

TRANSMITTAL

To:

THE COUNCIL

Date:

JAN 13 2009

From:

THE MAYOR

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.



for

ANTONIO R. VILLARAIGOSA

Mayor

PUBLIC SAFETY
JAN 14 2009



LEROY D. BACA, SHERIFF

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



November 6, 2008

Los Angeles Regional Crime Laboratory Facility Authority
4700 Ramona Blvd., 4th Floor
Monterey Park, CA 91754-2169

Dear Members of the Authority

**APPROVAL OF AN AMENDED OPERATING BUDGET
FOR FISCAL YEAR 2008 – 2009 FOR THE LOS ANGELES REGIONAL
CRIME LABORATORY FACILITY AUTHORITY AND AMENDED SUBLEASES
BETWEEN THE LOS ANGELES REGIONAL CRIME LABORATORY FACILITY
AUTHORITY, THE COUNTY OF LOS ANGELES, THE CITY OF LOS ANGELES, AND
THE CALIFORNIA STATE UNIVERSITY, LOS ANGELES**

THE RECOMMENDED ACTION:

1. Approve an amended operating budget for Fiscal Year 2008 – 2009 and authorize the Chair to sign correspondence of transmittal to the California State Office of Emergency Services (OES) and the California State Public Works Board (SPWB) reflecting said amendment.
2. Approve and authorize the Chair to sign the Second Amendment to Joint Crime Laboratory Facility Sublease Agreements (Second Amendment) By and Between the Los Angeles Regional Crime Laboratory Facility Authority (Authority) and the County of Los Angeles (County), the City of Los Angeles (City), and California State University Board of Trustees (CSU).
3. Direct the Chair to transmit executed originals of the Second Amendment to the County of Los Angeles Board of Supervisors, the Los Angeles City Council and California State University, Los Angeles (CSULA), for consideration and approval.

A Tradition of Service

PURPOSE OF THE RECOMMENDED ACTION

Adopting the recommended action will amend the Authority's 2008-09 operating budget to reflect cost savings by having the Authority directly contract for housekeeping and landscaping services, adjust the "Proportionate Share" of the operating budget per the specifications listed in attachment B, and amend the subleases between the County, City, and CSU to reflect the proposed changes.

JUSTIFICATION

At the regularly scheduled meeting on June 6, 2008, your Board received a letter (Attachment A) from George A. Pardon, Vice President for Administration and Chief Financial Officer for CSULA and CSULA's appointee to your Board. The letter contained a proposal to alter the method of determining the "Proportionate Share" of the Authority's operating expenses. Your board discussed CSULA's proposal at the June 6, 2008 meeting and at the following meeting on September 12, 2008, and in lieu of action on the proposal, your Board directed staff to formulate a list of "Options" for an alternate method of determining "Proportionate Share" of the Facility operating costs. Those options are provided in attachment B.

CSULA is contractually obligated to pay its "Proportionate Share" of Facility operating costs pursuant to its sublease with the Authority. While section 6 provides for a review and consideration of an alternative allocation, it does not require that the Authority or other sublessees agree to an alternative allocation.

Staff recommends that your Board adopt the options listed in attachment B, as they represent a reasonable compromise to CSULA's request for an alternative allocation.

BACKGROUND

The State of California constructed the Facility on land leased from the Trustees of the California State University, and in turn subleased the land and Facility to the Authority. The Authority has subleased portions of the Facility to its intended occupants—the County, on behalf of the Sheriff, the City, on behalf of Los Angeles Police Department and CSU, on behalf of CSULA. None of the sublessees pay rent to the Authority, but each is required, pursuant to section 6 of its respective sublease, to pay the costs and expenses associated with the operation and maintenance of the Facility, including Facility Operating Costs, Pass-Through Costs, and the Annual Contribution to the Extraordinary Repair Fund ("shared operating costs"). Each sublessee is obligated to pay its Proportionate Share of shared operating costs. "Proportionate Share" is defined as the number of useable square feet subleased by the respective party, not including common areas, divided by the number of useable square feet of the Facility. Section 6 provides that the parties shall review actual operating costs after the first year of occupancy of the

Facility, and may agree to an alternative allocation of operating costs and definition of Proportionate Share, which allocation and definition may be modified thereafter from time to time as agreed to by the parties.

The subleases between the parties to this transaction, which were entered into on April 24, 2003, were negotiated at length, in great detail. Each component of the shared operating costs are defined in the sublease. Facility Operating Costs are defined and set forth in Exhibit D to the sublease. Pass-Through Costs are defined and set forth in Exhibit E to the sublease. The initial Annual Contribution to the Extraordinary Repair Fund is set forth in section 6(c) of the sublease. The sublease states that the initial Annual Contribution to the Extraordinary Repair Fund agreed to by the parties is \$200,000, with the maximum fund amount to be capped at \$5,000,000. The cost of demolition was projected to be \$2,000,000. These amounts are to be reviewed every five years.

On July 12, 2007, the Authority approved the first year's operating budget for the Facility and agreed to the purchase of a policy of commercial general liability insurance for the Facility as a part of the Facility operating costs to be shared by the parties.

On December 13, 2007, in order to bring the subleases into conformity with changed insurance requirements in the State sublease of the Facility to the Authority, each of the parties entered into the first amendment to the sublease agreements.

CSULA'S REQUEST FOR ALTERNATIVE ALLOCATION

Pursuant to section 6 of its sublease, CSULA has requested an alternative allocation methodology for facility operating costs. CSULA contends that the CSU system has allocated to CSULA a fixed per square foot maintenance and operation rate based on the useable square feet assigned to CSULA in the Facility. CSULA asserts that this rate is a system-wide rate for academic facilities. CSULA contends that it will not receive from the CSU system more than the allocated amount in future years as there is no built-in escalator or rate increases over time once the rate has been allocated to a facility. CSULA has proposed that instead of paying its Proportionate Share pursuant to the sublease, which is fourteen percent (14%), it will pay the Authority at the CSU system-wide rate for academic facilities for that year. Thus, the rate CSULA is willing to pay may increase over time if the CSU rate increases, even though CSULA's budget allocation for the Facility is fixed. CSULA maintains that its Proportionate Share of operating costs, which in fiscal year 2007-08 was \$297,783 far exceeds the \$147,000 it has been allocated by CSU and that its Proportionate Share obligation would significantly impact its ability to provide academic programming in the space. CSULA also contends that certain operating costs for this Facility are not operating costs that CSULA would normally incur; these include the Extraordinary Repair Fund, insurance costs, and the cost of the Facility Manager.

FINANCING

Operating expenses for the Facility will be funded by the sublessees in accordance with the terms of the subleases.

CONTRACTING PROCESS

Not applicable.

NEGATIVE DECLARATION/ENVIRONMENTAL IMPACT REPORT

Not applicable.

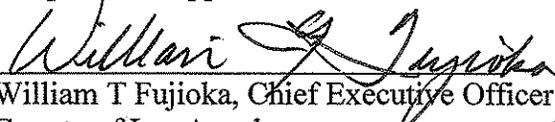
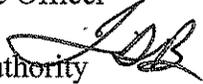
CONCLUSION

Please return one approved copy of this letter to the Los Angeles County Sheriff's Department.

Respectfully Submitted,


Jack Schweizer, Manager I
Project Coordinator

Adopted and Approved


William T Fujioka, Chief Executive Officer
County of Los Angeles
Chairperson of the Joint Powers Authority 

Date: 11/6/08

SECOND AMENDMENT TO JOINT CRIME LABORATORY FACILITY SUBLEASE AGREEMENT BY AND BETWEEN THE LOS ANGELES REGIONAL CRIME LABORATORY FACILITY AUTHORITY AND THE CITY OF LOS ANGELES

This Second Amendment to Joint Crime Laboratory Facility Sublease Agreement ("Second Amendment"), dated _____, is made and entered into by and between the Los Angeles Regional Crime Laboratory Facility Authority (the "Authority"), as sublessor, and the City of Los Angeles, a charter city ("City" or "Sublessee"), as sublessee.

WITNESSETH:

WHEREAS, on May 27, 2003, the Authority and City entered into that certain Joint Crime Laboratory Facility Sublease Agreement (the "Sublease") to permit the Los Angeles Police Department ("LAPD") to jointly occupy, along with the Los Angeles County Sheriff's Department ("LASD") and California State University (the "University"), the regional crime laboratory at the Hertzberg-Davis Forensic Science Center, located on the Los Angeles campus of the California State University ("Project"); and

WHEREAS, section 6 of the Sublease provides that "[t]he parties shall review Facility Operating Costs after the first year of occupancy of the Facility, and based thereon, may agree to an alternative allocation of Facility Operating Costs and definition of "Proportionate Share", which allocation and definition may be modified thereafter from time to time as agreed to by the parties;" and

WHEREAS, the University has requested an alternative allocation of Facility Operating Costs and the parties have reviewed the Facility Operating Costs and agreed to an alternative allocation of said costs; and

WHEREAS, the parties hereto desire to amend the Sublease to reflect their agreement to an alternative allocation of Facility Operating Costs.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. **Section 6. Payment of Facility Operating Costs, Pass-Through Costs , and Contributions to the Extraordinary Repair Fund.**

The first paragraph of the above-referenced section is hereby amended by deleting the second sentence of the first paragraph and replacing it with the following:

Unless expressly excluded or modified in the sublease agreements with the Authority, each subtenant shall be responsible for and pay its "Proportionate Share" for all such costs and expenses, whether categorized as "Facility Operating Costs," "Extraordinary Repair" costs or "Pass-Through Costs," as defined herein and in Section 5(b), above.

2. **Section 6. Payment of Facility Operating Costs, Pass-Through Costs , and Contributions to the Extraordinary Repair Fund.**

Subsection (a) Facility Operating Costs, of the above-referenced section is hereby amended by deleting the third sentence of subsection (a) and replacing it with the following:

Sublessee shall pay its "Proportionate Share" of the Facility Operating Costs associated with the maintenance and operation of the Facility, unless an alternative allocation is expressly set forth in Exhibit D hereto.

3. **EXHIBIT D. FACILITY OPERATING COSTS**

Exhibit D is hereby deleted in its entirety and replaced with the attached "Exhibit D", which is incorporated herein by this reference.

4. Except as herein specifically amended, all terms, conditions and provisions of the Sublease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Sublease as amended hereby.

IN WITNESS WHEREOF, this Second Amendment has been executed by the parties hereto as of the date first set forth above.

LOS ANGELES REGIONAL CRIME
LABORATORY FACILITY AUTHORITY

By  _____

CITY OF LOS ANGELES

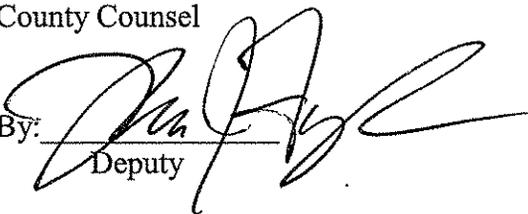
By _____
Mayor

ATTEST:

CITY CLERK

By _____
Deputy

APPROVED AS TO FORM,
RAYMOND G. FORTNER, JR.
County Counsel

By:  _____
Deputy

APPROVED AS TO FORM,
ROCKARD J. DELGADILLO,
CITY ATTORNEY

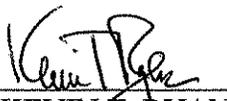
By:  _____
KEVIN T. RYAN
Deputy City Attorney

EXHIBIT D

FACILITY OPERATING COSTS

(a) Facility Operating Costs. Sublessee shall pay its "Proportionate Share" (as hereinafter defined) of the "Facility Operating Costs" (as hereinafter defined) paid or incurred by Authority, except as set forth below. In the event this Sublease shall terminate on any date other than the last day of a fiscal year, the additional sum payable hereunder by Sublessee during the fiscal year in which this Sublease terminates shall be prorated on the basis of the relationship which the number of days which have elapsed from the commencement of said fiscal year to and including said date on which this Sublease terminates bears to three hundred sixty-five (365).

(b) "Proportionate Share" shall mean the number of useable square feet of the Subleased Premises or any other portion of the Facility leased or subleased by Sublessee (not including Common Areas), divided by the number of useable square feet of the Facility (not including Common Areas), or any other allocation agreed to by the parties.

(c) "Facility Operating Costs" shall include, but not be limited to the following:

1. Real property taxes and assessments which accrue and are payable during the lease term and which are allocable to the Facility or its operations;
2. HVAC and other utility repair and maintenance costs for the Facility;
3. The cost of ordinary, normal repairs and general maintenance and cleaning of the Facility, including improved vehicular parking areas on the Site, except as provided in subsection 12, below;
4. The cost of ordinary, normal repairs and general maintenance and cleaning of the improved vehicular parking areas on the Site;

5. The cost of insurance, if any, procured by the Authority with the agreement of Sublessee for the purpose of insuring Sublease and/or the Subleased Premises;

6. Rental cost on all tools, machinery and equipment used in connection with the Facility and materials and supplies used in maintenance and repair of the Facility, except as provided in subsection 12, below; and

7. Wages, salaries, insurance, workers compensation and other labor costs paid to employees and independent contractors actually and reasonably engaged by Authority to maintain and operate the Facility, but solely to the extent such costs are reasonably expended and are allocable for the normal operation of the Facility and, to the extent Authority ~~or its~~ employees performs such services or expends such costs, are not in excess of the current market rates for such services, except as provided in subsection 12, below;

8. Costs relating to repairs, alterations, improvements, and equipment which must be capitalized under generally accepted accounting principles, including, without limitation, capital expenditures and improvements hereafter made or required by law to be made to the Facility or which are hereafter required to make the Facility comply with applicable laws, regulations or ordinances, including, but not limited to the Americans With Disabilities Act (except to the extent that such costs reduce Facility Operating Costs, in which case the amortization of such costs over their useful life may be included as an Operating Cost in an amount not to exceed any actual reduction in Facility Operating Costs realized by such costs), except as provided in subsection 12, below;

9. Expenses incurred by Authority in order to correct any existing (as of the Effective Date) violations of any law, ordinances, requirements, orders, directives, rules and regulations of federal, state, county and city governments and of all other governmental

authorities having or claiming jurisdiction over the Facility, including, without limitation, the Americans with Disabilities Act and any of said laws, rules and regulations relating to environmental, health or safety matters;

10. Sublessee shall pay forty-six and one half percent (46.5%) of all utility costs, including but not limited to electricity, water, and natural gas, and for any above-standard service, as provided for in subsection 11, below;

11. All costs and expenses of providing any above-standard service to any tenant or occupant of, or to any leasable area in, the Facility, e.g., overtime HVAC, supplemental chilled or condensed water, extra cleaning or overtime elevator service in excess of that required under this Sublease to be provided to tenant or occupant free of separate or additional charge; ~~and~~

12. Sublessee shall pay fifty percent (50%) of all costs related to waste removal, Facility personnel, elevator maintenance, the telecommunications and data communications systems, data systems maintenance, copy machine supplies and operations, and any other operating costs incurred by the Authority related to the laboratory facilities occupied by Sublessee or jointly shared with the LASD; and

13. The Annual Contribution to the Extraordinary Repair Fund as provided for in Section 6(b) of the Sublease.

(d) Estimate of Facility Operating Costs. On or before the date of commencement of this Sublease and on or before July 1 of each year thereafter, the Authority shall reasonably estimate the Facility Operating Costs for the following year and Sublessee's share of such costs in accordance with this Exhibit D. Commencing on the date of commencement of this Sublease, and on each July 1 thereafter, Sublessee shall pay to Authority said estimate of its share of Facility Operating Costs, ~~multiplied by Sublessee's Proportionate Share.~~

(e) Reconciliation of Facility Operating Costs. Within ninety (90) days after the expiration of each fiscal year, Authority shall furnish Sublessee with a statement of the actual Facility Operating Costs for the Facility. In the event the sum of the payment made by the Sublessee during the preceding fiscal year hereunder exceeds the amount which the Sublessee would have been obligated to pay if the actual Facility Operating Costs for such year were used in lieu of Authority's estimate thereof in calculating Sublessee's payments hereunder, the difference shall be credited by Authority to Sublessee's account against the next payments owed by Sublessee hereunder or, if the Sublease has terminated, the difference shall be paid to Sublessee within thirty (30) days of determination. In the event the payment made by Sublessee during the preceding fiscal year hereunder is less than the amount which Sublessee would have been obligated to pay if the actual Facility Operating Costs for such year were used in lieu of Authority's estimate thereof, in calculating Sublessee's payment hereunder, Sublessee shall pay the amount of such difference to Authority within sixty (60) days after receipt of a demand by Authority accompanied by a statement of the actual Facility Operating Costs for such year. If Authority does not submit such reconciliation statement on or prior to one hundred twenty (120) days following the expiration of each fiscal year, it shall waive the right to collect any deficiency in payments made by Sublessee for such year.

(f) Audit. Sublessee shall be entitled from time to time to audit and verify the costs, expenses, operations, etc., relating to the Facility and/or the related books and records of Authority to ensure that the Facility Operating Costs reported by Authority are in keeping with the provisions of this Sublease. In the event of any dispute or error relating to the Facility Operating Costs, Sublessee may withhold any disputed payment on its part until resolution of such dispute, provided, however, that no payment on the part of Sublessee shall prejudice any or

all of its rights under this Sublease. In the event of any errors, the appropriate party shall make a correcting payment in full to the other party within thirty (30) days after the determination and communication of the amount of such error.