

L-246  
Boyd/DBH5630

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter LEASE) is made and entered into this 15 day of August, 2006, by and between KENCO INVESTMENTS, INC. and JOSEPH HAIG BOYD LIVING TRUST dba The Boyd Professional Center, 275 S. Madera, Suite 100, Kerman, CA 93630 (hereinafter LESSOR), and the COUNTY OF FRESNO, a Political Subdivision of the State of California, 2220 Tulare Street, 16<sup>th</sup> Floor, Fresno, CA 93721-2120 (hereinafter LESSEE).

1. LEASED PREMISES - LESSOR hereby leases to LESSEE suite 301 (800.20 square feet), suite 400 (1,149.77 square feet), and suite 403 (1,105.55 square feet), a total of 3,055.52 square feet, at the location commonly known as 275 S. Madera Avenue, Kerman, CA 93630, together with common area parking and hereinafter referred to as the "Premises".

2. TERM - The initial term of this LEASE shall be for three (3) years commencing on July 1, 2006, through June 30, 2009. Thereafter, the lease shall be renewable for additional periods of one year, such renewals to take place automatically unless one of the parties provides the other with written notice to the contrary Ninety (90) days prior to the expiration of the then current Lease term. In no event shall the term of this LEASE extend beyond June 30, 2017.

3. RENT - LESSEE agrees to pay LESSOR rent for the Premises effective July 1, 2006, in advance on or about the first of each month, in the amount of Three Thousand Eight Hundred Nineteen and 40/100 Dollars (\$3,819.40) per month (3,055.52 square feet at \$1.25 per square foot).

4. RENT INCREASE - LESSOR may propose an increase in the monthly rent only for changes in taxes, maintenance, or insurance costs after completion of the initial term. LESSOR shall give written notice of the proposed rent increase prior to January first (1<sup>st</sup>) preceding the effective date of July 1. If LESSEE rejects proposed rent adjustment, the Parties will negotiate the rent increase. LESSEE shall have thirty (30) days to provide written notice to accept or reject the proposed rent increase.

5. UTILITIES - LESSOR shall pay those metered costs associated with LESSEE'S

1 (B) cure LESSOR'S breach and deduct the cost of such cure, together with  
2 reasonable administrative costs, from LESSEE'S future rent obligation. LESSEE'S  
3 decision to cure LESSOR'S breach shall not constitute a waiver of any rights or  
4 remedies that LESSEE may have arising from this LEASE or by operation of law.

5 9. DESTRUCTION OR DAMAGE FROM CASUALTY - If the Premises are damaged  
6 or destroyed as a result of fire, earthquake, act of God, or any other identifiable event of a  
7 sudden, unexpected, or unusual nature (hereinafter Casualty), then LESSOR shall either  
8 promptly and diligently repair the damage at its own cost, or terminate the LEASE as hereinafter  
9 provided.

10 (A) LESSOR'S Election to Repair: If LESSOR elects to repair the Casualty damage  
11 to the Premises, then it shall within fifteen (15) days after the date of Casualty  
12 provide written notice (hereinafter "Notice of Repair") to LESSEE indicating the  
13 anticipated time required to repair. LESSOR shall bear the cost of all repairs to  
14 the Premises, including the cost to repair any alterations or fixtures installed or  
15 attached thereto by LESSEE. Such repairs shall restore the Premises to  
16 substantially the same condition as that existing at the commencement of this  
17 LEASE; such repairs shall also be made in compliance with all applicable state  
18 and local building codes. LESSOR shall not be liable to LESSEE for  
19 compensation for any loss of business, or any inconvenience or annoyance  
20 arising from repair of the Premises as a result of the Casualty except for rent  
21 reduction as hereinafter provided. LESSEE shall be responsible at its sole cost  
22 and expense for the replacement of its personal property.

23 (B) LESSOR'S Election to Terminate Due to Casualty: LESSOR may only elect  
24 to terminate the LEASE due to Casualty if: the Premises have been destroyed or  
25 substantially destroyed by said Casualty; and the estimated time to repair the  
26 Premises exceeds sixty (60) days from the date of the Casualty. LESSOR shall  
27 provide LESSEE with written notice of its election to terminate within fifteen (15)  
28 days after the date of Casualty.

1 (C) Rent Reduction Due to Casualty: In the event of Casualty, LESSEE'S  
2 obligation to pay rent shall be reduced beginning on the date of the Casualty.  
3 Such reduction shall be proportional to the damage caused to the Premises by  
4 the Casualty as determined by LESSEE. If LESSOR elects to repair the Premises  
5 pursuant to the terms of this LEASE, then the rent reduction shall continue until  
6 the date of substantial completion of repair.

7 (D) LESSEE'S Election to Terminate Due to Casualty: If LESSEE does not receive a  
8 Notice of Repair from LESSOR within fifteen (15) days after a Casualty, or if the  
9 anticipated period of repair contained in the Notice of Repair exceeds sixty (60)  
10 days, then LESSEE may elect to terminate this LEASE as hereinafter provided. In  
11 such case, LESSEE shall have the right to demand that LESSOR refund any  
12 monies which, in the judgment of LESSEE, were paid to LESSOR pursuant to the  
13 LEASE but which were not earned by LESSOR by consequence of the Casualty.  
14 Upon receipt of such demand, LESSOR shall promptly refund all such monies.

15 10. TERMINATION - This LEASE may be terminated as follows:

- 16 (A) If, pursuant to the terms provided herein, either LESSOR or LESSEE has an  
17 election to terminate the LEASE and so elects;  
18 (B) If LESSEE determines LESSOR has breached any obligation stated in the  
19 LEASE;  
20 (C) If LESSOR determines LESSEE has breached any obligations stated in the  
21 LEASE.

22 In the event either LESSOR or LESSEE chooses to terminate the LEASE, then notice  
23 of such termination shall specify a date of termination not less than ninety (90) days from the  
24 date of said notice, after which this LEASE shall convert to a month-to-month tenancy with all  
25 of its remaining provisions in full force and effect.

26 In the case of LESSEE, the County Administrative Officer or the Director of General  
27 Services or their designee shall have the power to provide such notice and terminate the  
28 LEASE.

1           11. HOLD HARMLESS - LESSOR agrees to indemnify, save, hold harmless, and at  
2           LESSEE'S request, defend the LESSEE, its officers, agents, and employees from any and all  
3           costs and expenses, damages, liabilities, claims, and losses occurring or resulting to LESSEE  
4           in connection with the performance, or failure to perform, by LESSOR, its officers, agents, or  
5           employees under this LEASE, and from any and all costs and expenses, damages, liabilities,  
6           claims, and losses occurring or resulting to any person, firm, or corporation who may be injured  
7           or damaged by the performance, or failure to perform of LESSOR, its officers, agents, or  
8           employees under the LEASE. This LEASE is made upon the expressed condition that the  
9           LESSEE is to be free of all liability, damages or injury arising from structural failures of the  
10          Leased Premises, including, but not limited to external walls, glass, doors, roof and  
11          floor. The parties acknowledge that as between LESSOR and LESSEE, each is responsible  
12          for the negligence of its own employees and invitees.

13                 LESSEE will indemnify LESSOR and save it harmless from and against any and all  
14                 claims, actions, damages, liability and expense in connection with loss of life, personal injury  
15                 and/or damage to property arising from or out of any occurrence in, upon or at the Premises, or  
16                 the occupancy or use by LESSEE of the Premises, or any part thereof, or occasioned wholly or  
17                 in part by any act or omission of LESSEE, its agents, contractors, employees, servants,  
18                 lessees or concessionaries. In case LESSOR shall, without fault on its part, be made a party  
19                 to any litigation commenced by or against LESSEE, then LESSEE shall protect and Hold  
20                 LESSOR harmless and shall pay all costs, expenses and reasonable attorney's fees incurred  
21                 or paid by LESSOR in connection with such litigation. LESSEE shall pay all costs, expenses  
22                 and reasonable attorney's fees that may be incurred or paid by LESSOR in enforcing the  
23                 covenants and agreements in the LEASE.

24           12. INSURANCE - LESSOR shall, at its sole expense, maintain in full force and effect  
25           during the term of this LEASE the following policies of insurance:

- 26                 (A) Commercial General liability insurance with limits of not less than One Million  
27                 Dollars (\$1,000,000) per occurrence and an annual aggregate limit of not less than  
28                 Two Million Dollars (\$2,000,000). This policy shall be issued on an occurrence

basis; and

(B) Fire insurance and extended coverage. LESSOR shall add LESSEE as an additional loss-payee thereon.

LESSOR shall provide LESSEE a Certificate of Insurance describing the coverages described above within thirty (30) days from the date LESSOR executes this LEASE, by mailing or otherwise delivering the Certificate of Insurance to the County of Fresno, General Services, ATTN: Lease services, 2220 Tulare Street, 16<sup>th</sup> Floor, Fresno, CA 93721-2120.

LESSEE shall maintain during the term of this LEASE the following policies of insurance, which coverages may be provided in whole or in part through one or more programs of self-insurance:

(A) Commercial General liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of not less than Two Million Dollars (\$2,000,000). This policy shall be issued on an occurrence basis.

(B) All-Risk property insurance covering the personal property of LESSEE.

13. NON-FUNDING TERMINATION - This LEASE is contingent on the allocation of funds by a governmental agency. Should funds not be allocated, this LEASE may be terminated by the Board of Supervisors or the County Administrative Officer or his/her designee at any time by giving at least thirty (30) days prior written notice to LESSOR.

14. SURRENDER OF POSSESSION - Upon the expiration or termination of this LEASE, LESSEE will surrender Premises to LESSOR in such condition as existing at the commencement of this LEASE less reasonable wear and tear, less the effects of any Casualty as herein defined, and less the effects of any breach of LESSOR'S covenant to maintain. LESSEE will not be responsible for any damage which LESSEE was not obligated hereunder to repair.

15. FIXTURES - LESSOR agrees that any equipment, fixtures or apparatus installed in or on the Premises by LESSEE shall continue to be the property of LESSEE and may be removed by LESSEE at any time. LESSEE shall repair any damage caused by the removal of fixtures. Any fixtures not removed when LESSEE surrenders possession shall become the

1 property of LESSOR.

2 16. RIGHT OF ENTRY - LESSOR, or its representative(s), upon giving 24 hours  
3 written notice, shall have the right to enter the Premises at any time during business hours, or  
4 at such other time as LESSEE deems appropriate, to make any alterations, repairs or  
5 improvements to the Premises. The normal business of LESSEE or its invitees shall not be  
6 unnecessarily inconvenienced.

7 17. AMENDMENT - This LEASE may be amended in writing by the mutual consent of  
8 the parties without in any way affecting the remainder.

9 18. NON-ASSIGNMENT - Neither party shall assign, transfer or sub-contract this  
10 LEASE, or the rights or duties under this LEASE, without the prior written consent of the other  
11 party.

12 19. GOVERNING LAW - Venue for any action arising out of or relating to this  
13 LEASE shall be in Fresno County, California. This LEASE shall be governed by the laws of the  
14 State of California.

15 20. SIGNAGE - LESSOR shall designate the style and color of signage to be used by  
16 the LESSEE, and the signage shall only be installed on the glass entry door. Signage is not  
17 permitted on the suite window(s). Signage will be at the LESSEES sole expense. If LESSEE  
18 elects to have signage on the outside of the building, it shall be constructed in a manner  
19 approved by the LESSOR.

20 21. NOTICES - All notices, demands, requests, exercises, and other communications  
21 under this Option Agreement by either party shall be in writing and:

22 (a) sent by United States Certified Mail, return receipt requested, in which case  
23 notice shall be deemed delivered three (3) business days after deposit, postage  
24 prepaid in the Under States mail, or

25 (b) sent by a nationally recognized overnight courier, in which case notice shall  
26 be deemed delivered one (1) business day after deposit with that courier, as follows:

27 ///

28 ///

LESSEE:

County of Fresno  
John A. Navarrette  
Director of General Services  
2220 Tulare Street, 16<sup>th</sup> Floor  
Fresno, CA 93721-2120

LESSOR:

Kenco Investments, Inc., dba  
The Boyd Professional Center  
275 S. Madera Avenue, Suite 100  
Kerman, CA 93730

or to such person or at such other place as either Party may from time to time designate by written notice to the other Party.

Notice given in the foregoing manner shall be deemed sufficiently given for all purposes hereunder on the date such notice was (i) personally delivered, deposited and postmarked with the United States Postal Service, (ii) sent by a nationally recognized overnight courier service, or (iii) sent by telephonic facsimile transmission, provided however, such transmission shall be completed before 5:00 PM on the day of transmission and such Party shall otherwise comply with this Section concerning the giving of notice in such manner, provided further that, in any event notices of changes of address or termination of this Agreement shall not be effective until actual receipt.

Notices given hereunder shall not be amendments or modifications to this Agreement.

22. AUTHORITY TO EXECUTE LEASE - Each party represents to the other party(ies) that it has obtained all necessary approvals, consents and authorizations to enter into this LEASE and to perform its duties under this LEASE; the person executing this LEASE on its behalf has the authority to do so; and, upon execution of the LEASE by the parties, it is a valid and binding lease agreement.

23. ENTIRE LEASE - This LEASE constitutes the entire LEASE between the LESSOR and LESSEE with respect to the subject matter hereof and supersedes all prior leases, negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly referenced in this LEASE.

This LEASE shall be binding on and inure to the benefit of LESSOR'S heirs,

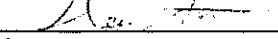
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1 successors and assigns.

2 EXECUTED as of the date first herein written.

3  
4 APPROVED AS TO LEGAL FORM:  
5 DENNIS A. MARSHALL, COUNTY COUNSEL

6 By   
7 Deputy

8 APPROVED AS TO ACCOUNTING FORM:  
9 VICKI CROW, C.P.A.  
10 AUDITOR-CONTROLLER/TREASURER-  
11 TAX COLLECTOR

12 By 

13 RECOMMENDED FOR APPROVAL:

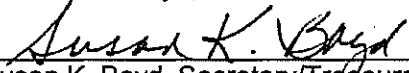
14 By   
15 Giang Nguyen, Director of  
16 Department of Behavioral Health

17 RECOMMENDED FOR APPROVAL:

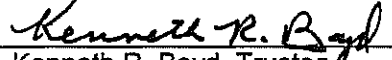
18 By   
19 John A. Navarrette, Director  
20 of General Services

LESSOR:  
KENCO INVESTMENTS, INC., dba The  
Boyd Professional Center

By   
Kenneth R. Boyd, President

By   
Susan K. Boyd, Secretary/Treasurer

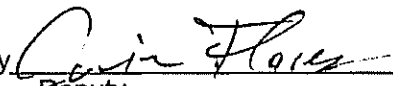
JOSEPH HAIG BOYD LIVING TRUST

By   
Kenneth R. Boyd, Trustee

LESSEE:  
COUNTY OF FRESNO

By   
Phil Larson, Chairman  
Board of Supervisors

ATTEST: BERNICE E. SIEDEL, CLERK  
BOARD OF SUPERVISORS

By   
Deputy

21 Org No. 56302005-001  
22 Acct. No. 7340

23 Lessor Tax ID # 94-2538544

24 L-246PropertyBoyd/DBH5630





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## Agenda Item

DATE: August 15, 2006

TO: Board of Supervisors

FROM: Giang Nguyen, Director, Department of Behavioral Health  
John A. Navarrette, Director of General Services

SUBJECT: Retroactive Lease Agreement  
275 S. Madera, Suites 301, 400, 403  
Kerman, CA

RECEIVED

AUG 22 2006

BEHAVIORAL HEALTH CONTRACTS

### RECOMMENDED ACTIONS:

Approve and authorize the Chairman to execute a retroactive three-year Lease Agreement with Kenco Investments, Inc. and Joseph Haig Boyd Living Trust, dba The Boyd Professional Center, effective July 1, 2006 through June 30, 2009, with automatic annual renewals thereafter not to exceed June 30, 2017, for office space to be used by the Department of Behavioral Health at 275 S. Madera Avenue, Kerman, CA, Suites 301, 400, and 403 (\$137,498).

The recommended action will permit the Department Behavioral Health continued use of approximately 3,055 square feet of office space in Suites 301, 400, and 403 for the provision of mental health services in Kerman, CA., with no net County cost.

### FISCAL IMPACT:

There is no increase in net County cost associated with the recommended action. The annual rent for FY 2006-07 will increase from \$39,799.68 to \$45,832.80, an increase of \$6,033.12. Sufficient appropriations are included in the adopted FY 2006-07 Behavioral Health's Organization 56302323, and will be financed with Mental Health Realignment, Medi-Cal and CalWORKS Mental Health allocation funds.

ADMINISTRATIVE OFFICE REVIEW

BOARD ACTION: DATE August 15, 2006

APPROVED AS RECOMMENDED ☒

Page 1 of 2

OTHER

Official Action of  
Board of Supervisors  
DeputyUNANIMOUS ☒ ANDERSON \_\_\_\_\_ CASE \_\_\_\_\_ LARSON \_\_\_\_\_ PEREA \_\_\_\_\_ WATERSTON \_\_\_\_\_

REGIONAL JOBS INITIATIVE IMPACT:

The recommended action has no impact to the goals the Regional Jobs Initiative.

DISCUSSION:

The Department of Behavioral Health provides individual and group therapy, medication services, rehabilitation and case management services and an Employment Services Program at this site.

The initial term of the recommended Lease Agreement is for three years, and after the initial term, the lease will automatically renew annually each July 1, unless it is terminated by either party giving written notice ninety (90) days prior to the expiration of the then current term. The automatic renewal cannot extend beyond June 30, 2017. This is a full service lease with the janitorial and utilities included in the rent. The annual rent for FY 2006-07 will increase from \$39,799.68 to \$45,832.80, an increase of \$6,033.12. There are no annual increases; however, the recommended Lease does include a provision for a rent increase for changes in taxes, maintenance or insurance costs after the completion of the initial term of the recommended Lease. If increases are required, an amendment will be returned to your Board for approval. The recommended Lease contains a mutual hold harmless clause, as the property owner would not approve the Lease without the mutual hold harmless clause. Risk Management approved the clause.

The recommended Lease was reviewed and approved by the Facilities Planning Committee on May 19, 2006. This is a retroactive lease because of extended negotiations with the property owner.