



Contract Number

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	Morongo Basin ARCH, Inc.
Contractor Representative	Astrid Johnson, President
Telephone Number	(760) 861-6433
Contract Term	3/1/20 – 2/28/25
Original Contract Amount	\$5.00
Amendment Amount	
Total Contract Amount	\$5.00
Cost Center	6100352454-52002419
GRC/PROJ/JOB No.	79004013
Internal Order No.	

Briefly describe the general nature of the contract:

The initial term of the lease shall be for five (5) years commencing March 1, 2020 and ending February 28, 2025. The Premises is approximately 2,760 square feet of space, which comprises the entirety of the building, at the San Bernardino County Fire Protection District's Fire Station No. 35 located at 6562 Sierra Avenue in Joshua Tree. The rental rate is \$1.00 annually.

FOR COUNTY USE ONLY

Approved as to Legal Form ► _____ Agnes Cheng, Deputy County Counsel Date _____	Reviewed for Contract Compliance ► _____ Date _____	Reviewed/Approved by Department ► _____ Jim Miller, Real Property Manager, RESD Date _____
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SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

LEASE AGREEMENT

TENANT: Morongo Basin ARCH, Inc.
74617 Morning Drive
29 Palms, CA 92271

DISTRICT: SAN BERNARDINO COUNTY
FIRE PROTECTION DISTRICT
157 W. Fifth Street, 2nd Floor
San Bernardino, CA 92415-0540

PREMISES: Approximately 2,760 square feet of space comprising the entirety of building at the District's Fire Station No. 35 located at 6562 Sierra Ave in Joshua Tree

TERM OF LEASE: Five (5) years, commencing March 1, 2020

OPTIONS: None

COMMENCEMENT: March 1, 2020

REVENUE PER YEAR: \$1.00

DISTRICT CONTRACT NUMBER:

DOCUMENT REVISION DATE: 3/1/2011

DATE TYPED: January 2, 2020

LEASE AGREEMENT

1. **PARTIES:** This lease is made by and between the San Bernardino County Fire Protection District ("DISTRICT"), as landlord, and Morongo Basin ARCH, Inc., a California non-profit corporation, ("TENANT"), as tenant. The parties hereby agree to the terms and conditions set forth in this Lease.

2. **PREMISES LEASED:** DISTRICT leases to TENANT approximately 2,760 total square feet of space, comprising the entirety of the building at the DISTRICT-owned Fire Station 35 located at 6562 Sierra Ave in Joshua Tree ("Premises"), as more particularly described in Exhibit "A", Premises. The Premises, which consists of kitchen space, office space, specialized garage space, and storage space, shall be delivered to the TENANT in its AS-IS condition without any representations or warranties as to its condition or suitability for TENANT's intended use as set forth in Paragraph 7, USE. Along with the Premises, DISTRICT grants to TENANT, the right to use of on-site parking spaces.

3. **TERM:** The term of this lease shall be for five (5) years, commencing on **March 1, 2020** ("Commencement Date") and expiring on **February 28, 2025** unless said term is earlier terminated in accordance with this lease ("Term").

4. **RENT:**

A. TENANT shall pay to DISTRICT rent in the amount of One and 00/100 Dollars (\$1.00) per year during the Term, which shall be paid in advance on the Commencement Date and one each anniversary of the Commencement Date.

B. All rent and other amounts due under this lease shall be delivered to

San Bernardino County Fire Protection District
157 West Fifth Street, 2nd Floor
San Bernardino, CA 92415-0450

C. If any rents or other amounts under this lease are not paid when due and payable, TENANT shall pay to DISTRICT an additional Twenty Five and 00/100 Dollars (\$25.00) for each overdue rent or other amounts as an administrative processing charge. The parties agree that this administrative charge represents a fair and reasonable estimate of the costs that DISTRICT will incur by reason of late payment by TENANT. Acceptance of any administrative charge shall not constitute a waiver of TENANT's default with respect to the overdue rent or other amounts or prevent DISTRICT from exercising any of the other rights and remedies available to DISTRICT. Rent or other amounts not paid when due shall bear simple interest from the date due at the rate of one and one-half percent (1.5%) per month.

5. **RETURN OF PREMISES:** The TENANT 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.

6. **TAXES:** TENANT shall pay before delinquency any and all property taxes, assessments, fees, or charges, including possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to TENANT and located within the Premises. TENANT shall also pay all license or permit fees necessary or required by law for the conduct of its operation. TENANT recognizes and understands that this lease may create a possessory interest subject to property taxation and that the TENANT may be subject to the payment of property taxes levied on such interest.

7. **USE:** TENANT shall use the premises for only the following purpose: office use from Monday through Friday from 8:00 am to 5 pm to provide assistance information to transient individuals and storage use for donated personal property, provided that overnight sleeping and living quarters of any kind (whether temporary or otherwise) are strictly prohibited. TENANT shall not have the right to use the premises for any other purpose without first obtaining written approval from DISTRICT

8. **DELIVERY CONDITION OF PREMISES:** TENANT acknowledges and understands that the Premises are provided to TENANT in its "AS IS" condition without any representations or warranties by DISTRICT as to its condition or suitability for TENANT's intended use. Upon use of the Premises by TENANT, the same shall conclusively be deemed to be fit and proper for the purposes for which the same is hereby leased. In the event that TENANT desires to make any improvements or installations to the Premises in accordance with Paragraphs 11 or 12, TENANT shall, at its sole expense, be responsible for the cost of such improvements and installations and for compliance with all laws for such improvement and installation, including but not limited to the American with Disabilities Act ("ADA") and any Health, Safety, or Fire Codes and to make any necessary modifications to the Premises or other portions of the building or property on which the Premises is situated as a result of TENANT's compliance with such laws. Should the continued occupancy of the Premises be in any way prejudiced or prevented due to changes in the ADA or the Health, Safety or Fire Codes, the TENANT herein shall correct, update and comply with said changes at TENANT's sole cost.

9. **SIGNS:** TENANT will display from the windows and/or marquee of the Premises only such sign or signs as are not prohibited by law, and which are approved by DISTRICT.

10. **MAINTENANCE:**

A. TENANT at its sole cost shall maintain in good working order, condition and repair, all portions of the Premises, including but not limited to the following:

(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;

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

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

(4) Air conditioner, heating and ventilating systems servicing the Premises (additionally, air conditioning and heating filters are to be changed quarterly);

(5) The grounds, including all parking areas and outside lighting, grass, trees, shrubbery and other flora, and;

(6) Interior maintenance and janitorial services, pest control.

(7) All vandalism

B. TENANT shall have ten (10) days after notice from DISTRICT to perform its obligation under this paragraph, except that TENANT shall perform its obligations immediately if the nature of the problem presents a material hazard or emergency. Provided, however, if the nature and/or extent of TENANT's obligation is such that more than ten (10) days are reasonably required to complete, then TENANT shall not be in default if TENANT commences its obligation within said ten (10) day period and thereafter diligently prosecutes its obligation to completion. If TENANT does not perform its obligations within the time limitations in this paragraph, DISTRICT after notice to TENANT can perform the obligations and have the right to be reimbursed for the sum it actually and reasonably expends (including charges for DISTRICT employees and equipment) in the performance of TENANT's obligations. Any notice or demand concerning a material hazard or emergency may be made orally, by telephone or otherwise, provided that written confirmation is given within five (5) days after the oral notice or demand is made. Such confirmation shall be made as provided in **Paragraph 18, NOTICES.**

11. **ALTERATIONS:** TENANT shall not make any structural, interior or exterior improvements or alterations to the Premises without DISTRICT's consent. Any such alterations made shall, at DISTRICT's election, remain on and be surrendered with the Premises on expiration or termination of the lease or be removed by TENANT, at TENANT's cost on expiration or earlier termination of the lease.

12. **UTILITIES:** TENANT shall furnish to the Premises and pay all service charges and related taxes for water, trash, sewer and all other utilities. The TENANT shall furnish and pay for its own telephone service and any security services.

13. **INDEMNIFICATION:** The TENANT agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT and the County of San Bernardino ("COUNTY") and its respective authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this lease from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the DISTRICT or COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The TENANT's indemnification obligation applies to the DISTRICT's and the COUNTY's "active" as well as "passive" negligence but does not apply to the DISTRICT's or the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

14. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. The TENANT agrees to provide insurance set forth in accordance with the requirements herein. If the TENANT uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the TENANT agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the lease hereunder. Without in anyway affecting the indemnity herein provided and in addition thereto, the TENANT shall secure and maintain throughout the Term the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability – 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 \$250,000 limits covering all persons including volunteers providing services on behalf of the TENANT and all risks to such persons under this lease. If TENANT has no employees, it may certify or warrant to the DISTRICT 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 DISTRICT's Director of Risk Management. If, TENANT is a non-profit corporation, organized under California or Federal law, volunteers for TENANT are required to be covered by Workers' Compensation insurance.

(2) Commercial/General Liability Insurance – The TENANT shall carry General Liability Insurance covering all operations performed by or on behalf of the TENANT

providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse, and underground hazards
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

(3) Commercial Property Insurance providing all risk coverage for the Premises, building, fixtures, equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

(5) Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

B. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming the DISTRICT and the COUNTY and their respective officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this lease hereunder. The additional insured endorsements shall not limit the scope of coverage for the DISTRICT to vicarious liability but shall allow coverage for the DISTRICT to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.1185.

C. Waiver of Subrogation Rights – The TENANT shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the TENANT and TENANT's employees or agents from waiving the right of subrogation prior to a loss or claim. The TENANT hereby waives all rights of subrogation against the DISTRICT.

D. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the DISTRICT.

E. Severability of Interests – The TENANT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the TENANT and the DISTRICT or between the DISTRICT and any other insured or additional insured under the policy.

F. Proof of Coverage – The TENANT shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RES D) administering the lease evidencing the insurance coverage, including endorsements, as required, prior to 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 RES D, and TENANT shall maintain such insurance from the time TENANT commences use under the lease hereunder until the end of the period of the lease. Prior to commencement of this lease, the TENANT shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G. Acceptability of Insurance Carrier – Unless otherwise approved by the DISTRICT Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “AVII”.

H. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by DISTRICT’s Director of Risk Management.

I. Insurance Review – Insurance requirements are subject to periodic review by the DISTRICT. The DISTRICT’s Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the DISTRICT’s Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT. In addition, the DISTRICT’s Director of Risk Management or designee 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 DISTRICT, inflation, or any other item reasonably related to the DISTRICT’s risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this lease. TENANT agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of RES D or DISTRICT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RES D or the DISTRICT.

J. Failure to Procure Insurance. All insurance required must be maintained in force at all times by TENANT. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the DISTRICT to give notice to immediately suspend all TENANT’s operations on the Premises. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this agreement, and/or DISTRICT, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by DISTRICT shall be repaid by TENANT to DISTRICT upon demand but only for the pro rata period of non-compliance. DISTRICT shall have no liability for any premiums charged for such coverage(s). The inclusion of DISTRICT as additional named insured is not intended to and shall not make a partner or joint venturer with TENANT in TENANT’s operations.

K. The TENANT agrees to require all parties or subcontractors, or others it hires or contracts with related to this lease to provide the same insurance and naming the DISTRICT and the COUNTY as additional insured as set forth in this Paragraph 15. TENANT agrees to monitor

and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

15. **DESTRUCTION OF PREMISES:** If during the Term of this lease any casualty and destruction renders the Premises unusable by TENANT in whole or in part, and such casualty was not caused by TENANT or its employees, agents, contractors, clients, guests, and invitees, then this lease shall terminate as of the date of the casualty. If such casualty or destruction is caused by TENANT or its employees, agents, contractors, clients, guests, and invitees, then TENANT shall, at its sole cost, promptly restore such damage caused by said casualty and destruction to the condition existing immediately prior to said casualty and destruction and to the reasonable satisfaction of DISTRICT.

16. **DISTRICT'S ACCESS TO PREMISES:** DISTRICT 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;
- B. To do any necessary maintenance and to make any restoration to the Premises that DISTRICT has the right to perform.
- C. To serve, post, or keep posted any notices required by law;
- 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.

DISTRICT 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 TENANT.

17. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party (excluding notices required under the California unlawful detainer statutes), or any other person shall be in writing and either served personally, delivered by overnight courier service, or sent by postage prepaid, first-class United States mail, certified or registered, return receipt requested. 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. Notices shall be deemed delivered upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery, if such notice is sent as stipulated above.

TENANT's address: Morongo Basin ARCH, Inc.
74617 Morning Drive
29 Palms, CA 92271

DISTRICT's address: San Bernardino County Fire Protection District
157 West Fifth Street, 2nd Floor
San Bernardino, CA 92415-0450

With a copy to: San Bernardino County Fire Protection District
c/o Real Estate Services Department
385 North Arrowhead Avenue, Third Floor

San Bernardino, CA. 92415-0180

18. **RESERVED:**
19. **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.
20. **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.
21. **SUCCESSORS:** This lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.
22. **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.
23. **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.
24. **QUIET ENJOYMENT:** Subject to the provisions of this lease and conditioned upon performance of all the provisions to be performed by TENANT hereunder, DISTRICT shall secure to TENANT during the lease Term the quiet and peaceful possession of the Premises and all right and privilege appertaining thereto.
25. **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.
26. **CONSENT:** Unless otherwise expressly provided otherwise in this lease, whenever consent or approval of either party is required that party shall not unreasonably withhold, condition or delay such consent or approval
27. **EXHIBITS:** All exhibits referred to are attached to this lease and incorporated by reference.
28. **LAW:** This lease shall be construed and interpreted in accordance with the laws of the State of California.
29. **RESERVED:**
30. **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 the DISTRICT, including such costs and attorneys' fees payable under **Paragraph 14, INDEMNIFICATION, Paragraph 42, PUBLIC RECORDS DISCLOSURE, and Paragraph 47, HAZARDOUS SUBSTANCES.**
31. **VENUE:** The parties acknowledge and agree that this lease was entered into and intended to be performed in the Superior Court of the State of California, County of San Bernardino. 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, statute (including but not limited to Code of Civil Procedure section 394), 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 Superior Court of the State of California, County of San Bernardino.

32. **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.

33. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the Term of this lease, will survive the termination of this lease.

34. **BROKER'S COMMISSIONS:** TENANT is solely responsible for the payment of any commissions to any broker who has negotiated or otherwise provided services in connection with this lease.

35. **ESTOPPEL CERTIFICATES:** Tenant, within ten (10) days after notice from DISTRICT, shall execute and deliver to DISTRICT, in recordable form, a certificate stating that this lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of rent, the dates to which the rent has been paid in advance, the amount of any security deposit or prepaid rent, and that there are no uncured defaults or specifying in reasonable detail the nature of any uncured default claimed. Failure to deliver the certificate within ten (10) days shall be conclusive upon TENANT, that this lease is in full force and effect and has not been modified, and that there are no uncured defaults on the part of the DISTRICT. The estoppel certificate shall be in the form provided by the DISTRICT.

36. **SECURITY DEPOSIT:**

A. TENANT shall deposit with the DISTRICT in the form of a cashiers check the amount of Three Thousand Dollars (\$3,000), The DISTRICT's Director of the Real Estate Services Department is authorized, but not required, to accept substitute security, under such terms and conditions as the Director determines, in lieu of the above deposit.

B. If TENANT defaults in payment of rent or any of the terms, provisions, covenants and conditions of this lease, DISTRICT may use, apply, or retain the whole or any part of this security for the payment of any rent in default or for any other sum which the DISTRICT may spend or be required to spend by reason of TENANT's default.

C. Should TENANT fully and faithfully comply with all the terms, provisions, covenants and conditions of this lease, the security or any balance of the security shall be returned to TENANT at the expiration of the lease Term.

D. DISTRICT may require, at any time, that the security deposit be increased.

E. In the event DISTRICT uses part or all of the security deposit as provided herein, TENANT shall replenish the security deposit in the amount used within ten (10) days of notice from DISTRICT.

37. **ASSIGNMENT AND SUBLETTING:** TENANT shall have no right to assign this Lease or sublease all or any portion of the Premises. Any attempted assignment or sublease shall be void and of no legal force and effect.

38. **TERMINATION:** DISTRICT may terminate this lease with or without cause and at any time during the Term by providing not less than ninety (90) days written notice prior to the effective termination date. The DISTRICT's Director of the Real Estate Services Department shall have the

authority, on behalf of the DISTRICT, to give the TENANT notice of any termination pursuant to this paragraph. In the event TENANT terminates this LEASE pursuant to this paragraph, the DISTRICT shall be entitled to the fees which will have been earned at the date of termination of this LEASE and any other rights and remedies under this lease.

39. **FORMER DISTRICT OFFICIALS:** TENANT agrees to provide or has already provided information on former DISTRICT administrative officials (as defined below) who are employed by or represent TENANT. The information provided includes a list of former DISTRICT administrative officials who terminated DISTRICT employment within the last five years and who are now officers, principals, partners, associates or members of the TENANT. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of TENANT. For purposes of this provision, "DISTRICT administrative official" is defined as a member of DISTRICT or COUNTY's Board of Supervisors or such officer's staff, DISTRICT or COUNTY Administrative Officer or member of such officer's staff, DISTRICT or 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 District Officials.)

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

41. **PUBLIC RECORDS DISCLOSURE:** All information received by the DISTRICT from the TENANT or any source concerning this lease, including the lease itself, may be treated by the DISTRICT as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). TENANT understands that although all materials received by the DISTRICT in connection with this lease are intended for the exclusive use of the DISTRICT, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a TENANT has reasonably requested DISTRICT to hold in confidence is made to the DISTRICT, the DISTRICT shall notify the TENANT of the request and shall thereafter disclose the requested information unless the TENANT, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides DISTRICT a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the DISTRICT harmless in any/all actions brought to require disclosure. TENANT waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event DISTRICT fails to notify TENANT of any such disclosure request and/or releases any information concerning this lease received from the DISTRICT or any other source.

42. **DEFAULT AND RIGHT TO TERMINATE:**

A. Definitions. A "Default" by TENANT shall refer to any failure by TENANT to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to TENANT under this lease. The term "Breach" shall refer to the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure of TENANT to cure such Default prior to the expiration of the applicable grace period:

(1) TENANT's unexcused failure to conduct TENANT's operations at the Premises in accordance with the terms of this lease including but not limited to the failure to comply with the limitations of use of the Premises.

(2) Vacating the Premises without the evident intention to reoccupy same, an abandonment of the Premises, or notice of intent to abandon Premises expressed in written notice.

(3) TENANT's failure to make any payment of monthly rent, or any other monetary payment required to be made by TENANT hereunder as and when due, the failure of TENANT to provide DISTRICT with reasonable evidence of insurance or surety bond required under this lease, or TENANT's failure to fulfill any obligation under this lease which endangers or threatens life or property, where such failure continues for a period of three (3) days, or such reasonable time as agreed by DISTRICT, following written notice thereof by or on behalf of DISTRICT to TENANT.

(4) The failure by TENANT to provide DISTRICT with reasonable written evidence (in duly executed original form, if applicable) of any documentation or information which DISTRICT may reasonably require of TENANT under the terms of this lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of DISTRICT to TENANT.

(5) A Default by TENANT as to any of the other terms, covenants, conditions or provisions of this lease that are to be observed, complied with or performed by TENANT where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of DISTRICT to TENANT; provided, however, that if the nature of TENANT's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this lease by TENANT if TENANT commences such cure within said thirty (30) day period and thereafter continuously and diligently prosecutes such cure to completion.

(6) The occurrence of any of the following events: (a) the making by TENANT of an assignment for the benefit of creditors; (b) TENANT's becoming a "debtor" as defined in 11 U.S. Code Section 101 or any successor statute thereto (unless, in the case of a petition filed against TENANT, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this lease, where possession is not restored to TENANT within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of TENANT'S assets located at the Premises or of TENANT's interest in this lease, where such seizure is not discharged within thirty (30) days.

(7) The discovery by DISTRICT that any financial statement of TENANT, given to DISTRICT by TENANT was materially false.

B. Remedies.

(1) Other than when a different time or remedy is specifically provided, such as for the payment of rent, if TENANT fails to perform any affirmative duty or obligation of TENANT under this lease within ten (10) days after written notice to TENANT (or in case of an emergency, without notice), DISTRICT may at its option (but without obligation to do so), perform such duty or obligation on TENANT's behalf, including, but not limited to, the obtaining of reasonably required, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by DISTRICT shall be due and payable by TENANT to DISTRICT within ten (10) days of DISTRICT's demand.

(2) In the event of a Breach of this lease by TENANT (as defined above), with or without further notice or demand, and without limiting DISTRICT in the exercise of any right or remedy which DISTRICT may have by reason of such Breach, DISTRICT may:

(a) Terminate TENANT's right to possession of the Premises by any lawful means, in which case this lease and the term hereof shall terminate and TENANT shall immediately surrender possession of the Premises to DISTRICT. In such event DISTRICT shall be entitled to recover from TENANT: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the TENANT proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that the TENANT proves could be reasonably avoided; and (iv) any other amount necessary to compensate DISTRICT for all the detriment proximately caused by the TENANT's failure to perform its obligations under this lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, and that portion of any leasing commission paid by DISTRICT in connection with this lease and applicable to the unexpired term of this lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). DISTRICT's attempt to mitigate damages caused by TENANT's Default or Breach of this lease shall not waive DISTRICT's right to recover damages under this paragraph. If termination of this lease is obtained through the provisional remedy of unlawful detainer, DISTRICT shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or DISTRICT may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages.

(b) Continue the lease and TENANT's right to possession in effect under California Civil Code Section 1951.4 after TENANT's Breach and recover the rent as it becomes due, provided TENANT has the right to sublet or assign, subject only to reasonable limitations. DISTRICT and TENANT agree that the limitations on assignment and subletting in this lease are reasonable. DISTRICT's maintenance of the Premises or efforts to relet the Premises, or the appointment of a receiver to protect the DISTRICT's interest under this lease, shall not constitute a termination of the TENANT'S right to possession.

(c) Pursue any other remedy now or hereafter available to DISTRICT under the laws or judicial decisions of the State of California.

(3) If, at any time TENANT is in default in monthly rent or fees or any other provision for forty-five (45) days, or if TENANT defaults on any provision(s) three (3) times within any twelve (12) consecutive months, DISTRICT may terminate this lease on ten (10) days' notice.

C. Survival of Indemnity Provisions. The expiration or termination of this lease and/or the termination of TENANT's right to possession shall not relieve TENANT from liability under any indemnity provisions of this lease as to matters occurring or accruing during the Term or by reason of TENANT's occupancy of the Premises.

D. Tenant's Personal Property. Immediately upon termination of this lease, TENANT covenants and agrees to remove all of TENANT's personal property, machinery or fixtures from the Premises. If TENANT fails to remove any such personal property, DISTRICT may remove such personal property and place the same in storage at the expense of TENANT and without liability to DISTRICT for losses. TENANT agrees to pay DISTRICT for all expenses incurred by DISTRICT in connection with the removal, and storage charges of TENANT's personal property, including

attorney's fees and court costs. Alternatively, DISTRICT may at its option and on not less than ten (10) days written notice to TENANT sell all or any part of said personal property at public or private sale for such prices as DISTRICT may obtain. DISTRICT shall apply the proceeds of any such sale to the amounts due from TENANT under this lease and to any expense incidental to such sale. Any surplus arising from such sale shall be refunded to TENANT.

E. **No Waiver by District.** DISTRICT's receipt of any rent or of any other sum of money paid by TENANT after the termination and forfeiture of this lease, or after the giving by DISTRICT of any notice to effect such termination, shall not waive the Default, reinstate, continue or extend the Term of this lease, or destroy or impair the efficacy of DISTRICT's notice of termination, unless otherwise agreed in writing by DISTRICT. DISTRICT's acceptance of the keys to the Premises or any other act of the DISTRICT or its agents or employees during the Term of this lease shall not be deemed to be an acceptance or a surrender of the Premises, unless otherwise agreed in writing by DISTRICT.

43. **HOLDING OVER:** In the event the TENANT shall hold over and continue to occupy the Premises with the express written consent of the DISTRICT, the lease shall continue on month-to-month term upon the same terms and conditions as existed and prevailed at the time of the expiration of the term of this lease, provided that the rent shall be pro-rated to a monthly amount. Either party may terminate the lease during the holdover term by providing the other party with not less than thirty (30) days prior written notice.

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

45. **RESERVED:**

46. **HAZARDOUS SUBSTANCES:**

A. **Definition.** For purposes of this agreement, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court,

(c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. In connection with the lease of the Premises by TENANT, (a) TENANT agrees and acknowledges that it has had an opportunity to investigate the Premises and the land of which the Premises are a part and its environs for the presence of any hazardous substance; (b) any and all reports, studies, analyses, estimates, maps, drawings, materials, etc. delivered by DISTRICT to TENANT preceding execution of this lease are delivered to TENANT as an accommodation and not with the intent that such items be relied upon by TENANT, except to the extent that TENANT has independently confirmed the validity of such items; and (c) TENANT's decision to enter into this lease is based upon the investigation, study and analysis of the property made by tenant or its agents and/or independent contractors, and not upon oral or written statements or representations of DISTRICT. It is expressly understood by TENANT and DISTRICT that all statements and representations made by DISTRICT which are not included in this agreement (a) are intended by DISTRICT to be made as an accommodation to TENANT in DISTRICT's investigation and not in lieu of TENANT's investigation; and (b) are not to be relied and acted upon by TENANT.

C. TENANT shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Premises or the land of which the Premises are a part of any hazardous substance, or the transportation to or from the Premises or the land of which the Premises are a part of any hazardous substance.

D. Without limiting the generality of this indemnity, this indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607 (e) and California Health and Safety Code Section 25364 to insure, protect, hold harmless and indemnify DISTRICT for any liability pursuant to such sections.

E. TENANT agrees, in addition to those obligations imposed upon it pursuant to **Paragraph 14, INDEMNIFICATION**, herein, to indemnify, defend with counsel selected by DISTRICT, protect and herein hold harmless DISTRICT, the COUNTY, and its respective directors, officers, employees, agents, assigns, any successor or successors to DISTRICT's interest in the property from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the property or any indemnified party directly or indirectly arising from or attributable to (a) any breach by the TENANT or any of its agreements, warranties or representations set forth in this lease, or (b) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any hazardous substance on, under or about the Premises or the land of which the Premises form a part, regardless of whether undertaken due to governmental action. To the fullest extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of TENANT.

47. **ENTIRE AGREEMENT:** This agreement, including recitals, constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

48. **AUTHORIZED SIGNATORS:** The parties to this lease represent that the signators executing this lease are fully authorized to enter into this agreement.

END OF LEASE TERMS.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

TENANT: MORONGO BASIN ARCH, Inc., a California non-profit corporation

By _____
:
Curt Hagman, Chairman
Board of Directors

By: _____
Astrid Johnson

Title: President

Date: _____

Date: _____

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

LYNNA MONELL, Secretary

By: _____
Deputy

Address: 74617 Morning Drive
29 Palms, CA 92271

Date: _____

Approved as to Legal Form:

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By _____
:
Agnes Cheng, Deputy County Counsel

Date: _____

EXHIBIT "A"

**Premises Description
(Premises Outlined in Red)**



EXHIBIT "B"

LIST OF FORMER DISTRICT OFFICIALS

INSTRUCTIONS: List the full names of former DISTRICT Administrative Officials, the title/description of the Official's last position with the DISTRICT, the date the Official terminated DISTRICT employment, the Official's current employment and/or representative capacity with TENANT, and the date the Official entered TENANT's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

TENANT hereby certifies that the information it has provided in this Exhibit "B" is true, complete, and accurate.

TENANT:

By: _____
(Name)
(Title)

Date: _____