

## LEASE

THIS LEASE is entered into on \_\_\_\_\_, 2009, between Geraldine J. Giotto (LESSOR), and the COUNTY OF TULARE (COUNTY), who agree as follows:

1. **LEASE:** LESSOR leases to COUNTY and COUNTY leases from LESSOR, the real property located at 152-A Canby St., in the City of Tulare, State of California, consisting of approximately 1200 square feet of warehouse space.
2. **TERM/OPTION TO RENEW:** The term shall commence May 1, 2009 and shall expire two (2) years thereafter. COUNTY shall have the option and right to renew this lease for an additional term of two (2) additional two (2) year terms upon the same terms and conditions, by serving a notice of exercise of the option to renew on LESSOR prior to the end of the initial term.
3. **RENT:** COUNTY shall pay to LESSOR monthly rent, without deduction, set off, prior notice, or demand of four hundred dollars (\$400.00) payable in advance on the first day of each month, commencing on the date the term commences, and continuing during the term and any option period(s) exercised. Monthly rent for the first month, or portion of it, shall be paid on the day the term commences. Rent shall be prorated for any partial month at the rate of 1/30<sup>th</sup> of the monthly rent per day.
4. **ACCEPTANCE:** On the commencement of the term, the premises shall be in good condition. COUNTY taking possession of the premises on commencement of the term shall constitute COUNTY's acknowledgment that the premises are in good condition. COUNTY acknowledges that the parking lot area is for customer parking only.

**Tulare County Agreement No. \_\_\_\_\_**

5. **USE:** COUNTY shall use the premises for warehouse space by the District Attorney's Action Project and COUNTY shall comply with all laws concerning such use of the premises, except that COUNTY shall not be obligated to comply with any law that requires alterations, maintenance, or restoration to the premises unless the alterations, maintenance or restoration are required as a result of COUNTY's particular and specific use of the premises at the time. LESSOR shall make all other alterations, maintenance, or restoration to the premises required by such laws at COUNTY's expense. COUNTY shall not use the premises in any manner that will constitute waste or nuisance.

6. **MAINTENANCE:** Except as otherwise provided in 5, above, LESSOR shall be responsible for all maintenance, repair and upkeep of the entire premises, including without limitation, the parking lot, grounds, building and improvements, and equipment and fixtures attached thereto. Such responsibility shall include, without limitation, the following:

- a. The structural parts of the building and other improvements in which the premises are located, which structural parts include the foundations, bearing and exterior walls, sub flooring, and roof;
- b. The exposed and unexposed electrical, plumbing, and sewage systems, including, without limitations, those portions of the systems lying outside the premises;
- c. Window frames, doors, gutters, and down spouts on the building and other improvements in which the premises are located;
- d. Heating, ventilating, and air-conditioning systems (HVAC) servicing the premises;
  - i. The HVAC shall be inspected at least once every twelve (12) months, and problems found during these inspections shall be corrected within thirty (30) days from discovery.
  - ii. Inspections and maintenance of the HVAC system shall be documented in writing. The LESSOR shall record the name of the individual(s) inspecting and/or maintaining the system, the date of the inspection

and/or maintenance, and the specific finding and action taken. The LESSOR shall ensure that the records are kept for at least five (5) years. The LESSOR shall provide the COUNTY a copy of the record of inspection within 30 days of the inspection.

- e. Light fixtures, ballasts;
- f. Pest control;
- g. In case of emergency the LESSOR will take immediate steps to protect persons and property. Emergency is defined as: Condition that will cause irreparable harm to personal property, real property, or fixtures attached to real property if not immediately repaired, or any condition that poses an immediate threat to the health or safety of an occupant. If the LESSOR does not take the necessary steps, COUNTY will have the right to repair or contract to repair and to be reimbursed by LESSOR. If the full amount of the reimbursement is not delivered by LESSOR to COUNTY within 10 days after COUNTY's delivery to LESSOR of a written statement bill evidencing the cost of the repair, COUNTY will have the right to deduct the cost of repair from the next monthly rent payment.
- h. Except for cases of emergency, LESSOR will make all repairs as soon as is possible. In the event LESSOR has not made a repair referred to in a written notice from COUNTY to LESSOR within 30 days after date of notice, COUNTY will have the right to repair or contract to repair and be reimbursed by LESSOR. If the full amount of the reimbursement is not delivered by LESSOR to COUNTY within 10 days after COUNTY's delivery to LESSOR of a written statement or bill evidencing the cost of the repair, COUNTY will have the right to deduct the cost of repair from the next monthly rent payment.

7. **ALTERATIONS:** COUNTY shall not make any structural or exterior alterations to the premises without LESSOR's consent, which consent shall not be unreasonably withheld; however, COUNTY shall have the right without cost to the LESSOR to make, without LESSOR's consent, nonstructural alterations to the exterior of the premises that COUNTY requires in order to conduct its operations on the premises. Upon termination of the tenancy, COUNTY shall have the right to remove from the premises immediately before the termination of the tenancy, or within ten (10) days thereafter, any alterations COUNTY has made to the

premises, as long as the removal will not cause any structural damage to the premises, and COUNTY at its cost promptly restores any damage caused by the removal.

8. **MECHANICS LIENS:** COUNTY shall pay all costs for construction done by it or caused to be done by it on the premises as permitted or required under this Agreement. COUNTY shall keep the building, other improvements, and land on which the premises are located free and clear of all mechanics liens resulting from construction or repair work done by or for COUNTY.

9. **UTILITIES AND JANITORIAL:** COUNTY shall make all arrangements for, and pay, for phones, alarm service, gas and electric utilities and for all connection charges therefore. LESSOR shall provide and pay for all water, sewer and trash collection. LESSOR shall provide all fire extinguishers and related signs. COUNTY shall furnish, at its own expense, all janitorial services. COUNTY shall arrange for the installation of any and all telephones and telephone or data lines it may require, and pay for any and all charges relating thereto.

10. **INDEMNITY:** LESSOR shall not be liable to COUNTY for any damage to COUNTY or COUNTY's property from any cause, except that LESSOR shall be liable to COUNTY for damage to COUNTY resulting from the acts or omissions of LESSOR, his agents and employees. COUNTY shall hold LESSOR harmless from all damages arising out of any injury or damage to person or property occurring in, on, or about the premises, except that LESSOR shall be liable to COUNTY for, and shall hold COUNTY harmless from, injury or damage resulting from the acts or omissions of LESSOR, his agents and employees.

11. **INSURANCE:** LESSOR acknowledges and agrees that COUNTY is a self-insured entity, and waives any requirement that COUNTY procure and/or maintain insurance of any kind, including liability and/or fire/extended coverage insurance. During the time that

COUNTY shall occupy the premises, LESSOR shall maintain commercial general liability insurance with combined single coverage of a minimum of \$1,000,000.00 per occurrence. The insurance shall be issued by companies licensed to transact business in the State of California; shall name the County of TULARE, its officers, agents and employees, as insureds; and, shall provide for 30 days written notice to the COUNTY prior to cancellation or material alteration. LESSOR shall maintain the required insurance as set forth in Exhibit A. Evidence of such insurance coverage acceptable to the TULARE County Risk Manager shall be filed with the Clerk of the Tulare County Board of Supervisors prior to the execution of this lease.

12. **DESTRUCTION:** In the event the building on the demised premises shall be totally or partially destroyed by fire, earthquake, or other casualty so as to render that part of said building hereby leased unfit in whole or in part for occupancy, COUNTY shall be entitled to a reduction in the rental during the period that such part remains unrepaired or unrestored, in proportion to the amount of floor space unfit for occupancy bears to the total floor space included in the lease; provided, however, that if it should reasonably appear that LESSOR cannot or will not restore or repair the premises within ninety (90) days from the date of such damage, either party shall be entitled to terminate the lease by giving the other party notice in writing of intention to so terminate ten (10) days before the proposed date of termination.

13. **CONDEMNATION:** If, during the tenancy, there is any taking by condemnation of all or part of the building, other improvements, or land of which the premises are a part, or any interest in the tenancy, the rights and obligations of the parties shall be determined as follows:

- a. If the premises are totally taken by condemnation, the tenancy shall terminate on the date of the taking;

- b. If any portion of the premises is taken by condemnation the tenancy shall remain in effect, except that COUNTY may elect to terminate the tenancy by giving notice of same within ten (10) days of the date of the taking.
- c. If any portion of the premises is taken by condemnation and the tenancy remain in effect, the rent shall be reduced by an amount that is in the same ratio to monthly rent as the value of the area of the portion of the premises taken bears to the total value of the premises immediately before the taking.

14. **ASSIGNMENT:** COUNTY shall not assign or encumber its interest in the tenancy, or sublease all or any part of the premises, without the consent of LESSOR, which consent shall not be unreasonably withheld.

15. **DEFAULT:** The occurrence of any of the following shall constitute a default by COUNTY:

- a. Failure to pay rent when due, if the failure continues for ten (10) days after written notice has been given to COUNTY;
- b. Abandonment and vacation of the premises;
- c. Failure to perform any other provision of this agreement if the failure to perform is not cured within a reasonable time after notice has been given of same to COUNTY.
- d. Notices given under this section shall specify the alleged default and the applicable provisions of this agreement, and shall demand that COUNTY perform the provisions within the applicable period of time, or quit the premises.
- e. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.
- f. In the event of a default, the parties shall have the remedies now or later allowed by law.

16. **SIGNS:** COUNTY may not install, or permit any other person to install, any sign, awning, canopy, marquee or other advertising on any exterior wall, door, or window on the premises without LESSOR's prior written consent, which consent shall not be unreasonably

withheld. Eleven days after the expiration or termination of this lease, LESSOR may remove and destroy any items which were permitted to be installed in accordance with the terms of this section and not removed by COUNTY.

**17. LESSOR'S ENTRY ON PREMISES:** LESSOR and his authorized representatives shall have the right to enter the premises at all reasonable times, and after reasonable notice to COUNTY, for any of the following purposes:

- a. To determine whether the premises are in good condition and whether COUNTY is complying with the obligation under this agreement;
- b. To do any necessary maintenance and to make any restoration to the premises or the building and other improvements in which the premises are located that LESSOR has the right or obligation to perform;
- c. To serve, post, or keep posted any notices required or permitted under this agreement;
- d. To show the premises to prospective brokers, agents, buyers, and prospective lessees at any time during the tenancy.

**18. TERMINATION:** The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this agreement.

- a. With Cause: This Agreement may be terminated by either party should the other party:
  - i. be adjudged a bankrupt, or
  - ii. become insolvent or have receiver appointed, or
  - iii. make a general assignment for the benefit of creditors, or
  - iv. suffer any judgment which remains unsatisfied for 30 days and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
  - v. materially breach this Agreement

For any of the occurrences except item (v), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may, subject to the following paragraph, be terminated following the failure of the

defaulting party to remedy the breach to the reasonable satisfaction of the non-defaulting party within ten (10) days of written notice specifying the breach. If the breach is not remedied within that ten (10) day period, the non-defaulting party may, subject to the following paragraph, terminate the agreement on further written notice specifying the date of termination.

If the nature of the breach is such that it cannot be cured within a ten (10) day period, the defaulting party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of the termination.

- b. Effects of Termination: Termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement and to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. .

19. **SURRENDER:** On expiration or other termination of the tenancy, COUNTY shall surrender the premises to LESSOR in good condition, ordinary wear and tear excepted. COUNTY shall remove all its personal property, and shall perform all restoration made necessary by the removal of any alteration or fixtures.

20. **HOLDING OVER:** If COUNTY, with LESSOR's consent, remains in possession of the premises after the expiration of the tenancy, such possession shall be deemed to be a month-to-month tenancy terminable on thirty (30) days notice given at any time by either party. During any such month-to-month tenancy, COUNTY shall pay all rent required by this agreement, all other provisions of which, except the option to renew, shall apply to the month-to-month tenancy.

21. **SUCCESSORS:** This agreement shall be binding on, and inure to, the benefit of the parties, their successors and assigns, except as otherwise limited by this agreement.



22. **NOTICE:** Any notice, demand, request, consent, approval or other communication required or permitted under this agreement shall be in writing and either served personally or sent by prepaid, first class mail, certified return receipt requested, and addressed to the other party at the address indicated below:

COUNTY: Board of Supervisors  
County of Tulare  
Administration Building  
2800 W. Burrel  
Visalia, CA 93291

LESSOR: Geraldine J. Giotto  
520 South G Street  
Tulare, Ca 93274

Notice shall be deemed communicated four (4) days from the time of mailing as provided in this section.

23. **WAIVER:** LESSOR's consent to or approval of any act by COUNTY shall not be deemed to waive or render unnecessary LESSOR's consent to or approval of any subsequent act by COUNTY.

24. **INTEGRATION:** This instrument contains all the agreements of the parties relating to the premises and cannot be modified or amended except by a subsequent agreement in writing.

25. **SEVERABILITY:** The unenforceability, invalidity, or illegality of any provision of this agreement shall not render the other provisions of the agreement unenforceable, invalid, or illegal.

26. **REDUCTION OF COUNTY'S FUNDING:** LESSOR expressly understands and agrees that COUNTY is dependent upon certain Federal and/or State funding to pay the rent provided in this Agreement. If such Federal and/or State funding is discontinued and/or reduced,

COUNTY shall have the right to: (a) reduce the amount of warehouse space occupied by COUNTY, or (b) terminate the lease. In either event COUNTY shall provide LESSOR with at least 90 days prior written notice of such reduction or termination. In the event of a reduction in the amount of warehouse space, the monthly rent shall be reduced by an amount equal to the ratio of the total remaining occupied office space in square feet divided by the total office space in square feet previously occupied by COUNTY. In the event COUNTY reduces the amount of office space, LESSOR, in the exercise of its own absolute discretion, shall have the right to terminate the lease by giving written notice of the exercise of such right to COUNTY within ten (10) days of its receipt of the notice of reduction from COUNTY. The tenancy shall then terminate sixty (60) days after services of the notice of the exercise of the right to terminate by LESSOR.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LESSOR

Date: 12/18/09

Geraldine J. Giotto  
Geraldine J. Giotto

\*Corporations Code Section 313 requires that contracts with a corporation shall be signed by the (1) chairman of the Board, the president or any vice-president and (2) the secretary, any assistant, the chief financial officer, or any assistant treasurer; unless the contract is also accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract.

COUNTY

COUNTY OF TULARE

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

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

Approved as to form:  
County Counsel

By [Signature] 2009/1310  
Deputy i-11 09

**Exhibit A**  
**Insurance Requirements**  
**(County As Lessee)**

Lessor shall provide and maintain insurance for the duration of the this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with performance under the Agreement by the Lessor, his agents, representatives, employees, or contractors.

**A. MINIMUM SCOPE OF AND LIMITS OF INSURANCE.**

1. Coverage at least as broad as Commercial General Liability Insurance of \$1,000,000.00 combined single limit per occurrence.
  - a. Names the COUNTY, its officers, agents, employees and volunteers, individually and collectively as additional insureds.
  - b. States that such insurance for additional insureds shall apply as primary insurance and any other insurance maintained by the County shall be excess.
  - c. Provides that coverage shall not be suspended, voided, canceled or otherwise materially changed except after thirty (30) days prior written notice is given to the County and provide ten (10) days prior written notice be given to the County for cancellation for non-payment of premium.
2. Comprehensive Automobile Liability Insurance (if applicable) of \$1,000,000 per occurrence, combined single limit.
  - a. Names the COUNTY, their officers, agents, employees and volunteers, individually and collectively, as additional insureds.
  - b. States that such insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.
  - c. Provides that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice has been given to the County and provide ten (10) days prior notice be given to the County for cancellation for non-payment of premium.

3. Workers' Compensation and Employer's Liability Insurance as required by law. Insurer shall agree to waive all rights of subrogation against the COUNTY, its officers, officials, employees, agents and volunteers for losses arising out of activities which are the subject of this Agreement.

#### **B. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductible or self-insured retention that exceeds \$50,000 must be approved by the COUNTY Risk Manager.

#### **C. ACCEPTABILITY OF INSURANCE**

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than "A:V" or as approved by the County's Risk Manager and from a company admitted to do business in California.

#### **D. VERIFICATION OF COVERAGE**

Prior to approval of this Agreement by Lessee and the COUNTY, the Lessee shall file with the COUNTY certificates of insurance with additional insured endorsements effecting coverage in form acceptable to the COUNTY. COUNTY reserve the right to require certified copies of all required insurance policies at any time.