

## Attachment B

### Real Property Acquisition Questionnaire\* for ASR

(\*Applies to property purchase, or acquisition lease, license or easement)

#### Instructions:

- This questionnaire was developed with input from Auditor Controller, Internal Auditor and CEO Real Estate to assure that County leadership is fully informed.
- Insert the complete answer after each question below.
- When completed, save and include as an Attachment to your ASR.
- In the body of the ASR focus on the considerations relevant to the decision.
- If you need assistance, please contact CEO Real Estate.

#### 1. What property interest is being considered for acquisition (fee, lease, license, easement)?

Lease Agreement for property located at 1241 East Dyer Road, Santa Ana, CA, 92705

- a) Why is this property being considered for acquisition? The proposed site offers an excellent expansion opportunity within the existing building to improve staffing efficiencies, optimization of space floor plan between co-location programs and best account for future program growth for Health Care Agency's Environmental Health office. The location supports access and convenience for clients and employees, including over 100 EH field inspectors based out of the Current Premises, and will enhance the client service experience.
- b) How and who identified this property for a potential acquisition? Health Care Agency and CEO/Real Estate agreed this is the best site option at this time. This expansion is within the existing building currently occupied by Health Care Agency/Environmental Health.
- c) What factors are key in recommending this property for acquisition? Program service requirements, cost and location are the key factors for recommending this site.
- d) How does the proposed acquisition fit into the County's/District's strategic or general plan? The location supports access and convenience for clients and employees, including over 100 EH field inspectors based out of the Current Premises, will enhance the client service experience and will support consolidation of all onsite EH division programs onto the first floor of the Current Premises and will support the internal relocation of staff.
- e) What are the short and long term anticipated uses of the property? Health Care Agency will continue to use the Current Premises for various State mandated programs authorized by the California Health and Safety Code carried out by Environmental Health agency. Services include restaurant and mobile truck inspections to ensure the safety of the food served to the public, public pool safety inspections, ocean water quality monitoring, inspections regarding the safe handling and disposal of hazardous materials and medical waste, and inspections of landfills and other solid waste facilities. Additional programs at the Current Premises include food facility plan check, which reviews the plans for all new and remodeled food facilities within Orange County in accordance with applicable requirements, and EH division administrative staff.
- f) Are there any limitations on the use of the property for its intended purposes? County shall use the Premises for general office purposes or any other lawful purpose, except that County shall not use the Premises for any illegal or unlawful purpose.

#### 2. What analysis has been performed as to whether to acquire the proposed real property interest?

Health Care Agency and CEO/Real Estate collaborated to determine that this location best fits program and client needs.

- a) Have there been any internally or externally prepared reports regarding this property acquisition? A market analysis and lease cost comparison has been completed.
- b) Who performed the analysis? Jones Lang La Salle (JLL) on behalf of County of Orange
- c) Provide details about the analysis and cost/benefit comparison. This site was determined to be the best expansion site for the Health Care Agency/Environmental Health based on price, location and program service requirements. Lessor shall complete the tenant improvements and provide the

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Premises in turn-key condition to the County using the "County Improvement Allowance," which shall not exceed eighty dollars (\$80.00) per RSF for the Office Premises and ten dollars (\$10.00) per RSF for the Warehouse Premises. Additionally, Lessor shall provide County with an allowance equal to ten dollars (\$10.00) per RSF of the Office Premises to be used at County's sole discretion toward FF&E, relocation costs, cabling, telecommunications and rent ("County's FF&E Allowance"). Additionally, if there is any County Improvement Allowance remaining after Lessor has completed the Work, County may use that allowance towards FF&E, relocation, cabling, telecommunications and rent costs.

3. How was the acquisition price, or lease/license rent, determined? JLL and CEO/Real Estate negotiated with the Lessor for optimal full service gross lease rate.

a) Who performed the appraisal or market study and what certifications do they possess? CEO/Real Estate and JLL, utilizing market data obtained through Costar.

b) How does the price/rent compare with comparable properties? The rental rate is at current market for the central Orange County market area.

c) Does the setting of the price/rent follow industry standards and best practices? Yes

d) What are the specific maintenance requirements and other costs within the agreement and who is responsible? Provide an estimate of the costs to the County/District if applicable. The Lessor is responsible for all interior and exterior maintenance, except County shall be responsible for telephone services. Lessor shall provide, at its sole cost and expense (except as otherwise provided in this Lease) any and all necessary repair, maintenance and replacement for the Premises and Building (and systems therein) in good order, condition and repair and in compliance with all applicable laws, including, but not limited to, the replacement, repair and maintenance of the structural portions of the Building, the roof of the Building, the parking facilities and all Building systems including the Heating, Ventilation, Air Conditioning ("HVAC") system, the plumbing, electrical and mechanical systems, fire/life safety system, elevators, roof, paving, fire extinguishers, pest control, and whether capital or non-capital improvements.

4. What additional post-acquisition remodeling or upgrade costs will be needed for the property to meet its intended use? None

a) Will any of the upgrades be required to meet County, ADA, or other standards and requirements? N/A

b) Include estimates of the costs. N/A

c) What department will be responsible for the costs? N/A

5. Can the County terminate the purchase/easement, lease/license? No termination right within Lease.

a) What would be necessary to terminate the agreement, and when can it be terminated? N/A

b) Are there penalties to terminate the purchase/easement, or lease/license? N/A

6. What department will be responsible for the acquisition payments? Health Care Agency

a) Are the acquisition costs budgeted in the department's budget? Yes

b) What fund number will the funds for the acquisition ultimately be drawn from? 6600

c) Will any restricted funds be used for the acquisition? (Check with the Auditor Controller's General Accounting Unit and Counsel if you have questions about whether restricted funds are involved.)  
No.

d) If restricted funds will be used, has County Counsel advised that this is an allowable use of the proposed restricted funds? N/A

7. Does the proposed purchase/lease/license/easement agreement comply with the CEO Real Estate standard language? Yes

a) List any modified clauses and reasons for modification.

4. PARKING (1.3 N)

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Throughout the Term of the Lease and including any Extension Term pursuant to Clause 7 (OPTION TO EXTEND TERM), County shall have the exclusive right, without additional charge, to use two hundred fifty-four (254) parking spaces, of which County may use up to forty (40) as reserved and/or designated visitor parking ("Reserved Parking"), nine (9) of which will be enclosed as a "Secured Parking Area" and six (6) stalls for vehicle inspection designated as "Inspection Stalls," as shown on Exhibit B. County's use of said parking spaces shall be subject to all reasonable rules and regulations which are prescribed by Lessor from time to time for the efficient operation of the parking areas for the Building and provided to County in writing. Within County's two hundred fifty-four (254) allocated parking spaces, Lessor shall also provide parking for disabled persons ("ADA Spaces") in accordance with the Americans with Disabilities Act, Section 7102 of the California Uniform Building Code and the applicable codes and/or ordinances relating to parking for disabled persons as established by the local jurisdiction in which the Premises is located where the provisions of such local codes and/or ordinances exceed or supersede the State requirements.

### 5. TERMINATION OF PRIOR AGREEMENTS (1.4 AALC - N)

As of the Commencement Date, it is mutually agreed that this Lease shall terminate and supersede any prior agreement between the Parties hereto covering all or any portion of the Premises, as that term is defined in that certain Lease dated July 27, 2004 by and between PS Business Parks, L.P., a California limited partnership, as lessor, (predecessor in interest to Lessor) and County, as lessee, as amended by that certain First Amendment to Lease dated September 30, 2014, by and between PS Business Parks, L.P. and County (the "Existing Lease"), EXCEPT for those terms relating to continuing obligations for events during the term of the Existing Lease, including but not limited to indemnification, and that all personal property and/or equipment (e.g., fixtures, partitions, counters, shelving) attached to and/or placed upon any portion of the Premises (as defined in the Existing Lease) by County pursuant to the terms of any prior agreement between the Parties hereto shall remain the personal property of County, who shall have the right to remove same. The Parties hereby acknowledge and agree that County will be required to vacate a certain portion of its currently leased Premises (as defined in the Existing Lease) and relocate to other space in the Premises in which the Work has been Substantially Complete (as those terms are defined below) in order for Lessor to perform the Work. Notwithstanding anything to the contrary in the Existing Lease, nothing therein shall prohibit Lessor from performing the Work in, on and about the Premises in accordance with this Lease and the Work Letter (as defined below) and that County shall continue to abide by all of the covenants set forth in the Existing Lease, including, but not limited to timely paying all Rent and all other charges due and payable under the Existing Lease until the Commencement Date of this Lease.

### 16. ALTERATIONS (2.5 N)

County may, at County's sole cost and expense, make improvements and changes in the Premises ("Alterations"), including, but not limited to, the installation of fixtures, partitions, counters, shelving, and equipment as deemed necessary or appropriate by the County in its discretion. The Parties agree that the term "Alterations" shall not include the Work. It is agreed that any such fixtures, partitions, counters, shelving, or equipment attached to or placed upon the Premises by County shall be considered as personal property of County, as defined below in Clause 32 (COUNTY PROPERTY), who shall have the right, but not the obligation, to remove same.

Notwithstanding the foregoing, County shall not have the right to make any Alterations to the Building or to any Building Systems (as hereinafter defined) that affect or could affect the Building foundation, bearing walls, structural roof (collectively, "Structural Components") or building plumbing, HVAC, mechanical, electrical or life safety systems (collectively, "Building Systems") without Lessor's prior written consent, which may be withheld in Lessor's sole and absolute discretion. County may, without Lessor's prior written consent, make non-structural interior Alterations to the Premises, provided such Alterations do not exceed one hundred thousand dollars (\$100,000.00) per annum in the aggregate. County agrees that the Premises shall be left in as good a condition as when received, reasonable wear and tear exempted.

### 17. COUNTY-REQUESTED ALTERATIONS (2.6 N)

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County through HCA/Facilities Service Manager, may, during the Term of the Lease, request Lessor to make improvements and changes to the Premises ("County Requested Alterations"). If the County Requested Alterations affects the Structural Components and/or Building Systems, then Lessor's prior written consent is needed prior to the commencement of said County Requested Alterations. All plans and working drawings for the County Requested Alterations shall have the written approval of HCA/Facilities Service Manager. All such County Requested Alterations shall be made by Lessor, at Lessor's sole cost, and reimbursed as additional Rent upon receipt by County of Lessor's written claim for reimbursement. County shall include the reimbursement amount in the Rent payment owed immediately following receipt of Lessor's claim for reimbursement. At no times shall County Requested Alterations exceed two hundred and fifty thousand dollars (\$250,000.00) per year in the aggregate.

County shall have the right to audit said claim and require additional supporting documentation from Lessor prior to making reimbursement payment. County shall evidence acceptance of such claim by written letter to Lessor. Once Lessor's claim has been accepted by County as complete and adequate, the claim amount shall be reimbursed by County to Lessor at the same time as the next scheduled monthly Rent payment following the date of written acceptance of said claim.

Lessor agrees that any improvements being constructed for County by, or under the direction of Lessor under this Clause, shall be constructed in substantial compliance with city approved plans and to the extent applicable, in compliance with Federal, California and local laws, including by not limited to, the requirement of California Public Contract Code Section 22000 et seq., and shall require, to the extent applicable, its contractor or subcontractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of Orange County and not less than the general prevailing rate of per diem wages for work of a similar character in the locality of Orange County and not less than the general prevailing rate of per diem wages for holiday and overtime work, as provided in Clause 29 (LABOR CODE COMPLIANCE) of this Lease.

Following the written approval to let a contract for improvements, Lessor shall, to the extent applicable, publicly advertise for bids for such improvements, as provided in Orange County Codified Ordinances 1-8-1 et seq., and shall provide County a list of all bids received for the contract. Thereafter, with the prior written approval of County as to the winning bid, Lessor shall award the contract or contracts for such improvements. County's approval of the bid shall be limited to the dollar value only, to ensure it is within County's budget.

### 56. SECURITY SERVICES (6.5 N)

Lessor shall provide security services for the Building, which security services shall be substantially similar to the security services provided in similar office buildings in the surrounding area where the Building is located and otherwise reasonably acceptable to County. In addition, during the Term (as the same may be extended), County may, at its sole cost and expense, engage its own security personnel to provide security to the Premises and to County's employees, personnel, agents, licensees and/or invitees going to and from the Premises. Such security personnel shall be solely for the benefit of County and shall not be relied on by Lessor. Without limiting the generality of the foregoing, notwithstanding anything to the contrary contained in this Lease, if County elects to engage its own security personnel, in no event shall County be directly or indirectly liable to Lessor or any other person and Lessor hereby waives any and all claims against and releases County, its employees, agents, licensees and invitees from any and all claims arising as a consequence of or related to the same, except for the negligence or willful misconduct of County or any other County Parties.

### 59. LESSOR'S LIABILITY

Throughout the Term of this Lease, Lessor (including any and all successors-in-interest to the originally named Lessor under the Lease), shall maintain a net equity in the Premises of not less than Three Million and 00/100 Dollars (\$3,000,000.00) as measured by the difference between the fair market value of the Premises and the total value of all liens, charges or indebtedness placed against the Premises. Upon receipt of County's request, Lessor shall certify such net equity in the Premises no more than once per every twenty-four (24) month period.

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To the extent Lessor (and any successor-in-interest) maintains the aforesaid \$3,000,000 net equity during this Lease, no direct or indirect, current or future shareholder, officer, director, member, partner, employee or affiliate of Lessor or of any affiliate of Lessor shall have any liability under this Lease or for any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the project of which the Building is a part and, accordingly, County's sole recourse (and the sole recourse of any person or entity claiming by, through or under County) for any breach or liability under the terms of this Lease or for any other such matter shall be against Lessor (or any successor-in-interest) and Lessor's interest in the Premises. Further, Lessor shall only be liable for County's actual direct, but not special, consequential or speculative, damages. The provisions of this Clause 59 shall survive the expiration or earlier termination of the Term.

### 60. LESSOR'S TRANSFER

Lessor may transfer all or any portion of the Building and any of its rights under this Lease, in the Building and in any other property referred to herein. If Lessor assigns its rights under this Lease, then Lessor shall thereby be released from any further obligations hereunder arising after the date of transfer, provided that the assignee assumes Lessor's full and complete obligations hereunder arising from and after the transfer date. Lessor shall send County written notice of said transfer at least thirty (30) days prior to the transfer date.

### 61. RULES AND REGULATIONS

The use and occupancy by County of the Premises shall be subject to such reasonable, non-discriminatory rules and regulations concerning the property of which the Premises is a part as may be established by Lessor from time to time, including the Rules and Regulations attached hereto as Exhibit H. County agrees to promptly comply with all such rules and regulations and any reasonable, non-discriminatory amendments thereto, upon receipt of written notice from Lessor. To the extent of a conflict between the terms of the Rules and Regulations and the terms of this Lease, the terms of this Lease shall prevail.

8. If this is a lease, is it a straight lease, an operating agreement, a lease with an option to purchase, or a capital lease (see details below)? Operating Agreement

Capital Lease Determination: At the inception of any *potential* capital lease, it is important to contact the Auditor-Controller's Capital Asset Unit for further guidance to ensure that proper classification and accounting for the lease occurs. There are specialized accounting rules and required forms for capital leases. See further details in the County's Accounting Manual, Policy No. FA-1: *Accounting for Lease Purchases (Capital Leases)*, located on the intranet. For accounting purposes only, a capital lease exists if ANY one (1) of the following four (4) criteria is met:

- i) Lease transfers ownership to the County by the end of the term.
- ii) Lease contains an option to purchase the property by the end of the term for a price lower than the expected fair market value of the property? (For example \$1 or \$1,000, and based on this option price, for accounting purposes only, the ultimate purchase of the property is deemed reasonably assured at the inception of the lease.)
- iii) Lease term is equal to 75% or more of the remaining estimated useful life of the leased property.\*
- iv) Present value of the minimum lease payments is equal to 90% or more of the fair value of the property at the inception of the lease.\*

\*Criteria iii) and iv) don't apply if the lease term begins in the last 25% of a property's estimated useful life.

To validate whether a lease is a capital lease for accounting purposes, please contact the Auditor-Controller's Capital Asset Unit at [capitalassets@ac.ocgov.com](mailto:capitalassets@ac.ocgov.com).