Counsel, 387-5474) on April 12, 2005; and the County Administrative Office [Tom Forster (387-4635) and Daniel R. Kopp (387-3828) Administrative Analysts] On May 10, 2005.

**FINANCIAL IMPACT:** The total lease cost for this five-year agreement is \$201,000. The total lease cost in 2004-05 will be \$43,900 (\$3,720 per month x ten months and \$3,350 per month x two months). Lease payments will be paid from Rents budget (AAA RNT) and reimbursed from the Library budget (SAP CLB). Approval of this item will not result in local cost.

Annual lease costs (subject to CPI adjustment not to exceed 4%) are as follows:

Estimate of other costs

<u>Year</u>	<u>Annual lease cost</u>	<u>associated with this lease</u>
May 1, 2005 to April 30, 2006	\$40,200	\$8,000
May 1, 2006 to April 30, 2007	\$40,200	\$8,000
May 1, 2007 to April 30, 2008	\$40,200	\$8,320
May 1, 2008 to April 30, 2009	\$40,200	\$8,320
May 1, 2009 to April 30, 2010	\$40,200	\$8,600

**COST REDUCTION REVIEW:** The County Administrative Office has reviewed this agenda item, concurs with the department's and RESD's proposal, and recommends this action based on the need for the Library to provide service in the Rialto area. Lease payments are funded 100% by dedicated property tax revenue. The lease can be terminated with 180-days notice.

**SUPERVISORIAL DISTRICT:** Fifth

**PRESENTER:** David H. Slaughter, Director of RESD, 387-7813

SD: 387-7814

bas: 387-7830



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dept	A	Contract Number 05-294			
County Department Real Estate Services Department			Dept	Orgn.	Contractor's License No			
County Department Contract Representative David H. Slaughter, Director			Telephone 387-7813		Total Contract Amount			
Contract Type <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other								
If not encumbered or revenue contract type, provide reason.								
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount			
Fund AAA	Dept RNT	Organization RNT	Appr 200	Obj/Rev Source 2905	GRC/PROJ/JOB No N32096	Amount		
Fund	Dept	Organization	Appr	Obj/Rev Source	GRC/PROJ/JOB No	Amount		
Fund	Dept	Organization	Appr	Obj/Rev Source	GRC/PROJ/JOB No	Amount		
Project Name RIALTO - Library - 251 W. First Street			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	I/D
Contract type 2 (d)								

CONTRACTOR City of Rialto

Federal ID No. or Social Security No 95-6000768

Contractor's Representative Director of Public Works

Address 335 W. Rialto Avenue, Rialto, CA 92376

Phone (909) 421-7229

Nature of Contract. *(Briefly describe the general terms of the contract)*

This Lease Contract is for a period of five (5) years with one (1) three-year and two (2) one-year options to extend. Leased Premises consist of 10,000 gross square feet with build-to-suit office. Rental is \$.34 per square foot per month.

LANDLORD shall provide all interior and exterior maintenance to include grounds, parking lot maintenance, exterior lighting, plumbing and HVAC.

LANDLORD will provide to Premises and LANDLORD will pay for all utilities, including water, trash, sewer, fire alarm services, electricity, gas, security and janitorial. COUNTY shall provide and pay for all vending machines and its own telephone service.

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)  County Counsel  Date _____	Reviewed as to Contract Compliance  Date _____	Presented to BOS for Signature  <i>David H. Slaughter</i> Department Head Date <u>5-10-05</u>
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Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input checked="" type="checkbox"/> FAS
Input Date	Keyed By

**COUNTY OF SAN BERNARDINO**

**LEASE AGREEMENT**

**LANDLORD:** CITY OF RIALTO  
335 W. Rialto Avenue  
Rialto, CA 92376

**COUNTY:** COUNTY OF SAN BERNARDINO  
Internal Services Group  
Real Estate Services Department  
825 East Third Street  
San Bernardino, CA 92415-0832

**PREMISES:** 251 W. First Street  
Rialto, CA

**TERM OF LEASE:** Five (5) years with one (1) three-year and two (2) one-year options

**COMMENCEMENT DATE OF LEASE:** May 1, 2005

**COST PER SQUARE FOOT:** \$.34 full service, modified gross

**COUNTY CONTRACT NUMBER:**

**REV:** 04/03/02 (110568.10)

**TYPED:** 02/20/04

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## LEASE AGREEMENT

1. **PARTIES:** This lease ("Lease") is made between City of Rialto ("LANDLORD"), and the County of San Bernardino ("COUNTY"), who agree as follows:

2. **PREMISES LEASED:** LANDLORD leases to COUNTY and COUNTY leases from LANDLORD 10,000 square feet of building, real property, and other improvements, with the non-exclusive right to use the parking spaces, including handicapped parking, located at 251 West First Street, Rialto, California ("Premises"), as described in Exhibit "A", Premises Specifications.

3. **TERM:** The Lease's initial term ("Initial Term") shall commence on May 1, 2005 ("Commencement Date") and end on April 30, 2010 ("Ending Date").

4. **RENT:**

a. COUNTY shall pay to LANDLORD monthly rental payments in advance on or before the first day of each month following the Commencement Date. During the first year of this Lease, the monthly rental payment shall equal three thousand three hundred fifty and no/100 dollars (\$3,350.00). The monthly rental amount shall be subject to annual adjustment on the anniversary of the Commencement Date and each year thereafter based on the change in the Consumer Price Index as provided below:

The base for computing the adjustment is the Consumer Price Index ("C.P.I."), Pacific Cities and U.S. City Average, All Items, Los Angeles, Anaheim and Riverside, Urban Wage Earners and Clerical Workers (1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is in effect two (2) months prior to the date of the commencement of the initial term ("Beginning Index"). The Index in effect two (2) months prior to the adjustment date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the monthly rent in effect at the beginning of the Initial Term by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. In no case shall the new monthly rent be more than four percent (4%) greater than the rent in effect immediately prior to the adjustment date then occurring. If the Index is changed so that the base year differs from that in effect when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

b. Rent for any partial month shall be prorated based on the actual number of days of the month. All rent shall be paid to LANDLORD at the address to which notices to LANDLORD are given.

5. **OPTION TO EXTEND TERM:** LANDLORD gives COUNTY the option to extend the term of the Lease on the same provisions and conditions, except for the monthly rent, for one

(1) three-year and two (2) one-year periods ("extended terms") following expiration of the initial term, by COUNTY giving notice of its intention to exercise the option to LANDLORD at least 60 days prior to the expiration of the preceding term. The rent for each extended term 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 property in San Bernardino County.

6. **RETURN OF PREMISES:** The COUNTY agrees that it will, upon any termination of this Lease, return the Premises in as good condition and repair as the Premises now are or shall hereafter be put; reasonable wear and tear excepted.

7. **HOLDING OVER:** In the event the COUNTY shall hold over and continue to occupy the Premises with the consent of the LANDLORD, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent, as existed and prevailed at the time of the expiration of the term of this Lease.

8. **TAXES:** LANDLORD shall pay all real property taxes, and general and special assessments levied and assessed against the Premises.

9. **USE:** COUNTY shall occupy and use the Premises during the term hereof for the sole and exclusive purpose of operating a COUNTY library.

10. **HEALTH, SAFETY AND FIRE CODE REQUIREMENTS:** LANDLORD, at its sole expense shall ensure the Premises meet the applicable requirements of the Health, Safety, Fire and Building Codes for public and governmental buildings, including any requirements for a notice of completion, certificate of occupancy and the Americans with Disabilities Act ("ADA"). Additionally, LANDLORD warrants that any improvements on or in the Premises which have been constructed or installed by LANDLORD or by COUNTY or at LANDLORD's direction shall comply with all applicable building codes, regulations and ordinances in effect at the time they were installed or constructed. LANDLORD also warrants to COUNTY that LANDLORD has no knowledge of any claim having been made by any governmental agency that a violation or violations of applicable building codes, regulations, or ordinances exist with regard to the Premises as of the Commencement Date. Should the continued occupancy of the leased Premises be in any way prejudiced or prevented due to changes in the ADA or the Health, Safety or Fire Codes for Public Buildings, then LANDLORD and COUNTY shall meet and confer in good faith to renegotiate the Rent to be paid under this lease to determine the COUNTY's contribution, if any.

11. **SIGNS:** COUNTY will display from the windows and/or marquee of the Premises only such sign or signs as are not prohibited by law.

12. **MAINTENANCE:**

a. Except as specifically provided in **subparagraph 12c**, below, LANDLORD at its cost shall perform such inspections, maintenance and repairs as are necessary to ensure that all portions of the Premises, including but not limited to the following, are at all times in good repair and safe condition:

(1) The structural parts of the building and other improvements that are a part of the Premises, which structural parts include the foundations, bearing and exterior walls (including glass and doors), subflooring, and roof; and,

(2) The electrical, plumbing, and sewage systems, including, without limitation, those portions of the systems owned or controlled by LANDLORD lying outside the Premises; and,

(3) Window frames, gutters, and downspouts on the building and other improvements that are a part of the Premises; and,

(4) Heating, ventilation and air conditioning (HVAC) systems servicing the Premises (additionally, air-conditioning and heating filters are to be changed quarterly); and,

(5) The grounds, including all parking areas and outside lighting, grass, trees, shrubbery and other flora. Major parking lot maintenance or improvement to the Premises shall be negotiated as required; and,

(6) The servicing of fire extinguishers or any other fire suppression equipment attached to the facility; and,

(7) LANDLORD shall perform interior maintenance.

b. COUNTY, at its cost, shall perform the following:

(1) Janitorial services to the Premises.

c. In the event LANDLORD determines a need for major maintenance or capital improvements to the Premises, COUNTY's contribution, if any, is to be negotiated on a case-by-case basis.

13. **ALTERATIONS:** COUNTY shall not make any structural or exterior improvements or alterations to the Premises without LANDLORD's express, written consent. Any such alterations shall remain on and be surrendered with the Premises on expiration or termination of the Lease.

14. **FIXTURES:** COUNTY shall have the right during the term(s) of this Lease to install shelving and fixtures, and make interior, non-structural improvements or alterations in the Premises. Such shelving, fixtures, improvements, and alterations shall remain the property of the COUNTY and may be removed by the COUNTY during the term(s) of this Lease or within a reasonable time thereafter, provided that the COUNTY restores the Premises to the condition as it existed at the commencement of this Lease, reasonable wear and tear excluded, or the COUNTY in its sole discretion may elect to surrender all or any part of such shelving, fixture, improvements and alterations to the LANDLORD, in which case COUNTY shall have no duty to restore the Premises. Any such election to surrender must be in writing, but need not be accepted by LANDLORD to be effective.

15. **UTILITIES:** LANDLORD shall furnish to the Premises and pay all service charges and related taxes for electric, gas, water, sewer, trash, fire alarm service and all other utilities. COUNTY to furnish and pay for security, vending machines and its own telephone service including pay telephones.

16. **HOLD HARMLESS:**

a. The LANDLORD agrees to indemnify and hold harmless the COUNTY, its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of LANDLORD's acts and omissions in connection with this Lease. The LANDLORD's indemnification obligation shall survive the COUNTY's tenancy. The insurance provisions in **Paragraph 17, INSURANCE**, shall not be interpreted in a manner that limits the indemnification obligation.

b. The COUNTY agrees to indemnify and hold harmless the LANDLORD, and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of COUNTY's acts and omissions in connection with this Lease. The COUNTY's indemnification obligation shall survive the COUNTY's tenancy. The insurance provisions in **Paragraph 17, INSURANCE**, shall not be interpreted in a manner that limits the indemnification obligation.

c. In the event COUNTY and/or the LANDLORD is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Lease, the COUNTY and/or LANDLORD shall indemnify the other to the extent of its comparative fault.

d. Furthermore, if the COUNTY or LANDLORD attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the COUNTY and LANDLORD agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

17. **INSURANCE:**

a. COUNTY is a public entity and is self-insured.

b. Without in any way affecting the indemnity herein provided and in addition thereto, the LANDLORD shall secure and maintain throughout the Lease the following types of insurance with limits as shown. LANDLORD may meet its insurance requirements through a State approved self-insurance program:

(1) Workers' Compensation: A program of Workers' Compensation insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) limits, covering all persons providing services on behalf of the LANDLORD and all risks to such persons under this agreement.

If LANDLORD has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Risk Manager.

If LANDLORD is a non-profit corporation organized under California or Federal law, volunteers for the LANDLORD are required to be covered by Workers' Compensation insurance. If the COUNTY's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

(2) Comprehensive General and Automobile Liability Insurance: This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00).

(3) Fire Insurance: Standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the extent of at least sixty percent (60%) of the full replacement value of the Premises.

c. Additional Named Insured: All policies, except for Workers' Compensation, shall contain additional endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of this agreement.

d. Waiver of Subrogation Rights: LANDLORD shall require the carriers of the above required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors.

e. Policies Primary and Non-Contributory: All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

f. Proof of Coverage: LANDLORD shall immediately furnish certificates of insurance to COUNTY, evidencing the insurance coverage, including endorsements, above required prior to occupying the Premises and the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the COUNTY, and LANDLORD shall maintain such insurance from the time of occupancy and commencement of performance of services hereunder until the completion of such occupancy. Within sixty (60) days of the commencement of this agreement, the LANDLORD shall furnish certified copies of the policies and all endorsements.

g. Insurance Review: The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to

change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk. Any such reduction or waiver for the entire term of the agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this agreement. LANDLORD agrees to execute any such amendment within thirty (30) days of receipt.

h. **Failure to Have Insurance:** In the event COUNTY receives a notice of cancellation concerning any of the required policies, or should LANDLORD fail to have in effect the required coverage at any time during this Lease, COUNTY may give notice to LANDLORD to immediately suspend all LANDLORD activities on the Premises and/or notice to reinstate or acquire the affected coverage. Should LANDLORD fail to reinstate or acquire the affected coverage within ten (10) days of COUNTY's notice to reinstate or acquire such coverage, COUNTY, in its sole discretion, may either; (a) terminate this Lease immediately upon written notice to LANDLORD, or, (b) reinstate or acquire the affected coverage, in which case LANDLORD shall reimburse COUNTY for the sum paid to reinstate or acquire the coverage. The sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld.

i. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make it a partner or joint venturer with LANDLORD.

18. **DESTRUCTION OF PREMISES:**

a. During the term of this Lease, if any casualty renders a portion of the Premises unusable for the purpose intended, then LANDLORD shall, at LANDLORD's expense, restore the Premises and repair any damages caused by such casualty as soon as reasonably possible and this Lease shall continue in full force and effect. However, in the event LANDLORD determines it is not reasonably possible to rebuild the Premises, the LANDLORD may make the decision to not rebuild the Premises and the lease will terminate.

b. In the event there is a destruction of a portion of the Premises as set out in **subparagraph a above**, there shall be an abatement or reduction of the rent between the date of destruction and the date of completion of restoration or the date of termination of this Lease, whichever comes first. The abatement or reduction of the rent shall be in proportion to the degree to which COUNTY's use of the Premises is impaired.

c. In the event there is a destruction of a portion of the Premises as set out in **subparagraph a**, above, and the Lease is not terminated because of such destruction, LANDLORD agrees to restore the Premises within a reasonable time..

d. In the event LANDLORD elects to restore the Premises as provided in this paragraph, LANDLORD shall restore, at LANDLORD's expense, any structural or exterior improvements or alterations to the Premises made by COUNTY pursuant to **Paragraph 13, ALTERATIONS**, of this Lease, but shall not be responsible for restoring any shelving, fixtures, or interior nonstructural improvements or alteration made by the COUNTY pursuant to **Paragraph 14, FIXTURES**, of this Lease.

e. It is the purpose and intent of this paragraph to determine who shall bear the initial responsibility for restoration of the Premises in the event of any such destruction and not to determine the party ultimately responsible for the costs of such restoration.

19. **LANDLORD'S DEFAULT:** Except where another time limit is specifically provided, LANDLORD shall be in default of this Lease if LANDLORD fails or refuses to perform any material provisions of this Lease and such failure or refusal to perform is not cured within thirty (30) days following LANDLORD's receipt of written notice of default from COUNTY, specifying the default and the actions necessary to cure the same. If the default cannot reasonably be cured within thirty (30) days, LANDLORD shall not be in default of this Lease if LANDLORD commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

20. **COUNTY'S REMEDIES ON LANDLORD'S DEFAULT:** COUNTY, at anytime after LANDLORD is in default, can terminate this Lease immediately upon written notice to LANDLORD or can cure the default at LANDLORD's cost. If COUNTY at any time, by reason of LANDLORD's default, pays any sum or does any act that requires the payment of any sum (including charges for COUNTY's employees and equipment), the sum paid by COUNTY shall be due from LANDLORD to COUNTY within thirty (30) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease.

21. **COUNTY'S DEFAULT:** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by COUNTY:

a. The vacating for more than thirty (30) consecutive days or abandonment of the Premises by COUNTY.

b. The failure by COUNTY to perform any material provisions of this Lease to be performed by COUNTY, including the payment of rent, where such failure shall continue for a period of thirty (30) days after notice by LANDLORD to COUNTY; provided, however, that if

the nature of COUNTY's default is such that more than thirty (30) days are reasonably required for its cure, then COUNTY shall not be deemed to be in default if COUNTY commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. The purpose of this notice requirement is to extend the notice requirements of the unlawful detainer statutes of California.

c. The failure to keep the premises open on a regular basis as a public library for more than thirty (30) consecutive days, except during times when it is closed for routine maintenance or necessary repairs.

22. **LANDLORD'S REMEDIES ON COUNTY'S DEFAULT:**

a. In the event of any default by COUNTY, which is not cured by COUNTY, LANDLORD may, at its election, terminate this Lease by giving COUNTY thirty (30) days notice of termination. The purpose of this notice requirement is to extend the notice requirement of the unlawful detainer statutes of California. On termination of the Lease for default pursuant to this paragraph, LANDLORD shall have the right to recover from COUNTY only the following amounts for any and all damages, which may be the direct or indirect result of such default:

(1) The worth, at the time of the award, of the unpaid rent that has been earned at the time of termination of this Lease; and,

(2) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that LANDLORD proves could not have been reasonably avoided; and,

(3) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that LANDLORD proves could not have been reasonably avoided; and,

(4) Any other amount necessary to compensate LANDLORD for all detriment proximately caused by COUNTY's default which LANDLORD proves could not have been reasonably avoided.

(5) "The worth, at the time of the award," as used in **subparagraphs a(1) and a(2)** of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award," as referred to in **subparagraph a(3)** of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

b. Notwithstanding **subparagraph a**, above, on any termination of the Lease for default pursuant to this paragraph, the amount LANDLORD shall have the right to recover from COUNTY for any and all damages which may be the direct or indirect result of such default shall not exceed the amount LANDLORD would have been entitled to receive had the COUNTY terminated the Lease under **Paragraph 39, COUNTY'S RIGHT TO TERMINATE LEASE**.

23. **LANDLORD'S ACCESS TO PREMISES:** LANDLORD and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

- a. To determine whether the Premises are in good condition; and,
- b. To do any necessary maintenance and to make any restoration to the Premises that LANDLORD has the right or obligation to perform; and,
- c. To serve, post, or keep posted any notices required by law; and,
- d. To post "for sale" signs at any time during the term, to post "for rent" or "for Lease" signs during the last three (3) months of the term; and,
- e. To show the Premises to prospective brokers, agents, buyers, tenants, lenders or persons interested in an exchange, at any time during the term.

LANDLORD shall conduct its activities on the Premises as allowed in this paragraph in a manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY.

24. **NOTICES:**

a. 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 or sent by prepaid, first-class mail. 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 address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) COUNTY working days from the time of mailing if mailed as provided in this paragraph.

LANDLORD's address:        Director of Public Works  
   City of Rialto  
   150 S. Palm Avenue  
   Rialto, CA 92376

With copy to:                City Attorney  
   City of Rialto  
   150 S. Palm Avenue  
   Rialto, CA 92376

COUNTY's address:         Internal Services Group  
   Real Estate Services Department  
   825 East Third Street, Room 207  
   San Bernardino, CA 92415-0832

b. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a non-controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action.

c. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action. The new owner must provide COUNTY with evidence of completion of such action. The parties shall immediately execute an amendment to this Lease stating the change of ownership of the Premises.

(1) Within fifteen (15) COUNTY working days of completing any action which affects a change in the ownership of the Premises, the new owner must provide COUNTY evidence of obtaining insurance in compliance with **Paragraph 17, INSURANCE**.

25. **INCORPORATION OF PRIOR AGREEMENT:** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

26. **WAIVERS:** No waiver by either party of any provisions of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.

27. **AMENDMENTS:** No provision of this Lease may be amended or added to, except by an agreement in writing signed by the parties hereto or their respective successor in interest, expressing by its terms an intention to modify this Lease.

28. **SUCCESSORS:** This Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

29. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this Lease or any other portion thereof.

30. **TIME OF ESSENCE:** Time is of the essence of each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specific time for performance, performance may be made within a reasonable time.

31. **QUIET ENJOYMENT:** Subject to the provisions of this Lease and conditioned upon performance of all the provisions to be performed by COUNTY hereunder, LANDLORD shall secure to COUNTY during the Lease term the quiet and peaceful possession of the Premises and all right and privilege appertaining thereto.

32. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
33. **CONSENT:** Whenever consent or approval of either party is required that party shall not unreasonably withhold or delay such consent or approval.
34. **EXHIBITS:** All exhibits referred to are attached to this Lease and incorporated by reference.
35. **LAW:** This Lease shall be construed and interpreted in accordance with the laws of the State of California.
36. **VENUE:** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.
37. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against either party for which the other has agreed to indemnify and defend.
38. **JURY TRIAL WAIVER:** LANDLORD and COUNTY hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either LANDLORD against COUNTY or COUNTY against LANDLORD on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of LANDLORD and COUNTY, COUNTY's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.
39. **TERMINATION OF LEASE:** The COUNTY and LANDLORD shall have the right to terminate this Lease at any time whenever COUNTY or LANDLORD, in their sole discretion, determine it would be in their best interests to terminate this Lease. Either party shall give the other notice of any termination pursuant to this paragraph at least one hundred eighty (180) days prior to the date of termination. In the event either party terminates this Lease pursuant to this paragraph, the LANDLORD shall have the right to receive from COUNTY only the rent which will have been earned at the date of termination.
40. **CAPTIONS, TABLE OF CONTENTS AND COVER PAGE:** The paragraph captions, table of contents and the cover page of this Lease shall have no effect on its interpretations.

41. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this Lease, will survive the termination of this Lease.

42. **FORMER COUNTY OFFICIALS:**

a. LANDLORD agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent LANDLORD. The information provided includes a list 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 the business. The information also includes the employment with or representation of LANDLORD. 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. (See Exhibit "B", List of Former County Officials.)

b. If during the course of the administration of this lease, the COUNTY determines that the LANDLORD has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this lease may be immediately terminated. If this lease is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

43. **PUBLIC RECORDS DISCLOSURE:** Each party understands that this lease is subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act").

44. **CONDITION OF PREMISES:** LANDLORD shall deliver the Premises to COUNTY "As Is". To the best of LANDLORD's knowledge, LANDLORD believes the plumbing, electrical systems, fire sprinkler system, lighting, air conditioning and heating systems, and loading doors, if any, in the Premises are in good operating condition on the Commencement Date.

45. **CONDEMNATION:** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the portion of the Common Areas or that portion of the Premises designated for COUNTY's parking, is taken by condemnation, COUNTY may, at COUNTY's option, to be exercised in writing within thirty (30) days after LANDLORD shall have given COUNTY written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If COUNTY does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to

the total rentable floor area of the Premises. No reduction of rent shall occur if the condemnation does not apply to any portion of the Premises. COUNTY shall be entitled to receive the following amounts of any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power: (a) one hundred percent (100%) of any amount attributable to any excess of the market value of the Premises for the remainder of the Lease Term over the present value as of the Termination Date of the Rent payable for the remainder of the Lease Term (commonly referred to as the "bonus value" of the Lease); and (b) COUNTY shall have the right to make a separate claim in the Condemnation proceeding for: (i) The taking of the amortized or undepreciated value of any trade fixtures or leasehold improvements owned by COUNTY that COUNTY has the right to remove at the end of the Lease term and that COUNTY elects not to remove; (ii) Reasonable removal and relocation costs for any trade fixtures or leasehold improvements that COUNTY has the right to remove and elects to remove (if Condemnor approves of the removal); (iii) Loss of goodwill; (iv) Relocation costs under Government Code section 7262, the claim for which COUNTY may pursue by separate action independent of this Lease; and (v) Any other amount in addition to the foregoing that the COUNTY is allowed under condemnation law. COUNTY shall have the right to negotiate directly with Condemnor for the recovery of the portion of the Award that COUNTY is entitled to under **subparagraph (b)** of this paragraph. In the event that this Lease is not terminated by reason of such condemnation, LANDLORD shall repair any damage to the Premises caused by such condemnation authority pursuant to **Paragraph 12, MAINTENANCE**, and **Paragraph 18, DESTRUCTION OF PREMISES**.

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46. **INTERPRETATIONS:** As this agreement was jointly prepared by both parties, the language in all parts of this agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

**END OF LEASE TERMS.**

**COUNTY OF SAN BERNARDINO**

**LANDLORD: CITY OF RIALTO**

  
\_\_\_\_\_  
Bill Postmus, Chairman,  
Board of Supervisors

By:   
\_\_\_\_\_  
Grace Vargas

Dated: MAY 17 2005

Title: Mayor

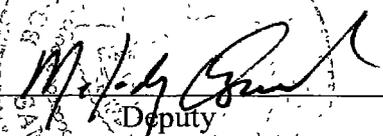
Dated: \_\_\_\_\_

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

Attest:

J. RENEE BASTIAN, Clerk of the Board  
of Supervisors.

By:   
\_\_\_\_\_  
Barbara McGee

By:   
\_\_\_\_\_  
Deputy

Title: City Clerk

Date: MAY 17 2005

Dated: 4-14-05

Approved as to Legal Form:  
RONALD D. REITZ, County Counsel

Approved as to form:

By:   
\_\_\_\_\_  
Fiona Luke, Deputy County Counsel

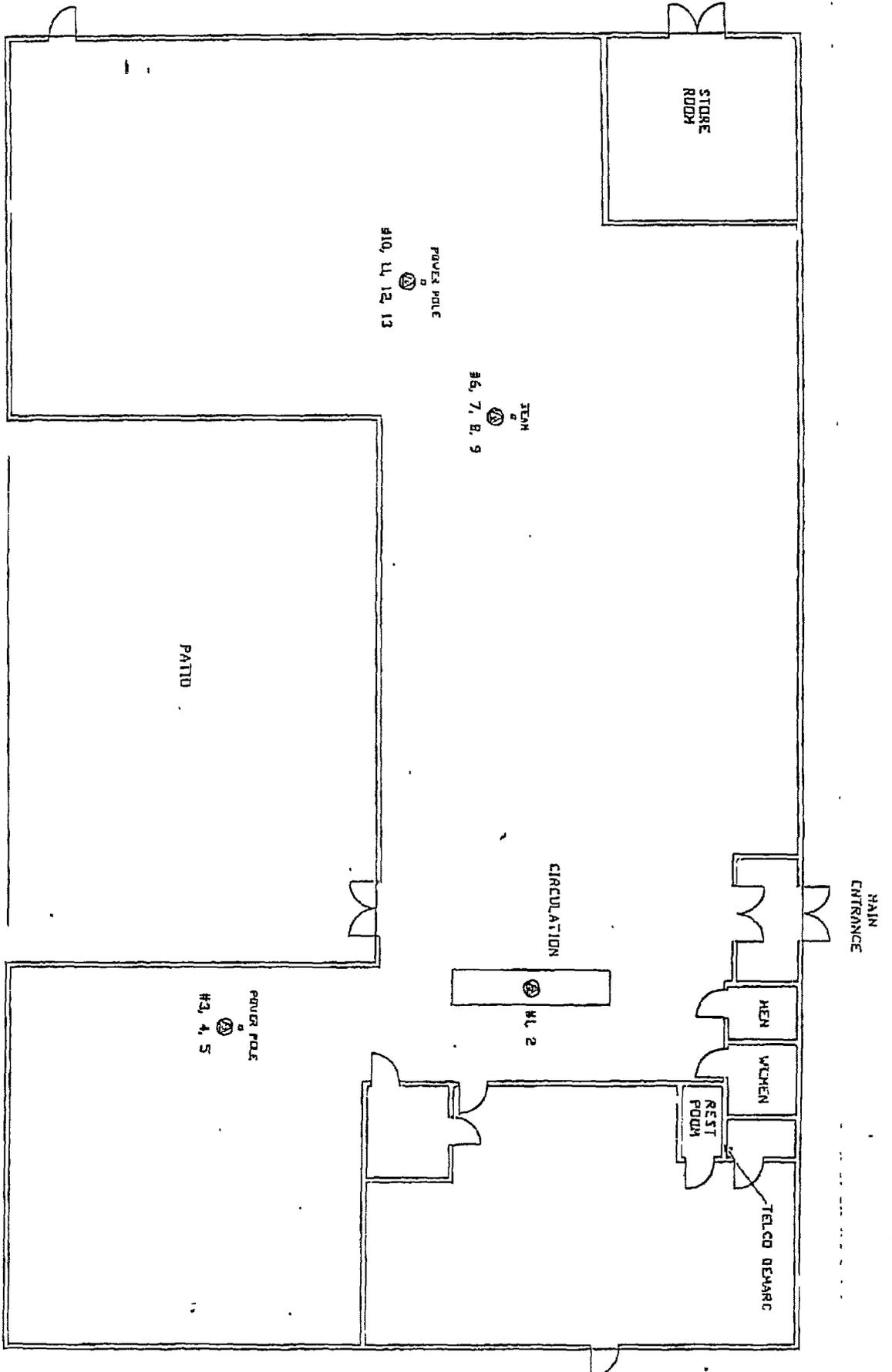
By:   
\_\_\_\_\_  
Robert Owen

Title: City Attorney

Dated: 4-20-05

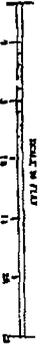
Dated: \_\_\_\_\_

EXHIBIT "A"



PROPERTY OF SAN BERNARDINO COUNTY  
 SHALL NOT BE REPRODUCED, COPIED  
 OR USED WITHOUT EXPRESS PERMISSION  
 OF SAN BERNARDINO COUNTY

COMMUNICATIONS DIVISION  
 RADIO LIBRARY  
 SCALE BAR  
 08-07-1995



COUNTY OF SAN BERNARDINO  
 COMMUNICATIONS DIVISION  
 RADIO LIBRARY  
 SCALE BAR  
 08-07-1995

**EXHIBIT "B"**

**LIST OF FORMER COUNTY OFFICIALS**

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

**OFFICIAL'S NAME:**

**REQUIRED INFORMATION**