

OPTION AGREEMENT

THIS OPTION AGREEMENT ("**Option Agreement**") is subject to Federal Aviation Administration ("**FAA**") approval of the non-aeronautical development and use of the project, prior to the Effective Date of the Lease. This Option Agreement is effective on the date the last Party executes this Option Agreement ("**Effective Date**") and is made by and between San Bernardino County ("**County**") and Parkcrest Construction, Inc. ("**Optionee**" in this Option Agreement and "**Tenant**" in the Ground Lease Agreement). County and Optionee may sometimes hereinafter individually be referred to as "**Party**" or jointly as "**Parties**."

Recitals

- A. Optionee desires to obtain an option to lease certain real property described as the "**Premises**" in **Exhibit A** to that certain Ground Lease Agreement made a part hereof ("**Ground Lease Agreement**", "**Attachment 1**") for the purposes and uses provided in this Option Agreement.
- B. County is the fee owner of the Premises and is willing to enter into an option to lease said Premises for such purposes and uses as set forth herein and in the Lease.

NOW, THEREFORE the Parties agree as follows:

1. DEFINITIONS

- a. "**Board of Supervisors**" means the San Bernardino County Board of Supervisors, a political subdivision of the State of California, the governing body of the County.
- b. "**County**" means the County, County Executive Office, San Bernardino County, or designee, or upon written notice to Optionee, such other person as may be designated by the Board of Supervisors.
- c. "**City**" means the City of Chino, State of California, within which the Premises is located.
- d. "**Lease**" means the Ground Lease Agreement, including any, and all addenda, amendments and exhibits thereto.
- e. "**Premises**" means that certain real property containing approximately forty acres with Assessor Parcel Nos: 1054-401-01-0000 and 1054-401-02-0000 in the City of Chino together with all easements, rights and privileges appurtenant thereto, to be leased to Optionee pursuant to the Option and Ground Lease Agreement for the uses and purposes as set forth therein. The legal description of the Premises is attached to the Ground Lease Agreement as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is also attached to the Ground Lease Agreement as **Exhibit A**.

- f. **“Project”** means the design, entitlement, permitting and construction of a non-aeronautical facility for the purpose of truck, trailer and cargo van parking, storage and electronic vehicle charging.

2. OPTION

County hereby grants Optionee a twelve (12) month option (**“Option”**) to lease said Premises during which time Optionee shall complete planning and entitlement of its development. The Option may be extended as set forth herein below.

3. TERM

Subject to Section 6 below, the term of this Option Agreement shall be twelve (12) months (**“Option Term”**) and shall commence on the Effective Date shown above, subject to day-for-day extensions as provided in this Option Agreement. This Term is conditioned upon the County’s termination rights set forth in Section 18.

4. OPTION PRICE

The price of the Option granted herein is **\$50,000.00** (**“Option Price”**) payable to the County upon full execution of this Option Agreement.

5. RESERVED

6. OPTION TERM EXTENSION

Optionee has one (1) free ninety (90) day extension of the Option Term if needed to complete the entitlement and requirements set forth in this Option Agreement as long as Optionee is diligently pursuing entitlements for its proposed development. Thereafter, Optionee may extend the Option Term for up to sixteen (16) additional thirty-day periods for of fee of **\$10,000.00** per period (**“Extended Option Period”**) which options shall be granted to Optionee by County so long as Optionee is not in breach of the terms of the Option and upon demonstration by Optionee to County that the Optionee is making reasonable progress on completing the Conditions Precedent.

Extensions beyond the Extended Option Period and any related fee shall be subject to approval by the Board of Supervisors.

7. CONDITIONS

During the term of this Option Agreement the Option to Lease may not be exercised until the following terms and conditions shall have been met (collectively, the **“Conditions Precedent”**):

A. Preliminary Plans

Optionee shall submit preliminary plans as necessary to obtain all planning approvals from governing agencies with jurisdiction over the Project (collectively **“Entitlements”**) for the development and use of the Premises (**“Preliminary Plans”**), as allowed under the terms of the Lease, for the County’s approval. As the County is the owner of the Property, the

County will respond to Optionee's reasonable inquiries as necessary to allow Optionee to prepare, submit, and make corrections to the Preliminary Plans as may be required by the governing agencies reviewing the Project. To the extent required by law or statute, approval by the FAA is a requirement for all Preliminary Plan

The Preliminary Plans shall be prepared by a licensed design professional in the State of California and, to the extent necessary to obtain the Entitlements, shall include:

- 1) A detailed site plan of the Premises showing:
 - a. all improvements planned for the Premises
 - b. any existing and/or proposed easements affecting the Premises
 - c. ingress and egress to and from the Premises
 - d. parking
 - e. location of all utilities
 - f. drainage plan
 - g. grade elevations of all structures;
- 2) Landscape plans;
- 3) Colored rendering or model of the planned development;
- 4) An Urban Runoff Management Plan;
- 5) A detailed cost estimate of all improvements; and
- 6) A detailed estimate of the construction schedule.

Within sixty (60) days of receipt of the Preliminary Plans, the County will approve, rule on, reject or comment on the Preliminary Plans. In the event that the County does not approve, rule on, reject or comment on the Preliminary Plans within such sixty (60) day period, the Option Term shall be extended on a day-for-day basis at no cost to Optionee until County approves, rules on, rejects or comments on the Preliminary Plans. The County's review shall be limited only to reviewing plans for conformity with this Option Agreement and shall not provide any representations or warranties regarding the sufficiency of the plans for the required land use approvals or for construction.

Within thirty (30) days following the County's approval of the Preliminary Plans, Optionee shall submit the plans to the City or other applicable permitting authority as deemed acceptable to the County (together hereinafter "**Permitting Authority**") and apply for approval of the planned development through the Permitting Authority's normal permit process.

B. Environmental Requirements

Concurrently with or prior to the submission of the Preliminary Plans to the City, or other applicable permitting authority, Optionee shall submit to the Permitting Authority, a draft Initial Study, prepared at Optionee's expense, in order for the Permitting Authority to determine the level of environmental review that will be necessary for the proposed development. Such determination will be made in accordance with the Permitting Authority's normal procedures.

If the Permitting Authority determines that a Negative Declaration is appropriate, Optionee shall submit all necessary documentation and cooperate with the Permitting Authority in order to provide the County with written proof of environmental clearance on this Project from the appropriate governmental authority.

If an Environmental Impact Report is mandated by the Permitting Authority, Optionee shall obtain a screen check Environmental Impact Report and draft Environmental Impact Report at its own expense and shall process same in accordance with the Permitting Authority's procedure. Optionee shall, prior to commencement of any construction on the Premises, provide supporting documentation to the County, evidencing that Optionee has received environmental clearance on this Project from the appropriate authority governing this matter.

C. Working Plans and Specifications

Within sixty (60) days following that date the Optionee obtains all Entitlements, Optionee shall prepare and submit to the County construction contract documents ("**Working Plans and Specifications**") and cost estimates for development of the Premises. As the County is the owner of the Property, the County will respond to Optionee's reasonable inquiries as necessary to allow Optionee to prepare, submit, and make corrections to the Working Plans and Specifications as may be required by the governing agencies reviewing the Project. To the extent required by law or statute, approval by the FAA is a requirement for all Preliminary Plan. Such Working Plans and Specifications shall consist of the following:

- 1) Complete architectural, landscape, and engineering working drawings;
- 2) Complete specifications;
- 3) Construction contract form; and
- 4) Construction schedule.

The County will approve, rule on, reject, or comment on the Construction Contract Documents within ninety (90) days following the County's receipt of the Construction Contract Documents. In the event that the County does not approve, rule on, reject or comment on the Contract Documents within such ninety (90) day period, the Option Term shall be extended on a day-for-day basis at no cost to Optionee until County approves, rules on, rejects or comments on the Construction Documents.

Within thirty (30) days following the County's review of the Construction Contract Documents as provided above, Optionee shall complete all corrections and adjustments to the Construction Contract Documents as required by the County and resubmit the documents to the County for approval. Within five (5) days following the County's approval of the corrected Construction Contract Documents, Optionee shall submit the approved Construction Contract Documents to the Permitting Authority for plan check.

D. City and County Permits

County shall not unreasonably withhold consent to any application by Optionee with respect to any permits or approvals related to activities or development plans approved by County in accordance with this Option Agreement which may be required by any governmental or regulatory agency.

Optionee shall provide the County with satisfactory evidence that Optionee has met all Permitting Authority and FAA requirements and has obtained all necessary clearances from the Permitting Authority and the FAA to commence construction of the planned development as preliminarily approved by the County such that the Project is permit ready.

Optionee acknowledges and agrees that no grading, or other construction activities shall be permitted on the Premises during the Option Term, until the Ground Lease Agreement is fully executed, and all applicable permits and clearances have been obtained from the Permitting Authority, the FAA, and County.

E. Lease Requirements

Optionee shall submit to the County:

- 1) Satisfactory evidence of Optionee's ability to finance or fund the cost of the development planned for said Premises in accordance with the requirements of the Lease. If Optionee plans to hypothecate the leasehold as security for a loan, Optionee shall submit all documents proposed in the loan transaction, if any, along with a request and processing fees, if any, for County's consent to the proposed hypothecation in accordance with the terms of the Lease.
- 2) A cashier's or certified check made payable to the "*San Bernardino County*" in an amount equal to one month's rent, which will be applied against the first month's rent due under the Lease.
- 3) Evidence of insurance coverage which fully complies with Section 8.1 (Insurance) of the Lease.
- 4) A Performance Bond to be posted and held in accordance with the terms of Paragraph 11(C) of the Lease.

8. IMPROVEMENTS

Following exercise of the Option, Optionee's construction of the Improvements shall be governed by the terms of the Lease. As set forth in this Option, Improvement specifications or modifications shall be subject to mutual approval of both the County and Optionee of both the location and specification of the desired Tenant Improvements, consistent with the plans and entitlements approved by the Permitting Authority during the Option term. Optionee shall be responsible for all costs, including any required demolition costs upon lease expiration or termination. Improvements must be approved and permitted by the County, and all local governing authorities with jurisdiction over the Project, including but not limited to Section 163.

Optionee will be responsible for complying with all appropriate building standards, as set forth in the Lease, including addressing ADA requirements. No structures will be constructed or installed at the Premises until following exercise of the Option.

Improvements shall include, without limitation, that portion of the stormwater drainage system to be located on the Premises to address the stormwater originating on the Premises, which shall be designed so that all stormwater shall exit the Premises at the point approved by local governing authorities. Off-site improvements may also include any stormwater drainage pipes, ditches, berms, or other improvements that are designed to divert stormwater that originates on the Premises per all local governing authorities.

9. REVIEW BY COUNTY

Optionee hereby acknowledges that one of the purposes of this Option Agreement is to afford Optionee and County the opportunity to determine whether Optionee is able to meet the various conditions of this Option Agreement and is able to obtain the required approvals as set forth in this Option Agreement. Several of those conditions involve obtaining reviews and approvals from officers, employees or agents of the County, and/or the Permitting Authority. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review.

Nothing contained in this Option Agreement shall be deemed to imply that required approvals will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of the County, and/or the Permitting Authority shall not be deemed in any manner a breach of this Option Agreement, nor shall any such denial give rise to any claim, liability, obligation, or cause of action with respect to this Option Agreement or the attached Lease.

No permit, approval, or consent given by the County, and/or the Permitting Authority, or their officers, employees, or agents, acting in its/their governmental capacity, shall affect or limit Optionee's obligations under this Option Agreement or under the Lease, nor shall any approvals or consents given under this Option Agreement by County, as a Party hereto, or by the County be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, and/or regulations.

10. DISCLAIMER OF REPRESENTATIONS OF WARRANTIES

Optionee agrees that County has made no representations, warranties, or agreements as to any matters concerning the Premises, including, but without being limited to, the land, marketability of title, topography, climate, air, water, water rights, utilities, present or future zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the Premises is suited, drainage, access to public roads, proposed routes of roads or extensions thereof or the availability of governmental permits or approvals of any kind. Optionee represents and warrants to County that it and its representatives and employees have made or will make their own independent inspection and investigation of such matters concerning the Premises.

11. OPTIONEE'S RIGHT TO ENTER PREMISES, INDEMNIFICATION

Optionee shall have early access to the Premises at no cost during the Option Term and at any time prior to the exercise of the Option for the purpose of Optionee or its representatives to conduct such due diligence investigations and inspections of the Premises ("Due Diligence and Entitlement Period"). Construction of improvements not to occur during this Option period or any of its extensions. During the Due Diligence and Entitlement Period, Optionee shall (at Optionee's sole cost and expense) be permitted to undertake intrusive testing, including a Phase II environmental assessment, after obtaining County's consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Optionee shall have the right to perform a Phase II environmental assessment or hazardous materials survey if the performance of the same is recommended by Optionee's Phase I environmental assessment. No intrusive testing or environmental assessment may be undertaken unless and until the County confirms in writing that such undertaking will not interfere with Airport operations as determined by the County Director of Airports.

Optionee hereby agrees to indemnify County and hold County, its officers, and employees harmless from any loss, claims, liability, or costs arising out of or incurred by reason of such investigation; provided however, such indemnification obligation shall not be applicable to the extent of Optionee's mere discovery of any pre-existing condition at the Premises, except to the extent Optionee aggravates or causes a release of such pre-existing condition. Whether or not this Option Agreement terminates or expires, Optionee agrees to repair any, and all damages caused to the Premises by reason of any such investigation or investigations to materially the same condition as existed prior to such investigation or investigations.

12. HOLD HARMLESS

Optionee hereby releases and waives all claims and recourse against the County, including the right of contribution for loss or damage of persons or property, arising from, growing out of, or in any way connected with, or related to Optionee's performance of its obligations under this Option Agreement except claims arising out of the willful misconduct or the gross negligence of the County, or its officers, agents, employees and contractors.

Optionee acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Optionee, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

Optionee hereby agrees to indemnify, defend (with counsel approved in writing by County), and hold harmless, County, the County and its elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost,

expenses or liability for injury to any persons or property, arising out of the Optionee's exercise of the rights under this Option Agreement, except for liability arising out of the willful misconduct or the gross negligence of County and its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If County is named as co-defendant in a lawsuit, Optionee shall notify County of such fact and shall represent County in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event, Optionee shall pay to County its actual litigation costs, expenses, and attorneys' fees for indemnification obligations arising out of Optionee's exercise of the rights under this Option Agreement. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "gross negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. If judgment is entered by a court of competent jurisdiction against Optionee and against the County because of the concurrent gross negligence or willful misconduct of County, County and Optionee agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

13. INSURANCE

A. Basic Insurance Requirements. Without in any way affecting Optionee's obligation to defend and indemnify COUNTY as herein provided, and in addition thereto, Optionee shall secure and maintain the following types of insurance, with the following minimum limits throughout the Term of this Option Agreement:

1. Real Property Insurance. Coverage for all buildings and improvements (whether built by Optionee or COUNTY) against loss or damage by fire, lightning, vandalism, malicious mischief, or earthquake, in an amount equal to the full replacement value of such buildings and improvements. If the buildings and improvements at the Premises are owned by COUNTY or COUNTY and Optionee, any loss payable under such policies shall be paid to COUNTY. If the buildings and improvements at the Premises are owned exclusively by Optionee, then Optionee, or Optionee's Lender, if applicable, shall be the loss payee on such policies. All proceeds from any loss covered by said policy shall first be used to repair and restore the buildings and improvements at the Premises in accordance with Paragraph 15. COUNTY shall have discretion not to repair or restore the buildings or improvements if cost of repair is greater than 60% of the most recent appraisal value of the Premises or where the buildings or improvements are 60% or more destroyed or made unusable and irreparable. COUNTY has the right, in all instances, to all insurance proceeds.

2. Comprehensive General and Automobile Liability Insurance.
(i) Comprehensive General Liability Insurance – Optionee shall carry general liability insurance covering all operations performed by or on behalf of the Optionee providing coverage for bodily injury and property damage with a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. The policy shall include (a) Premises operations and mobile equipment; (b) products and completed operations; (c) broad form property damage [including completed operations], (d) personal injury; (e) contractual liability; and (f) Two Million and 00/100 (\$2,000,000.00) general aggregate limit; and (ii) Automotive Liability Insurance - This

policy to include contractual and automobile liability coverage for owned, hired and non-owned vehicles with combined single limits for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, with a two million dollars (\$2,000,000) general aggregate limit.

3. **Workers' Compensation Insurance.** 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 Insurance with a limit of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), covering all persons providing services on behalf of the Optionee and all risks to such persons under this Option Agreement.

4. **Environmental Liability Insurance.** Environmental liability insurance with a combined single limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence.

5. **RESERVED.**

6. **Additional Named Insured.** All policies, except for the Workers' Compensation Insurance, shall contain additional insured endorsements naming the COUNTY and its officers, employees, agents and volunteers, and Optionee's lender (as hereinafter defined in Paragraph 11.E.), if any, as additional named insured with respect to claims arising out of Optionee's use and the occupancy of the Premises. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent of the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO CG 2010.11 85. COUNTY shall have no liability for any premiums charged for such additional insured coverage and the inclusion of COUNTY as an additional named insured is not intended to and shall not make COUNTY a partner or joint venturer with Optionee in Optionee's operations at Airport.

7. **Waiver of Subrogation Rights.** Optionee shall require the insurance carriers on each of the foregoing policies to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors, and subcontractors. All general and automobile liability insurance coverage provided shall not prohibit Optionee and/or Optionee's employees or agents from waiving the right of subrogation prior to a loss or claim. Optionee hereby waives all subrogation rights against the COUNTY.

8. **Policies Primary and Non-Contributory.** All required policies are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

9. **Severability of Interests.** Optionee agrees to ensure that coverage provided to meet the insurance requirements herein is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the Optionee and COUNTY or between the COUNTY and any other insured or additional insured under the policy.

10. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved, in its sole discretion, by the COUNTY's Department of Risk Management.

B. **Insurance Policies and Proof of Coverage.** All insurance required pursuant to this Option Agreement shall be with carriers duly licensed to transact business in the State of California and maintaining during the applicable policy term a "General Policyholder's Rating" of at least A, VII, in the most current issue of "Best's Insurance Guide." Optionee shall furnish certificates of insurance to the COUNTY, evidencing all of the required insurance coverage, including endorsements, prior to the Commencement Date, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the COUNTY. Optionee shall maintain all of the required insurance from the Commencement Date until the completion of Optionee's occupancy of the Premises. Optionee shall furnish certified copies of all insurance policies and all endorsements within thirty (30) days of the Commencement Date.

C. **Right to Review and Alter Insurance Requirements.** The foregoing insurance requirements are subject to periodic review by the COUNTY. The Director of Risk Management or designee is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the 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 COUNTY. If the Department of Risk Management determines that any additional or different insurance is required to adequately protect the interests of COUNTY, or that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, Director of Risk Management or designee is authorized to change the foregoing insurance requirements, require additional types of insurance coverage, or require higher coverage limits. Any change in insurance requirements must be reasonable in light of Optionee's permitted use of the Premises, past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk. Any reduction or waiver of the required insurance, as well as any change requiring additional or different types of insurance coverage or higher coverage limits, must be memorialized by a written amendment to this agreement. Optionee agrees to execute any such amendment within thirty (30) days of receipt.

D. **Adequacy of Insurance Coverage.** COUNTY makes no representation that the limits of liability specified in this Paragraph 13 are adequate to protect Optionee's interests. In the event Optionee believes that such insurance coverage is insufficient, Optionee shall provide, at Optionee's sole cost and expense, such additional insurance as Optionee deems adequate. In no event shall the limits of any coverage maintained by Optionee pursuant to this Option Agreement limit Optionee's liability under this Option Agreement.

E. **Failure to Procure or Maintain Insurance.** All insurance required as part of this Option Agreement must be maintained in force at all times by Optionee. Failure to maintain said insurance, due to expiration, cancellation, or for any other reason shall be cause for COUNTY to direct Optionee to immediately suspend all business activities at the Airport. Failure to reinstate said insurance within ten (10) business days of Optionee's receipt of COUNTY's notice shall be cause for termination and forfeiture of this Option Agreement. Alternatively, COUNTY, in

COUNTY's sole discretion and without any obligation to do so, may procure or renew such insurance and pay any, and all premiums in connection therewith. All monies paid by COUNTY on account of insurance coverage which Optionee is obligated to procure and maintain pursuant to this Option Agreement, shall be paid by Optionee to COUNTY within ten (10) business days of Optionee's receipt of COUNTY's written demand, regardless of whether COUNTY could withdraw such sums from the Optionee's Security Deposit. If paid at a later date, such sums shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by Optionee. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Option Agreement.

F. **Liability for Premiums.** COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make COUNTY a partner or joint venturer with Optionee in Optionee's operations at Chino Airport.

14. ASSIGNMENT

This Option shall not be sold, assigned, or otherwise transferred without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned, or delayed. Failure to obtain the County's required written consent shall render said sale, assignment, or transfer void.

15. EXERCISE OF OPTION TO LEASE

At any time during the Option Term that Optionee shall have performed all Conditions Precedent as set forth in Section 7 (Conditions) of this Option Agreement, Optionee may exercise the Option by giving County written notice of election to do so, accompanied by properly executed copies of the Lease in triplicate.

16. EXECUTION OF LEASE

Acting as County's representative, the County Director of Real Estate Services shall execute the Lease, if delegated the authority and subject to approval of the Lease by the County Board of Supervisors, provided that all Conditions Precedent are satisfied by Optionee, within fifteen (15) days of receipt of Optionee's notice of election to exercise the Option and the Lease executed by Optionee.

17. LEASE DATE

It is understood and agreed by the Parties hereto that the effective date of the Lease shall be the date of execution of the Lease by both Parties.

18. TERMINATION

Failure of Optionee to fully and satisfactorily meet the terms and Conditions Precedent of this Option Agreement within the time limits stated shall absolutely and conclusively terminate Optionee's rights hereunder, unless waived or extended in writing by County, notwithstanding the

fact that County may choose to negotiate a lease with Optionee within a reasonable time after the expiration of this Option Agreement. The County shall also have the right to terminate this Option Agreement as to any parcels of land not then optioned to ground lease by the Optionee in the event the County and/or Permitting Authority disapproves the permits being sought by Optionee as part of the Project.

19. NOTICES

All notices, documents, correspondence and communications concerning this Option Agreement shall be addressed as set forth in this Section 19, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, return receipt requested or with other proof of delivery, with postage prepaid, by personal delivery, Federal Express or similar courier service, or by facsimile. Notices so given shall be deemed to have been given upon receipt with the exception of transmittals via facsimile which shall be deemed delivered on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To COUNTY:

San Bernardino County
Department of Airports
268 Hospitality Lane, Suite 302
San Bernardino, California 92408-0831

To OPTIONEE:

Parkcrest Construction, Inc.
Real Estate Services Department
2910 South Archibald Avenue, Suite A-350
Ontario, CA 92716
Attn: Mr. Andy Sehremelis

With a copy to:

Law Office of Joseph A. Cardella
28241 Crown Valley Pkwy, Suite F-286
Laguna Niguel, CA 92677
Attn: Joseph A. Cardella, Esq.

And:

Allen Matkins Leck Gamble Mallory & Natsis LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, CA 90067
Attention: Anton N. Natsis, Esq.

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

20. VENUE

The Parties hereto agree that this Option Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Option Agreement, the sole and exclusive

venue shall be a court of competent jurisdiction located in San Bernardino County California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any, and all rights to request that an action be transferred for trial to another county.

21. SEVERABILITY

If any term, covenant, condition, or provision of this Option Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

22. ATTORNEYS' FEES

In any action or proceeding brought to enforce or interpret any provision of this Option Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

23. SUCCESSORS AND ASSIGNS

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.

24. AUTHORITY

The Parties to this Option Agreement represent and warrant that it has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

25. ENTIRE AGREEMENT

This instrument contains the entire agreement between the Parties relating to the Option granted herein and all negotiations and agreements between the Parties hereto or their agents with respect to this transaction are merged herein. Any oral representations, modifications, or waivers concerning this instrument shall be of no force and effect, except in a subsequent instrument made in writing and signed by both Parties. Time is of the essence in the performance of the Parties' respective obligations herein contained. Subject to the restrictions against sale, assignment, or other transfer above, this Option Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors, and assigns.

26. COUNTERPARTS

The Option Agreement and Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of the Option Agreement and Lease (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Option Agreement and Lease upon request.

27. LEVINE ACT CAMPAIGN CONTRIBUTION DISCLOSURE.

OPTIONEE has disclosed to the County using Attachment "2" – Levine Act Campaign Contribution Disclosure, whether it has made any campaign contributions of more than \$500 to any member of the Board of Supervisors or County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of OPTIONEE's proposal to the County, or (2) 12 months before the date this Agreement was approved by the Board of Supervisors. OPTIONEE acknowledges that under Government Code section 84308, OPTIONEE is prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Agreement.

In the event of a proposed amendment to this Agreement, the OPTIONEE will provide the County a written statement disclosing any campaign contribution(s) of more than \$500 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the OPTIONEE or by a parent, subsidiary or otherwise related business entity of OPTIONEE.

IN WITNESS WHEREOF, the Parties have executed this Option Agreement the day and year first above written.

[Signatures Commence on Next Page]

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

COUNTY:
SAN BERNARDINO COUNTY

OPTIONEE:
PARKCREST CONSTRUCTION, INC.

By: _____
Dawn Rowe, Chair
Board of Supervisors

By: _____
Andy Sehremelis

Title: President

Date: _____

Date: _____

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

Lynna Monell
Clerk of the Board of
Supervisors
San Bernardino County

By: _____
Deputy

Date: _____

Approved as to Legal Form:

TOM BUNTON, County Counsel
San Bernardino County, California

By: _____
John Tubbs II, Deputy County Counsel

Date: _____



**ATTACHMENT 1
GROUND LEASE AGREEMENT**

TABLE OF CONTENTS

PARAGRAPH	CAPTION	PAGE
	TABLE OF CONTENTS	i – iii
	Section 1 – BASIC LEASE TERMS-REFERENCE PAGES.....	iv – vii
	Section 2 – ADDITIONAL LEASE PROVISIONS	
1.	PREMISES.....	1
2.	USE.....	1
3.	TERM	1
4.	RENT	1
	A. Minimum Monthly Rent	1
	B. Reserved	1
	C. Late Payment Fees and Interest	1
	D. Place and Method of Payment	2
	E. Amounts Owed Deemed Rent.....	2
5.	ADJUSTMENTS TO MINIMUM MONTHLY RENT	2
	A. Annual Fixed Adjustment	2
	B. Amendment of Lease	2
6.	SECURITY DEPOSIT	2
7.	INSURANCE	3
	A. Basic Insurance Requirements	3
	1. Real Property Insurance.....	3
	2. Comprehensive General and Automobile Liability Insurance	3
	3. Workers' Compensation Insurance	3
	4. Environmental Liability Insurance	3
	5. RESERVED	3
	6. Additional Named Insured	4
	7. Waiver of Subrogation Rights	4
	8. Policies Primary and Non-Contributory	4
	9. Severability of Interests	4
	B. Insurance Policies and Proof of Coverage	4
	C. Right to Review and Alter Insurance Requirements	4
	D. Adequacy of Insurance Coverage	5
	E. Failure to Procure or Maintain Insurance	5
	F. Liability for Premiums.....	5
8.	HOLD HARMLESS.....	5
9.	EXEMPTION OF COUNTY FROM LIABILITY	5
10.	TAXES, ASSESSMENTS AND LICENSES	6
11.	IMPROVEMENTS	6
	A. Utilities and Utility Installations	7
	1. Utility Plans	7
	2. Utility Installations.....	7
	B. Plans and Specifications	7
	C. Performance and Payment Bonds	7
	D. Cost of Construction	8
	E. Construction Financing	8
	F. Alterations.....	9
	G. Ownership of Improvements and Alterations.....	9
12.	MAINTENANCE OF PREMISES	9

**ATTACHMENT 1
GROUND LEASE AGREEMENT**

TABLE OF CONTENTS

PARAGRAPH	CAPTION	PAGE
	A. Tenant's Obligation	9
	B. Surrender and Restoration of the Premises	10
	C. Utilities	10
13.	ASSIGNMENT AND SUBLETTING	10
	A. County's Consent Required	10
	B. Terms and Conditions Applicable To Assignment and Subletting	11
	C. Permitted Transfers	12
	D. Assignment of Rents	13
	E. Tenant Financing	13
14.	COUNTY'S ENTRY ON PREMISES	20
15.	DAMAGE OR DESTRUCTION OF PREMISES	21
16.	CONDUCT OF EMPLOYEES	21
17.	ERECTION OF SIGNS	21
18.	INTENTIONALLY OMITTED	21
19.	SPECIAL USE COVENANTS AND RESTRICTIONS	22
	A. Right of Flight	22
	B. Noninterference With Aircraft	22
	C. Federal Aviation Administration Requirements	22
	D. Hazardous Substances	22
	1. Definitions	22
	2. Tenant's Covenants	23
	3. Duty to Inform COUNTY	23
	4. Indemnification	24
	E. Reserved	24
	F. Priority of Agreements with United States	24
	G. Licenses and Certifications	24
	H. Rules and Regulations	24
	I. Auctions	24
20.	CONDEMNATION	25
21.	DEFAULT AND RIGHT TO TERMINATE	25
	A. Definitions	25
	B. Remedies	26
	C. Survival of Indemnity Provisions	27
	D. Tenant's Personal Property	27
	E. No Waiver by County	28
22.	HOLDING OVER	28
23.	TIME OF ESSENCE	28
24.	PROVISIONS ARE COVENANTS AND CONDITIONS	28
25.	CONSENT	28
26.	EXHIBITS	28
27.	LAW	28
28.	ATTORNEYS' FEES AND COSTS	28
29.	VENUE	28
30.	COMPLIANCE WITH LAW	29
31.	CAPTIONS, TABLE OF CONTENTS AND COVER PAGE	29
32.	NOTICES	29

**ATTACHMENT 1
GROUND LEASE AGREEMENT**

TABLE OF CONTENTS

PARAGRAPH	CAPTION	PAGE
33.	OPTION TO EXTEND TERM	29
A.	Tenant's Option Notice.....	29
B.	Options Personal to Original TENANT	29
C.	Effect of Default on Options	29
D.	Multiple Options	29
E.	Minimum Monthly Rent	29
34.	RECORDATION OF LEASE.....	29
35.	Intentionally Omitted.....	30
36.	SEVERANCE	30
37.	SURVIVAL	30
38.	REPRESENTATIONS AND AUTHORITY	30
39.	PUBLIC RECORDS DISCLOSURE.....	30
40.	INTERPRETATIONS.....	30
41.	ENTIRE AGREEMENT.....	31
42.	AMENDMENT	31
43.	NO RELIANCE	31
44.	FORMER COUNTY OFFICIALS.....	31
45.	MATERIAL MISREPRESENTATION.....	31
46.	LEVINE ACT CAMPAIGN CONTRIBUTION DISCLOSURE	31
47.	ELECTRONIC SIGNATURES	32
48.	AUTHORIZED SIGNATURES	32

**SAN BERNARDINO COUNTY
DEPARTMENT OF AIRPORTS**

**AIRPORT GROUND LEASE
DOCUMENT NO.**

In consideration of the mutual covenants contained in the Lease Agreement ("Lease") and for other good and valuation consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, San Bernardino County, as COUNTY, and Parkcrest Construction, Inc., as TENANT, agree on the terms and conditions set forth in the Lease, which includes Section I – Basic Lease Provisions and Section II – Additional Lease Provision.

AIRPORT: Chino Airport

DOCUMENT NO.: **TBD**

COUNTY: San Bernardino County

COUNTY'S NOTICE ADDRESS: San Bernardino County
Department of Airports
268 Hospitality Lane, Suite 302
San Bernardino, California 92408-0831

LEASE REFERENCE DATE: MM/DD/2025

TENANT: Parkcrest Construction, Inc.

TENANT'S NOTICE ADDRESS: Parkcrest Construction, Inc.
Real Estate Services Department
2910 South Archibald Avenue, Suite A-350
Ontario, CA 92716
Attn: Mr. Andy Sehremelis

With a copy to:

Law Office of Joseph A. Cardella
28241 Crown Valley Pkwy, Suite F-286
Laguna Niguel, CA 92677
Attn: Joseph A. Cardella, Esq.

And:

Allen Matkins Leck Gamble Mallory & Natsis LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, CA 90067
Attention: Anton N. Natsis, Esq.

TENANT'S TELEPHONE NO.: (702) 793-9995

PREMISES: APN's 1054-401-01, and 1054-401-02
(See Exhibit "A" for additional description.)

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Provisions

- RENTABLE AREA OF PREMISES:** Forty acres (40) - Northeastern quarter (NEQ) near Merrill Avenue and Flight Street.
- PERMITTED USE:** TENANT shall utilize the Premises for development and operation of a non-aeronautical truck, trailer and cargo van parking, storage facility and parking, and electronic vehicle charging, subject to all applicable laws, approval by the County's Board of Supervisors ("**Board**"), and approvals of all relevant governmental and regulatory authorities, including but not limited to the Federal Aviation Administration ("**FAA**"). Tenant shall not use the Premises for any purpose not set forth above without the prior written consent of the County.
- LEASE COMMENCEMENT DATE:** The Lease shall be effective upon full Lease execution.
- RENT COMMENCEMENT DATE:** The latter of (a) TENANT receiving the Certificate of Occupancy (as such term is defined in Section 11, below) and (b) the end of the Construction / Development Period.
- INITIAL TERM OF LEASE:** Commencing on Lease Commencement Date and expires Thirty years (30) from the Rent Commencement Date.
- LEASE TERM EXTENSION OPTION:** TENANT shall have two (2) five-year (5) options to extend the Term for a maximum potential lease term of forty (40) years. Subject to Paragraph 33 of his Lease. The ground rent and annual rent increases for the respective extension option terms shall be determined by an appraisal at the time the Lessee exercises its extension option, no less than twelve (12) months and no more than six (6) months prior to the expiration of the current Term. In no event will the rent be less than the rent paid by Lessee to Lessor in the last month of the current Term. The extension options are only valid and exercisable by Lessee provided the Lessee is not in default of its obligations under any of the terms of the Lease.
- OPTION AGREEMENT:** Prior to the execution of this Lease, TENANT and COUNTY entered into that certain Option Agreement dated _____, 2025 (the "Option Agreement").
- DEVELOPMENT / CONSTRUCTION PERIOD:** Immediately upon the satisfaction and completion of the Option Period and execution of the Lease, the Tenant shall commence construction of the Improvements (as such term is defined in Section 11, below) at TENANT's sole cost and expense in accordance with the terms of Section 11, below. TENANT shall be provided for up to twelve (12) months (the "**Development / Construction Period**") to cause the Substantial Completion (as such term is defined in Section 11, below) of the Improvements to occur and to open for business. Should the construction of the Improvements be completed in less than twelve (12) months, then the Improvements shall be deemed Substantially

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Provisions

Complete and open for business (and the Rent Commencement Date shall occur) upon issuance of the Certificate of Occupancy.

DEVELOPMENT / CONSTRUCTION PERIOD EXTENSIONS:

TENANT shall have right to request extensions of the Development / Construction Period at the rate of \$10,000 for each 30-day extension period requested, up to no more than twelve (12) thirty (30) day extension periods. The \$10,000 extension fee for each 30-day extension of the Development / Construction Period requested shall be non-refundable to the TENANT.

INITIAL IMPROVEMENTS:

TENANT shall construct at its sole cost and expense certain "Initial Improvements" on the Premises for the "Permitted Use" as set forth in these Basic Lease Provisions, and Exhibit "F". See Paragraph 11, "IMPROVEMENTS", and Exhibit "F" for additional description.

RENT AND OTHER CHARGES:

- (a) Minimum Monthly Rent: \$350,000.00 commencing on the Rent Commencement Date (See rent table as outlined in Exhibit "B".) Approximately \$0.20 per square foot per month for the Property (Ground Rent). The revenue from the Minimum Monthly Rent will be solely used by COUNTY for airport aeronautical-related purposes.
- (b) Monthly Infrastructure Improvement Allowance Reimbursement: Up to Maximum of \$26,841.08 per month (i.e., \$5,000,000 Infrastructure Allowance by COUNTY to TENANT for TENANT's construction, reimbursed by TENANT to COUNTY at a 5% compounded interest rate over the Initial Term as additional rent).
- (c) Commissions Payment: N/A
- (d) Utilities: Any, and all utilities, and utility connections will be at TENANT's sole costs, expense, and responsibility to maintain.

ADJUSTMENTS TO RENT AND OTHER CHARGES:

- (a) Fixed Adjustment Date: Commencing first (1st) anniversary of the Rent Commencement Date, and on each subsequent year of the Term, including any extension thereof, the Minimum Monthly Rent shall increase by (3%) three percent of the Minimum Monthly Rent paid for the immediately preceding (12) twelve-month period. (See Exhibit "B" for rent schedule.) There will be a re-appraisal of the Property at the end of the initial Term that will be applied to the Extension Options defined herein above. In no event shall the Minimum Monthly Rent established in the first extension option be less than the Minimum Monthly Rent in the last month of the Term.
- (b) Property Reappraisal: As set forth in Exhibit "D", "Property Reappraisal Procedure."

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Provisions

SECURITY DEPOSIT:	\$ 250,000.00 to be held by COUNTY over the term of the Lease. Prior to the Lease Commencement Date, TENANT shall pay to COUNTY TENANT'S Security Deposit. The Security Deposit shall be deposited in an interest-bearing deposit account in the name of COUNTY. The Security Deposit shall secure TENANT's faithful performance of TENANT's obligations under this Lease. The Airports Director may, in his sole discretion, accept substitute security under such terms and conditions as the Director determines, in lieu of the deposit mentioned in this paragraph.
PERFORMANCE AND PAYMENT BONDS:	COUNTY requires a Performance and a Payment Bond to be posted and held during the period of construction of such Improvements only, in accordance with the terms of Paragraph 11(C), below.
MINIMUM ASSIGNMENT/ SUBLETTING FEE:	\$1,500.00
GUARANTOR:	N/A
TENANT'S LENDER:	N/A [TO BE DESIGNATED BY TENANT]
REAL ESTATE BROKER:	N/A

EXHIBITS

(Initial if Exhibit attached, or mark "not applicable")

"A"	Premises	Applicable
"B"	Computation of Monthly Rent and Infrastructure Allowance Reimbursement Charges	Applicable
"C"	Reserved	Not Applicable
"C-1"	Reserved	Not Applicable
"D"	Property Reappraisal Procedure	Applicable
"E"	Definition of Plans	Applicable
"F"	Working Plans, Specifications and Construction Plans [TO BE PROVIDED]	Applicable
"G"	Consent to Hypothecation	Applicable
"H"	Additional Lender Terms [TO BE PROVIDED]	Applicable
"I"	Reserved	Not Applicable
"J"	List of Former County Officials	Applicable
"K"	Form of County Consent to Sublease	Applicable
"L"	Prevailing Wage Requirements	Applicable
"M"	Levine Act Campaign Contribution Disclosure	Applicable

SECTION II – ADDITIONAL LEASE PROVISIONS

1. **PREMISES.** COUNTY, in consideration of covenants and conditions herein set forth, hereby leases to TENANT and TENANT leases from COUNTY, in the condition existing at the inception of this Lease, the Premises. The Premises are more particularly described in Exhibit "A". The Premises are leased subject to all easements, reservations, restrictions, rights and rights-of-way of record.

2. **USE.** TENANT shall use and occupy the Premises only for the Use set forth on the Reference Pages, and for no other purpose. TENANT shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or a nuisance, or causes damage to the Premises or neighboring properties. TENANT shall not sell or permit the sale of any alcoholic beverages from the Premises without the prior written consent of COUNTY. TENANT shall not store any of TENANT's personal property outside the buildings on the Premises without the prior written consent of COUNTY. If COUNTY authorizes TENANT to store property outside, said property will be stored in a neat and orderly manner. Unattractive and/or unsightly outside storage shall not be permitted in public view under any circumstances. TENANT shall comply with all laws, ordinances, and regulations applicable to the use of the Premises, including the requirements of the Federal Aviation Administration, as may be amended. TENANT shall promptly comply with all governmental orders and directions for the correction, prevention, and abatement of any violations in or upon, or in connection with Premises, at TENANT's sole expense.

3. **TERM.** The obligations of the Parties pursuant to this Lease shall commence on the Lease Commencement Date stated in the Basic Lease Terms on the Reference Pages ("Commencement Date"), provided, however, that if the Lease Commencement Date is not on the first day of the month, then the calculation of the Term of this Lease shall commence on the first day of the first full calendar month following the Commencement Date. The Lease shall terminate as provided in the Reference Pages, unless terminated sooner pursuant to the terms of the Lease.

4. **RENT.**

A. **Minimum Monthly Rent.** The Minimum Monthly Rent as of the Rent Commencement Date is set forth on the Reference Pages. TENANT shall pay to COUNTY the Minimum Monthly Rent, in advance, without deduction, setoff, prior notice, or demand, on the first day of each month. The Minimum Monthly Rent shall be adjusted in accordance with Paragraph 5.A., Annual Fixed Adjustment Date. Should this Lease commence on any date other than the first day of a calendar month, the Minimum Monthly Rent for that partial month shall be prorated based on a thirty (30) day month and shall be payable on the Rent Commencement Date. The Minimum Monthly Rent shall be payable in advance.

B. Reserved.

C. **Late Payment Fees and Interest.** TENANT acknowledges that TENANT's late payment of Minimum Monthly Rent or Fees to COUNTY will cause COUNTY to incur costs not contemplated by this Lease and that the exact amounts of such costs are extremely difficult and impracticable to fix. Such costs include, without limitation, administrative, processing, accounting, and interest charges. Therefore, if any installment of Minimum Monthly Rent or Fees is not received by COUNTY by the third day after notice by the COUNTY to TENANT that the due date has occurred, TENANT shall pay to COUNTY a late payment charge equal to ten percent (10%) of the amount delinquent for each month or portion thereof that the payment remains delinquent commencing from the date the payment was due until such time as the overdue payment is made. The parties agree that this late charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment.

SECTION II – ADDITIONAL LEASE PROVISIONS

Acceptance of any late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY pursuant to this Lease or under any applicable law. **All late payments shall be made with certified funds and shall be credited in the following order: (1) to late payment charges, then 2) to the balance of the accrued Minimum Monthly Rent or Fees. If a late payment charge becomes payable for any three (3) installments of Minimum Monthly Rent or Fees within any twelve (12) month period, the Minimum Monthly Rent and Fees will automatically become payable quarterly in advance.**

D. **Place and Method of Payment.** All checks shall be made payable to: Airports Department, County of San Bernardino and shall be submitted to: Airports Department, 268 Hospitality Lane, Suite 302 San Bernardino, California 92408-0831. The Document Number set forth on the first page is the account number for this Lease and must be noted on the front of the TENANT's check. The Minimum Monthly Rent Fees, and all other monetary obligations of TENANT pursuant to this Lease shall be paid in lawful money of the United States. **The COUNTY reserves the right to demand at any time that payment of Rent, the security deposit, and all other monetary obligations of TENANT hereunder be made with certified funds.**

E. **Amounts Owed Deemed Rent.** All monetary obligations of TENANT under the Lease, including but not limited to the Minimum Monthly Rent, Fees, and any other amounts deemed additional rent hereunder, shall be deemed rent ("Rent").

5. **ADJUSTMENTS TO MINIMUM MONTHLY RENT.**

A. **Annual Fixed Adjustment.** The Minimum Monthly Rent established by Paragraph 4.A., shall be subject to a fixed three percent (3%) adjustment on the date defined in the Reference Pages as the Annual Fixed Adjustment Date and on the anniversary of that date ("Annual Fixed Adjustment Date") each, and every year thereafter.

B. **Amendment of Lease.** This Lease shall automatically reflect a three percent (3%) fixed adjustment amount to the Minimum Monthly Rent and the new Minimum Monthly Rent, as more specifically set forth in Exhibit "B", shall be the basis used to compute the next subsequent adjustment to the Minimum Monthly Rent.

6. **SECURITY DEPOSIT.**

A. Prior to the Commencement Date of this Lease, TENANT shall pay to COUNTY, or as permitted by the Director, a deposit in the amount set forth on the Reference Pages as TENANT's Security Deposit. The Security Deposit shall be deposited in an interest-bearing deposit account in the name of COUNTY. The Security Deposit shall secure TENANT's faithful performance of TENANT's obligations under this Lease. The Director may, in his sole discretion, accept substitute security under such terms and conditions as the Director determines, in lieu of the deposit mentioned in this paragraph.

B. If TENANT fails to pay the Minimum Monthly Rent, Fees, or any other amount which TENANT is obligated to pay pursuant to this Lease or defaults on the performance of any of the terms, provisions, covenants and conditions contained in this Lease, COUNTY may withdraw the Security Deposit from the deposit account and use, apply, or retain the whole or any part of the Security Deposit for the payment of any amount in default or for any other sum which the COUNTY may spend or be required to spend by reason of TENANT's default. The Security Deposit or any balance of the Security Deposit remaining shall be returned to TENANT at the

SECTION II – ADDITIONAL LEASE PROVISIONS

termination or expiration of the Term, less any accrued or accruing interest. COUNTY may require, at any time, that the Security Deposit be increased in proportion to the amount of any increase in the Minimum Monthly Rent. In the event COUNTY uses part, or all of the Security Deposit as provided herein, TENANT shall replenish the amount used by COUNTY within ten (10) business days of TENANT's receipt of written notice from COUNTY.

7. **INSURANCE.**

A. **Basic Insurance Requirements.** Without in any way affecting TENANT's obligation to defend and indemnify COUNTY as herein provided, and in addition thereto, TENANT shall secure and maintain the following types of insurance, with the following minimum limits throughout the Term of this Lease:

1. **Real Property Insurance.** Coverage for all buildings and improvements (whether built by TENANT or COUNTY) against loss or damage by fire, lightning, vandalism, or malicious mischief, in an amount equal to the full replacement value of such buildings and improvements. If the buildings and improvements at the Premises are owned exclusively by TENANT, then TENANT, or TENANT's Lender, if applicable, shall be the loss payee on such policies. All proceeds from any loss covered by said policy shall first be used to repair and restore the buildings and improvements at the Premises in accordance with Paragraph 15. TENANT shall have discretion not to repair or restore the buildings or improvements if cost of repair is greater than 60% of the most recent appraisal value of the Premises or where the buildings or improvements are 60% or more destroyed or made unusable and irreparable. TENANT has the right, in all instances, to all insurance proceeds.

2. **Comprehensive General and Automobile Liability Insurance.**
(i) Comprehensive General Liability Insurance – 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 and 00/100 Dollars (\$1,000,000.00) per occurrence. The policy shall include (a) Premises operations and mobile equipment; (b) products and completed operations; (c) board form property damage [including completed operations], (d) personal injury; (e) contractual liability; and (f) Two Million and 00/100 (\$2,000,000.00) general aggregate limit; and (ii) Automotive Liability Insurance - This policy to include contractual and automobile liability coverage for owned, hired and non-owned vehicles with combined single limits for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, with a two million dollars (\$2,000,000) general aggregate limit.

3. **Workers' Compensation Insurance.** 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 Insurance with a limit of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), covering all persons providing services on behalf of the TENANT and all risks to such persons under this Lease.

4. **Environmental Liability Insurance.** Environmental liability insurance with a combined single limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence.

5. **RESERVED.**

SECTION II – ADDITIONAL LEASE PROVISIONS

6. **Additional Named Insured.** All policies, except for the Workers' Compensation Insurance, shall contain additional insured endorsements naming the COUNTY and its officers, employees, agents and volunteers, and TENANT's LENDER (as hereinafter defined in Paragraph 11.E.), if any, as additional named insured with respect to claims arising out of TENANT's use and the occupancy of the Premises. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent of the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO CG 2010.11 85. COUNTY shall have no liability for any premiums charged for such additional insured coverage and the inclusion of COUNTY as an additional named insured is not intended to and shall not make COUNTY a partner or joint venturer with TENANT in TENANT's operations at Airport.

7. **Waiver of Subrogation Rights.** TENANT shall require the insurance carriers on each of the foregoing policies to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors, and subcontractors. All general and automobile liability insurance coverage provided shall not prohibit TENANT and/or TENANT's employees or agents from waiving the right of subrogation prior to a loss or claim. TENANT hereby waives all subrogation rights against the COUNTY.

8. **Policies Primary and Non-Contributory.** All required policies are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

9. **Severability of Interests.** TENANT agrees to ensure that coverage provided to meet the insurance requirements herein is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the TENANT and COUNTY or between the COUNTY and any other insured or additional insured under the policy.

B. **Insurance Policies and Proof of Coverage.** All insurance required pursuant to this Lease shall be with carriers duly licensed to transact business in the State of California and maintaining during the applicable policy term a "General Policyholder's Rating" of at least A, VII, in the most current issue of "Best's Insurance Guide." TENANT shall furnish certificates of insurance to the COUNTY, evidencing all of the required insurance coverage, including endorsements, prior to the Commencement Date, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the COUNTY. TENANT shall maintain all of the required insurance from the Commencement Date until the completion of TENANT's occupancy of the Premises. TENANT shall furnish certified copies of all insurance policies and all endorsements within thirty (30) days of the Commencement Date.

C. **Right to Review and Alter Insurance Requirements.** The foregoing insurance requirements are subject to periodic review by the COUNTY. The Director of Risk Management or designee is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the 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 COUNTY. If the Department of Risk Management determines that any additional or different insurance is required to adequately protect the interests of COUNTY, or that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, Director of Risk Management or designee is authorized to change the foregoing insurance requirements, require additional types of insurance coverage, or require higher coverage limits. Any change in insurance requirements must be reasonable in

SECTION II – ADDITIONAL LEASE PROVISIONS

light of TENANT's permitted use of the Premises, past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk. Any reduction or waiver of the required insurance, as well as any change requiring additional or different types of insurance coverage or higher coverage limits, must be memorialized by a written amendment to this agreement. TENANT agrees to execute any such amendment within thirty (30) days of receipt.

D. **Adequacy of Insurance Coverage.** COUNTY makes no representation that the limits of liability specified in this Paragraph 7 are adequate to protect TENANT's interests. In the event TENANT believes that such insurance coverage is insufficient, TENANT shall provide, at TENANT's sole cost and expense, such additional insurance as TENANT deems adequate. In no event shall the limits of any coverage maintained by TENANT pursuant to this Lease limit TENANT's liability under this Lease.

E. **Failure to Procure or Maintain Insurance.** All insurance required as part of this Lease must be maintained in force at all times by TENANT. Failure to maintain said insurance, due to expiration, cancellation, or for any other reason shall be cause for COUNTY to direct TENANT to immediately suspend all business activities at the Airport. COUNTY, in COUNTY's sole discretion and without any obligation to do so, may procure or renew any insurance and pay any, and all premiums in connection therewith to the extent TENANT fails to obtain such insurance within fifteen (15) business days of notice from the COUNTY. All monies paid by COUNTY on account of insurance coverage which TENANT is obligated to procure and maintain pursuant to this Lease, shall be paid by TENANT to COUNTY within ten (10) business days of TENANT's receipt of COUNTY's written demand, regardless of whether COUNTY could withdraw such sums from the TENANT's Security Deposit. If paid at a later date, such sums shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by TENANT. The remedy set forth in this paragraph is in addition to and does not in any manner limit other remedies set forth in particular paragraphs of this Lease.

F. **Liability for Premiums.** COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make COUNTY a partner or joint venturer with TENANT in TENANT's operations at Chino Airport.

8. **HOLD HARMLESS.** Except to the extent arising from COUNTY's gross negligence or willful misconduct, TENANT agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers, from any and all claims, actions, losses, damages, and/or liability arising out of this Lease or occurring on or about the Premises from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the 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 Contractor's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "gross negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

9. **EXEMPTION OF COUNTY FROM LIABILITY.** Except to the extent arising from COUNTY's gross negligence or willful misconduct, COUNTY shall not be liable for any injury or damage to the person or property of TENANT, TENANT's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects in pipes, fire sprinklers, wires, appliances, plumbing systems, fixtures, air

SECTION II – ADDITIONAL LEASE PROVISIONS

conditioning systems or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises or upon other portions of the Airport of which the Premises are a part or from other sources or places. COUNTY shall not be liable for any damages arising from any act or neglect of any other tenant at the Airport or from COUNTY's failure to enforce the provisions of any other lease at the Airport. COUNTY shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or any other damage arising out of any events that occur at the Airport, including but not limited to any air shows, air fairs, display shows, or other events. Notwithstanding COUNTY's negligence or breach of this Lease, COUNTY shall not be liable for any injury to TENANT's business or any loss of income or profit therefrom, or for any consequential damages allegedly sustained by TENANT. Notwithstanding TENANT's negligence or breach of this Lease, TENANT shall not be liable for any injury to COUNTY's business or any loss of income or profit therefrom, or for any consequential damages allegedly sustained by COUNTY, except to the extent provided in Paragraph 22.

10. **TAXES, ASSESSMENTS AND LICENSES.** TENANT shall pay before delinquency any, and all property taxes, assessments, fees, or charges, including but not limited to possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to TENANT and located in or about the Premises. TENANT recognizes and understands that this Lease may create a possessory interest subject to property taxation and that TENANT is obligated to pay and discharge such taxes. TENANT shall also pay all license or permit fees necessary or required by law for the conduct of TENANT's business or operation.

11. **IMPROVEMENTS AND ALTERATIONS.** TENANT may construct buildings or other improvements upon the Premises, or may alter, improve or modify the existing buildings and improvements situated at the Premises ("Improvements", and together with the Premises, the "Property"), provided that said Improvements shall be approved in writing by COUNTY prior to the commencement of any work, provided that COUNTY hereby pre-approves the Improvements that were approved under the Option Agreement or are depicted on Exhibit "F" attached hereto, as well as any Improvements relating to electronic vehicle charging. All Improvements shall be completed in: (i) accordance with the plans and specifications (as defined on Exhibit "E") approved by COUNTY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, any and all applicable permits and the Master Plan for the Airport. "Substantial Completion" of the Improvements shall occur when TENANT has obtained a certificate of occupancy or temporary or final certificate of occupancy, or legal equivalent, or has otherwise obtained building permit sign-off from any and all applicable governing agencies (each, a "Certificate of Occupancy") for the Improvements permitting occupancy of the Premises for Tenant's intended use. TENANT shall provide COUNTY with not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises so that COUNTY, at COUNTY'S option, may post a Notice of Non-Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be reasonably acceptable to COUNTY. TENANT's contracting for the construction of any Improvements shall be subject to prevailing wages and comply with the provisions of the California Public Contract Code 22000 through 22045 regarding bidding procedure and Labor Code Section 1720.2 and 1770 et seq. regarding general prevailing wages, including but not limited to, the provisions set forth in Exhibit "L" attached hereto and incorporated herein by reference. TENANT shall indemnify defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents, and volunteers from any claims, actions, losses, damages, and/or liability arising out of the obligations set forth herein, except to the extent of COUNTY, its officers, employees, agents, or volunteers' gross negligence and willful misconduct. TENANT's indemnity obligation shall survive TENANT's tenancy and shall not be limited

SECTION II – ADDITIONAL LEASE PROVISIONS

by the existence or availability of insurance. All approvals required by COUNTY in this paragraph, including all sub-paragraphs, shall be granted or denied in COUNTY's reasonable discretion.

A. Utilities and Utility Installations.

1. **Utility Plans.** Upon TENANT's request, the COUNTY will provide TENANT or TENANT's architect with a plan showing the approximate location of known utility lines on or about the Premises ("Utility Plans"). TENANT understands that Utility Plans show only the approximate location of the utility lines at the Airport and that the Utility Plans are furnished to TENANT without any warranty or representation as to completeness or accuracy. COUNTY's delivery of the Utility Plans to TENANT shall not relieve TENANT of TENANT's affirmative obligation to locate all utilities, and TENANT agrees that TENANT shall be responsible for determining the actual location of all utility lines.

2. **Utility Installations.** After obtaining COUNTY's consent and reasonable approval TENANT may extend any utility lines serving the Premises to the COUNTY approved points on the Premises. TENANT may also install such distribution panels and equipment; meters and other facilities and equipment as may be reasonably required to connect to the utilities serving the Premises ("Utility Installations"). TENANT agrees that all Utility Installations shall be constructed in accordance with provisions of this paragraph and that TENANT shall pay all costs associated with such Utility Installations, including but not limited to the extension and connection of said utilities. As additional consideration for this Lease, TENANT agrees that all extended Utility Installations shall become the COUNTY's property upon completion of the extension work. TENANT shall execute any documentation necessary to transfer the Utility Installations to the COUNTY. COUNTY shall not be required to reimburse TENANT for the cost of any of the foregoing work.

B. **Plans and Specifications.** Prior to the commencement of any construction at the Premises, TENANT shall provide COUNTY with a complete set of working drawings and specifications necessary for construction of the proposed Improvements (the "**Working Plans and Specifications**") in compliance with Exhibit "E", and the schedule for the construction of said Improvements (the "Construction Schedule"). COUNTY's review of TENANT's Working Plans and Specifications, as well as COUNTY's consent to the construction of the proposed Improvements, shall not constitute a representation of the adequacy of the Working Plans and Specifications or expose COUNTY to any liability. The Working Plans, Specifications and Construction Schedule prepared for the initial Improvements by TENANT and pre-approved by COUNTY are attached to this Lease as Exhibit "F", Working Plans, Specifications and Construction Schedule. TENANT shall construct on the Premises, only those improvements shown on the Working Plans and Specifications or any reasonable derivation thereof. All improvements and facilities depicted on the Working Plans and Specifications shall be constructed and completed within the time set forth on the Construction Schedule. Upon the completion of the construction of the Improvements, TENANT, at its sole cost, shall prepare as-built plans for the Improvements and shall give one (1) digital copy of each as-built plan to COUNTY.

C. **Performance and Payment Bonds.** As a condition of COUNTY's consent to TENANT's proposed construction of any Improvements at the Premises, during the period of construction of such Improvements until all contractors and suppliers are paid and the permitting authority's building official has approved final construction completion, TENANT shall furnish \$5,000,000 performance and payment bonds to COUNTY prior to the commencement of any construction. The COUNTY must approve the bonds before work can commence. The bonds

SECTION II – ADDITIONAL LEASE PROVISIONS

shall be issued by a surety qualified to do business in the State of California. TENANT's contractor shall procure performance and payment bonds as required by law, and the payment bond shall be in an amount equal to one hundred percent (100%) of the cost of construction. The bonds shall also name COUNTY as obligee and shall provide that in the event TENANT does not complete the proposed construction materially in accordance with the Construction Plans and/or Construction Schedule, the surety shall complete the construction or at COUNTY's option and upon COUNTY's demand shall return the parcel to grade. The Director is authorized, but not required, to accept substitute security under such terms and conditions as the Director determines, in lieu of the above performance, and labor and material bonds described in this paragraph.

D. Cost of Construction. All costs of construction shall be the sole responsibility of TENANT and shall be paid by TENANT when due. The TENANT shall conduct any construction program in such a manner so that no mechanic's liens or materialmen's liens shall be asserted, or purportedly asserted, against the Premises or any improvements thereon. If any such lien shall be asserted, TENANT shall indemnify, defend and hold harmless COUNTY and the Premises in accordance with Paragraph 8, HOLD HARMLESS, of this Lease.

1. Improvement Allowance and Payment. Provided that the TENANT has provided the final plans for the Improvements, including all engineered drawings and the proposed Improvements that not only benefit the Project but also benefit Chino Airport, as approved by the local governing authorities and the County Department of Airports, then, within thirty (30) days of TENANT's completion of the terms set forth in the Option Agreement and upon receiving permits from the City for the Improvements then the COUNTY shall pay to TENANT a maximum tenant improvement allowance (the "Improvement Allowance") in the amount of \$5,000,000 to be used solely for soft costs, including but not limited to the cost of designing and permitting, as well as construction costs of those approved infrastructure project(s) that are in accordance with the total cost estimate for those infrastructure project Improvements. With the commencement of the monthly Minimum Monthly Rent, TENANT shall pay COUNTY the amortized infrastructure project(s) cost allowance up to the maximum allowance of the \$5,000,000 amount of the Improvement Allowance over the initial Term of the Lease at five percent (5%) interest annually.

2. For example purposes only, if the approved total infrastructure project(s) cost estimate ends up being \$4,700,000 then that amount would be paid by Tenant to County and amortized over the Term of the Lease at 5% to be paid by Tenant to County as additional rent. In this example, for that \$4,700,000 paid by Lessor to Lessee, the Lessee would pay to Lessor additional monthly rent of \$25,230.62 per month over and above the monthly Rent.

E. Construction Financing. As part of the construction of the Improvements at the Premises, TENANT may encumber its leasehold interest in the Premises to a Lender furnishing construction financing to TENANT (or permanent financing to reimburse TENANT for the costs of construction), provided that COUNTY has consented to such encumbrance by executing a Consent of Hypothecation (the "County Consent"), which County Consent shall not be unreasonably delayed or withheld. The County Consent shall be in the form attached hereto as Exhibit "G", Consent to Hypothecation. The term "Approved Encumbrance" shall mean an encumbrance approved by the COUNTY by way of a County Consent. The term "LENDER" shall mean the owner and holder of an Approved Encumbrance. Notwithstanding the foregoing, TENANT shall not be required to obtain County Consent to any financing previously approved by COUNTY under the Option Agreement.

SECTION II – ADDITIONAL LEASE PROVISIONS

1. Upon default by TENANT under any of the terms of an Approved Encumbrance, the LENDER may exercise any rights provided in such Approved Encumbrance, provided that before any sale of TENANT's leasehold interest, whether under power of sale or foreclosure, the LENDER shall give to COUNTY notice of the same character and duration as is required to be given to TENANT by the terms of the encumbrance or the laws of the State of California.

2. If any default shall continue after the giving of such notice, COUNTY, prior to sale of the leasehold, shall have the right to correct such default and initiate an action under Paragraph 21, DEFAULT AND RIGHT TO TERMINATE, to terminate this Lease. COUNTY shall pay to LENDER an agreed amount or the amount of principal, accrued interest and other charges which remain unpaid upon any termination pursuant to this paragraph in exchange for deed of clear title.

3. If a sale or foreclosure under an Approved Encumbrance occurs or if the LENDER acquires the leasehold by assignment in lieu of foreclosure, said purchaser or assignee, as a successor in interest to TENANT, will be bound by all the terms of this Lease and will assume all the obligations of TENANT hereunder. Any acquisition of the leasehold interest by a party other than LENDER (whether by purchase at judicial foreclosure proceedings, trustee's sale, or upon assignment from LENDER) shall be subject to COUNTY's written approval, which approval shall be given if the proposed transferee's overall financial position is substantially as strong as TENANT's financial position as of the Commencement Date. Upon COUNTY'S approval of such transferee, LENDER shall no longer be liable for the performance of any of TENANT's obligations under this Lease and the transferee shall become the TENANT hereunder.

4. Any other terms applicable to any Approved Encumbrance which are acceptable to COUNTY, and which are to be part of this Lease shall be attached to this Lease as Exhibit "H", Additional Lender Terms.

F. **Alterations.** Following completion of the Improvements, TENANT may not make any other improvements, alterations or changes to the Premises (collectively, the "Alterations") without first procuring COUNTY's prior written consent thereto, which consent (i) shall be requested by Tenant at least 90 business days prior to the commencement thereof, and (ii) may be withheld only in COUNTY's reasonable discretion. COUNTY may impose, as a condition to its consent, any requirements that COUNTY in its reasonable discretion may deem necessary.

G. **Ownership of Improvements and Alterations.** All Improvements and Alterations constructed by TENANT on or about the Premises shall be the property of and owned by TENANT during the Term of this Lease but shall be considered to be improvements to real property and shall become the property of COUNTY at the termination of this Lease, the expiration of the current term of the lease, or as otherwise provided herein. COUNTY may require the TENANT to remove, at any time, all or any part of any Alterations or Improvements made without COUNTY's consent.

12. MAINTENANCE OF PREMISES.

A. **Tenant's Obligation.** TENANT shall, at TENANT's sole cost and expense and at all times during the Term of the Lease, be solely responsible to maintain, repair, replace, and keep all and every portion of the Premises and the Improvements in good order, condition and repair (normal wear and tear excepted), including but not limited to maintenance, repair, and

SECTION II – ADDITIONAL LEASE PROVISIONS

replacement of the structural and non-structural elements of the Improvements; the heating, ventilation, and air-conditioning, electric, gas, sewer, and life/fire/safety systems serving the Improvements located on the Premises, the Utility Installations; Tenant's Fixtures; any Alterations, the grounds, sidewalks, and landscaping of the Premises; the parking areas and drive lanes of the Premises; and all custodial, pest control, and any other services for the Premises and the Improvements; all in compliance with Applicable Laws. Without limiting the generality of the foregoing, TENANT shall maintain, manage, and operate the Premises and the Improvements in a first-class manner and as otherwise required by this Lease. As used herein, "first-class manner" shall mean the maintenance, repair, replacement, management, and operation of the Premises and the Improvements in a good, clean, sanitary, graffiti-free, functional, and high-quality condition consistent with the market in which the Premises is located. TENANT, in keeping the Premises and the Improvements in a first-class manner shall exercise and perform good maintenance practices consistent with the market in which the Premises is located. If TENANT fails to perform its obligations in this paragraph, such failure shall be a default under this Lease, subject to applicable notice and cure periods. TENANT acknowledges that the Premises are located on airport property and that the control of potential damage to aircraft utilizing said airport ("Foreign Object Damage") is of utmost importance. TENANT, in performing TENANT's obligations herein, shall maintain the Premises and the Improvements in compliance with FAA requirements, including those requirements related to the risk of Foreign Object Damage.

B. Surrender and Restoration of the Premises. TENANT shall surrender the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that could have been prevented by good maintenance practice or by TENANT performing all of its obligations under this Lease. TENANT's obligation shall include the repair of any damage occasioned by the installation, maintenance or removal of TENANT's trade fixtures, furnishings, equipment, as well as the removal of any storage tank installed by or for TENANT, and the removal, replacement, or remediation of any soil, material or ground water contaminated by TENANT, all as may then be required by any applicable law, ordinance or regulation and/or good practice.

C. Utilities. TENANT understands and agrees that provision of all utilities, including but not limited to, electrical, water, gas, telephone, refuse collection, sewage disposal, etc., shall be the responsibility of the TENANT, and payable directly to the utility or service provider. TENANT shall coordinate all utility connections with the local governing authority, and TENANT shall assume all costs involved with said connections, all costs for services thereafter and maintenance within the Premises.

13. ASSIGNMENT AND SUBLETTING.

A. County's Consent Required. TENANT shall not voluntarily or by operation of law, assign TENANT's interest in this Lease, in the Premises or in any options contained in this Lease, nor sublease exclusive leaseholds for all or any part of the Premises, without first obtaining COUNTY's written consent. The parties agree that the COUNTY will give its best efforts and diligently process TENANT's requests for sublease consent and approval by the County Board of Supervisors (Board). The Board's consent and approval is subject to its reasonable discretion. The Board may delegate the authority to consent and approve TENANT's sublease requests to the COUNTY Real Estate Services Director (Director). If delegated, the Director may receive, review, approve the sublease request and execute the Form of County Consent to Sublease if the sublease conditions are satisfied and the proposed subtenant satisfies the parameters required for subletting as follows: (i) the proposed sublease must be subject to

SECTION II – ADDITIONAL LEASE PROVISIONS

the terms of this Master Lease, (ii) TENANT must remain responsible subtenant's use of the subleased Premises, (iii) TENANT must pay to COUNTY the Subletting Fee as stated in the Basic Lease Provisions, (iv) the proposed sublease must be complete with all material terms, (v) TENANT and proposed subtenant must submit a completed Form of County Consent to Sublease (Exhibit "K"), (vi) the proposed subtenant must have qualified experience, credit worthiness, and financial solvency for the use being proposed to the reasonable satisfaction of the Director, and (vii) the proposed subtenant entity of record with the California Secretary of State must be in good standing. The Director will respond to TENANT's sublease request with reasonable promptness and within thirty (30) days following receipt of the proposed sublease package, complete with all the parameters stated in (i-vii) above satisfied, state whether consent is given or not given with the reasons therefore, or whether the sublease proposal is incomplete and needs additional information or correction. Consent shall not be deemed given if the Director reasonably requires more time to evaluate the proposed sublease. Except as provided in Paragraph 11, IMPROVEMENTS, TENANT shall not encumber TENANT's interest in this Lease or the Premises. Any assignment, sublease or encumbrance without COUNTY's consent shall be voidable and, at COUNTY's election, shall constitute a default under this Lease. COUNTY's consent to any assignment, sublease or encumbrance shall not constitute a waiver of COUNTY's right to require consent to any subsequent assignment or sublease. A sublease, as stated herein, shall mean the conveyance by TENANT to a subtenant of an exclusive, irrevocable leasehold of one year or longer wherein subtenant acquires management and operational control, and exclusive access and use rights to the subleased premises. TENANT's renting out of spaces within the Premises to TENANT's authorized users, licensees, permittees, or customers, shall not be deemed an assignment or sublease under this paragraph. For the purposes of this paragraph, the following events shall be deemed to be an assignment requiring COUNTY's prior written consent:

1. If TENANT is a partnership, limited liability company, or other non-corporate entity, the withdrawal or change, voluntary, involuntary, or by operation of law, of fifty percent (50%) or more of the partners, members, or owners, or transfer of fifty percent (50%) or more of partnership, membership, or ownership interests, or the dissolution of the partnership or other entity without immediate reconstitution thereof, will be deemed an assignment.

2. If TENANT is a corporation, any dissolution, merger, consolidation, or other reorganization of TENANT, or the sale or other transfer of a controlling percentage of the capital stock of TENANT (other than to immediate family members by reason of gift or death), or the sale of fifty percent (50%) or more of the value of the assets of TENANT, will be deemed an assignment. The phrase "controlling percentage" means the ownership of and the right to vote stock possessing fifty percent (50%) or more of the total combined voting power of all classes of TENANT's capital stock issued, outstanding, and entitled to vote for the election of directors. This paragraph will not apply to corporations the stock of which is traded through an exchange or over the counter.

B. Terms and Conditions Applicable To Assignment and Subletting. The following provisions shall apply to any sublease or assignment pursuant to this Lease:

1. Irrespective of COUNTY's consent, any assignment or sublease shall not: (i) be effective without the express written assumption by such assignee or sublessee of all of TENANT's obligations under this Lease; (ii) release TENANT of any of its obligations hereunder; nor (iii) alter the primary liability of TENANT for the payment of the Minimum Monthly Rent, Fees, and other sums due COUNTY pursuant to this Lease or for the performance of any of TENANT's other obligations under this Lease.

SECTION II – ADDITIONAL LEASE PROVISIONS

2. Each request for consent to an assignment or sublease shall be in writing, and shall be accompanied by the following: (i) an assignment or sublease agreement in a commercially reasonable form acceptable to the COUNTY, (ii) a certification by TENANT of all rents or consideration to be paid to TENANT by the assignee or sublessee, (iii) a current credit report of the assignee or sublessee, including credits reports for each of its principals, (iv) the three most recent years of financial statements of the proposed assignee or sublessee (v) information related to the responsibility and appropriateness of the proposed assignee or sublessee; and (vi) information related to the intended use of the Premises by the proposed assignee or sublessee. TENANT agrees to pay the Minimum Assignment/Subletting Fee as stated in the Basic Lease Provisions and all other costs incurred by COUNTY in reviewing TENANT's request and to provide COUNTY with such other and/or additional information and/or documentation as COUNTY may reasonably require in connection with TENANT's request.

3. Intentionally Omitted.

4. Without limiting the other instances in which it may be reasonable for COUNTY to withhold its consent to an assignment or sublease request, it shall be deemed reasonable for COUNTY to withhold its consent if any one or more of the following conditions exist: (i) TENANT is in default of the Lease at the time consent is requested; (ii) the net worth of the proposed assignee or sublessee at the time consent is requested is not at least as great as the net worth of the TENANT as existed at the initial Commencement Date of the Lease; (iii) the creditworthiness of the proposed assignee or sublessee at the time consent is requested is not at least as good as the creditworthiness of the TENANT as existed at the initial Commencement Date of the Lease; (iv) the proposed assignee or sublessee does not have the financial strength, stability, nor ability to perform all obligations of TENANT under this Lease; (v) the years and type of business experience of the proposed transferee at the time consent is requested is not as great as years and type of business experience as the TENANT as of the date consent is requested; (vi) the proposed assignee or sublessee is not in County's reasonable opinion of reputable or good character; (vii) the proposed transferee's use is not permitted by this Lease; (viii) the proposed use will significantly increase the demand upon utilities and services to be provided by County under the Lease; (ix) the proposed use will increase the likelihood of damage or destruction to the Premises; and (x) in the event of a sublease, the portion of the Premises to be subleased does not have adequate means of ingress and egress.

C. **Permitted Transfers.** Notwithstanding the foregoing, TENANT may assign or sublet its right, title and interest in, to and under this Lease upon notice to COUNTY, but without COUNTY's consent, to (i) an Affiliate of TENANT (which for purposes of this Paragraph 13(C), shall mean an entity which is Controlled by, Controls, or is under common Control with, TENANT), (ii) an entity which is the resulting entity of a merger or consolidation of TENANT so long as the resulting entity has, or has engaged in writing a third party (and evidence thereof is provided to COUNTY) with, experience operating Comparable Projects, or (iii) an entity that (after giving effect to the Transfer), will have one or more members or partners that are Affiliates of one or more members or partners of the prior TENANT (e.g., the TENANT prior to the Transfer) (any such assignee or sublessee described in items (i) through (iv) of this Paragraph 13(C) hereinafter referred to as a "Permitted Transferee", and any such assignment or sublease, a "Permitted Transfer"), provided that TENANT notifies COUNTY at least ten (10) days prior to any contemplated Permitted Transfer and promptly supplies COUNTY with any documents or information reasonably requested by COUNTY regarding such Permitted Transfer or Permitted Transferee. An assignee of TENANT's entire interest in this Lease who qualifies as a Permitted Transferee may also be referred to herein as a "Permitted Transferee Assignee." "Control," as used in this Paragraph 13(C), shall mean the ownership, directly or indirectly, of fifty

SECTION II – ADDITIONAL LEASE PROVISIONS

percent (50%) or more of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of fifty percent (50%) or more of the voting interest in, any person or entity.

D. **Assignment of Rents.** TENANT irrevocably assigns to COUNTY, as security for TENANT's obligations under this Lease, all rent due TENANT from any subletting of all or a part of the Premises pursuant to this Lease, and COUNTY, as assignee and as attorney-in-fact for TENANT, may collect such rent and apply it toward TENANT's obligations under this Lease, except that until the occurrence of a Default by TENANT, TENANT shall have the right to collect such rent.

E. **Tenant Financing.**

1. Tenant's Right To Encumber Leasehold; Enforcement.

a. TENANT may, at any time during the Term, or any extension as provided herein, without COUNTY's consent, encumber to any Leasehold Mortgagee (as defined below) by Leasehold Mortgage (as defined below) or other security instrument all or any portion of TENANT's right, title and interest in and to the Improvements, this Lease, and the Leasehold Estate hereby created in TENANT; provided, however, that (i) no Leasehold Mortgage incurred by TENANT pursuant to this Paragraph 13(E) shall, and TENANT shall not have the power to incur any encumbrance that will, constitute in any way a lien or encumbrance on COUNTY's fee estate in the Premises or any part of the Premises and any direct or indirect interest in such fee estate, including COUNTY's reversionary interest in the Property after expiration or termination of this Lease (the "Fee Estate"), or any residual interest of COUNTY in the Improvements attributable to the period following the Term, and (ii) the loan secured by the Leasehold Mortgage shall have a term no longer than the remaining portion of the Term (which shall not include any unexercised options). "Leasehold Estate" means the Tenant's leasehold estate in the Premises and all TENANT's rights, privileges and options of any kind or nature under this Lease, upon and subject to all of the terms and conditions of this Lease. "Leasehold Mortgagee" shall mean the holder of a Leasehold Mortgage. "Leasehold Mortgage" shall mean any and all mortgages, deeds of trust or other security instruments made in accordance with the terms and conditions contained in this Lease, which constitute a lien on all or any portion of the Leasehold Estate.

b. A Leasehold Mortgagee may enforce its Leasehold Mortgage and acquire title to the Leasehold Estate in any lawful way and, pending foreclosure (deed in lieu or assignment in lieu) of such Leasehold Mortgage, such Leasehold Mortgagee may take possession of and operate the Property, performing all obligations of TENANT under this Lease arising from and after the date such Leasehold Mortgagee takes possession of the Property, and upon foreclosure of such Leasehold Mortgage by power of sale, judicial foreclosure, or upon acquisition of the Leasehold Estate by deed and/or assignment in lieu of foreclosure or otherwise, (i) COUNTY shall recognize the applicable transferee thereof as successor-in-interest to TENANT under this Lease, provided that except for monetary obligations, such transferee shall not be obligated in respect of any obligation hereunder arising prior to or relating to a date prior to the date on which such transferee's acquired title to and possession of the Property, unless it is a continuing obligation beyond the date of transferee's acquisition and possession, and (ii) the Leasehold Mortgagee may, upon notice to COUNTY, sell and assign the Leasehold Estate hereby created subject to the terms and conditions applicable to assignment and subletting of this Lease (including Paragraph 13(E)(2) below). No such proceedings shall relieve TENANT of liability hereunder.

SECTION II – ADDITIONAL LEASE PROVISIONS

2. **Notices to County.** If TENANT shall, in accordance with Paragraph 13(E)(1), on one or more occasions mortgage its Leasehold Estate, the holder of such Leasehold Mortgage shall provide COUNTY with written notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. On such occasion, TENANT shall provide COUNTY with a separate notice which shall include a cumulative list of the names and addresses of all Leasehold Mortgagees to date, set forth in the order of priority of such Leasehold Mortgages. COUNTY and TENANT agree that, following receipt of the notice from the holder of the Leasehold Mortgage by COUNTY, the provisions of this Paragraph 13(E) shall apply with regard to each such Leasehold Mortgage. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee, notice thereof shall be promptly provided to COUNTY, but any failure to provide such notice shall not diminish, alter or terminate the rights of a Leasehold Mortgagee hereunder, but the foregoing shall excuse COUNTY of any notice obligations if notice is delivered consistent with the last notice provisions delivered to COUNTY.

3. **No Termination or Modification.** Except for COUNTY's rights following a Default by TENANT under this Lease after the expiration of all notice and cure periods granted to Leasehold Mortgagees pursuant to this Paragraph 13(E), no action by TENANT or COUNTY to cancel, surrender, or modify the terms of this Lease shall be binding upon a Leasehold Mortgagee without its prior written consent. Leasehold Mortgagee will use commercially reasonable efforts to respond in writing to any request by TENANT or COUNTY that Leasehold Mortgagee consent to a cancellation, surrender, or modification of the Lease within thirty (30) days of the TENANT's or COUNTY's request for such consent. Notwithstanding the above, Leasehold Mortgagee's consent is not required when COUNTY enforces its rights following a Default by TENANT under this Lease after the expiration of all notice and cure periods granted to Leasehold Mortgagees pursuant to this Paragraph 13(E).

4. **Notice of Default or Breach.** COUNTY, concurrently with the delivery to TENANT of any notice pursuant to Paragraph 21 DEFAULT AND RIGHT TO TERMINATE, shall provide a copy of such notice to each Leasehold Mortgagee, so long as COUNTY has previously been informed of the name and address of such Leasehold Mortgagee in the manner and by the means provided for in Paragraph 13(E)(2) of this Lease. No such notice by COUNTY to TENANT shall be deemed to have been duly given to Leasehold Mortgagee unless and until a copy thereof has been so provided to each Leasehold Mortgagee of which COUNTY has notice. As used herein, "Termination Notice" means a notice that expressly states that COUNTY will terminate this Lease if the breach or default which is the subject of the notice has not been cured prior to the expiration of all applicable notice and cure periods granted to TENANT pursuant to this Lease. Such notice may be combined into a single notice together with the notice described in the first sentence of this Paragraph 13(E)(4). COUNTY, concurrently with the delivery to TENANT of any Termination Notice, shall provide a copy of such notice to each Leasehold Mortgagee, so long as COUNTY has previously been informed of the name and address of such Leasehold Mortgagee in the manner and by the means provided for in Paragraph 13(E)(2) of this Lease. No such notice by COUNTY to TENANT shall be deemed to have been duly given to Leasehold Mortgagee unless and until a copy thereof has been so provided to each Leasehold Mortgagee of which COUNTY has notice.

5. **Limitation on Termination Rights for Default.** Notwithstanding any provisions of Paragraph 21 to the contrary, COUNTY shall have no right to terminate this Lease for a Default by TENANT (or any other reason) without first delivering a Termination Notice to TENANT and each Leasehold Mortgagee, nor thereafter so long as:

SECTION II – ADDITIONAL LEASE PROVISIONS

a. within the thirty (30) day period following the date COUNTY duly delivers its Termination Notice, a Leasehold Mortgagee shall: (1) pay or cause to be paid all rent and other payments then due and specified in the notice to the Leasehold Mortgagee and which may become due during such period; and comply or in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by the Leasehold Mortgagee (and, for such purposes, COUNTY and TENANT hereby authorize the Leasehold Mortgagee to enter upon the Property); and (2) in the Leasehold Mortgagee's sole discretion, and if not enjoined or stayed, commence procedures and diligently be completing the procedures to acquire or sell TENANT's interest in the Lease by foreclosure under the Leasehold Mortgage or other appropriate means, subject to Paragraph 13(E)(6) below; and

b. after such thirty (30) day period, the Leasehold Mortgagee shall: (1) pay or cause to be paid the Rent and other monetary obligations of TENANT under this Lease as they become due, and continue its good faith efforts to perform all of TENANT's other obligations under this Lease, excepting past nonmonetary obligations then in default and not reasonably susceptible of being cured by the Leasehold Mortgagee; and (2) in the Leasehold Mortgagee's sole discretion, and except during any period enjoined or stayed therefrom, pursue with reasonable diligence and prosecute proceedings and diligently be completing proceedings to acquire or sell TENANT's interest in this Lease by foreclosure under the Leasehold Mortgage or other appropriate means, subject to Paragraph 13(E)(6) below.

6. **Right to Cure; Continuance of Foreclosure; Effect of Cure.**
Each Leasehold Mortgagee shall have the right, but not the duty, to cure or cause to be cured any Default and any act, event or condition which, with or without notice, the passage of time or both, would be a Default under this Lease or a breach of any obligation of TENANT to COUNTY which could affect the continued existence of this Lease, and COUNTY shall accept such performance from a Leasehold Mortgagee as if it had been done by TENANT. Nothing herein shall be construed to require a Leasehold Mortgagee to continue or to discontinue foreclosure or other enforcement proceedings after a default has been cured. If a Default or other default is cured, this Lease shall continue in full force and effect as if no Default or other default by TENANT had occurred.

7. **Leasehold Mortgagee's Right to New Lease.**

a. In case of early termination of this Lease by reason of any voluntary surrender or cancellation of this Lease, any exercise of a right granted to TENANT hereunder to which Leasehold Mortgagee has not consented in writing, any Default, any breach of TENANT's obligations of any kind to COUNTY, or any rejection or disaffirmance of this Lease by TENANT or any trustee or other successor to TENANT pursuant to bankruptcy or other law affecting creditors' rights, COUNTY shall give prompt notice thereof to all Leasehold Mortgagees. COUNTY shall, on written request of any Leasehold Mortgagee (or its designee) made at any time within sixty (60) calendar days after the earlier of its receipt of such notice from COUNTY or its acquisition of the leasehold, promptly enter into a new lease with such Leasehold Mortgagee (or its designee) covering the Property provided that, on or prior to the execution and delivery of such new lease (1) the Leasehold Mortgagee (or its designee) pays to COUNTY all Rent and other charges payable by TENANT under this Lease and due as of the date of termination of this Lease, plus all Rent and other charges payable by the Leasehold Mortgagee (or its designee) under the new lease and due for the period from the date of termination of this Lease until the date of entry into the new lease, and (2) the Leasehold Mortgagee (or its designee) agrees in writing that promptly following delivery of the new lease, the Leasehold Mortgagee (or its

SECTION II – ADDITIONAL LEASE PROVISIONS

designee) will perform or cause to be performed all other covenants of TENANT under this Lease to be performed to the extent that TENANT fails to perform the same to the date of delivery of the new lease. except such covenants which are not reasonably susceptible of cure or performance by the Leasehold Mortgagee (or its designee) within such sixty (60) day period so long as the Leasehold Mortgagee commences to cure within such sixty (60) day period and continues to cure such Default without interruption until the Default has been completely cured. The new lease shall be for a term equal to the then-remaining Term had termination not occurred, be effective at the date of termination, and be in the form of this Lease, including, but not limited to, at the Rent and on all of the covenants, agreements, conditions, provisions, restrictions and limitations contained in this Lease, but subject to the rights of the Leasehold Mortgagee (or its designee) as a Foreclosure Purchaser under Paragraph 13(E)(10), if applicable. Any new lease made pursuant to this Paragraph 13(E)(7), and any renewal lease entered into with a Leasehold Mortgagee (or its designee), shall confer upon and to the Leasehold Mortgagee (or its designee) the same right, title and interest in and to this Lease, the Property, and the Improvements thereon as TENANT had under this Lease, including, without limitation, TENANT's ownership of the Improvements, if any. The foregoing shall not apply in the event of any other termination of the Lease except as provided above.

b. Any new lease and any amendment, substitution, or renewal thereof shall be prior to any mortgage or other lien, charge or encumbrance on the fee interest in the Property as to which the Lease was prior, and the tenant under any new lease shall have the same right, title and interest in and to the Property and Improvements thereon as TENANT had under the Lease.

c. COUNTY's obligations and liability under such new lease shall not be greater than if the Lease had not terminated and Foreclosure Purchaser had become the lessee thereunder. Foreclosure Purchaser shall take the Premises "as is" in their then-current condition. Upon execution and delivery of such new lease, COUNTY shall have no obligation to remove the TENANT named therein or any other occupant from the Premises.

d. After any termination of this Lease after which a Leasehold Mortgagee has the right to obtain a new lease and has delivered written notice of its intent to enter a new lease, COUNTY shall receive all rent and other payments due from all subtenants as agent of the Leasehold Mortgagees, and shall deposit such amounts in a segregated account in trust for the Leasehold Mortgagees, and upon execution of a new lease, shall account to the tenant thereunder for such amounts. Such collection of such amounts by COUNTY shall not be deemed an acceptance by COUNTY for its own account of the attornment of any subtenant. In the event a new lease is so entered into, all subtenants shall attorn to the new tenant thereunder. All rights and obligations of COUNTY and a Leasehold Mortgagee provided under this Paragraph 13(E) with respect to a new lease following the termination of this Lease shall survive the termination of this Lease.

8. **Multiple Leasehold Mortgages.** If more than one Leasehold Mortgagee shall make a written request upon COUNTY for a new lease in accordance with the provisions of Paragraph 13(E)(6), then such new lease shall be entered into pursuant to the request of the Leasehold Mortgagee or its designee whose Leasehold Mortgage shall be most senior in lien, as evidenced by a title insurance commitment provided to COUNTY, unless otherwise agreed by all such Leasehold Mortgagees in writing and provided to COUNTY in writing.

SECTION II – ADDITIONAL LEASE PROVISIONS

9. **Foreclosure Purchasers.** For purposes of this Paragraph 13(E), a Leasehold Mortgagee or other acquirer of the Leasehold Estate of TENANT, pursuant to foreclosure, deed and/or assignment in lieu of foreclosure or other like proceedings ("Foreclosure Purchaser"), shall be deemed to be subject to and to have agreed to perform all of the terms, covenants and conditions of this Lease on the part of TENANT to be performed hereunder from and after the date of such transfer, but only for so long as such Foreclosure Purchaser is the owner of the Leasehold Estate. Any Foreclosure Purchaser may thereafter sell and assign the Leasehold Estate consistent with the assignment terms contained in this Lease provided that the transferee assumes the obligations of TENANT under this Lease arising from and after the date of transfer to such transferee, and expressly confirms in writing that the same are in full force and effect. Upon such sale or assignment, the Foreclosure Purchaser shall be relieved of all obligations under this Lease.

10. **Protection of County's Estate.** Except as expressly provided in this Lease, the foregoing provisions do not give to any person whatsoever the right to mortgage, hypothecate or otherwise to encumber or to cause any liens to be placed against the Fee Estate, nor shall said provisions be construed as resulting in a subordination in whole or in part of the Fee Estate to any indebtedness of TENANT.

11. **Mortgagee Clauses.** A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by TENANT hereunder on condition that the insurance proceeds are to be applied in the manner specified in the Leasehold Mortgage, subject to Paragraph 13(E)(24).

12. **Notice of Proceedings.** COUNTY shall give each Leasehold Mortgagee whose name and address for notice has been given to COUNTY, prompt notice of any legal proceedings between COUNTY and TENANT involving the enforcement or declaration of obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, COUNTY shall give the Leasehold Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of such notice of such proceedings.

13. **No Merger.** In the event the ownership of the Fee Estate and Leasehold Estate of the Property becomes vested in the same person or entity, as long as the Leasehold Mortgage shall remain outstanding, such occurrence shall not result in a merger of title or interest. Rather, this Lease and the Leasehold Mortgage lien thereon shall remain in full force and effect, unless or until the Leasehold Mortgagee expressly waives this "no merger" provision in a writing.

14. **Removal of Collateral.** COUNTY agrees that any Leasehold Mortgagee or other individual, person or entity ("Other Party") shall have the right to file and/or record one or more financing statements against, and to take security interests in, any and all Personal Property (as defined below) at any time located at the Property and the proceeds of such Personal Property, and further that the Leasehold Mortgagee or Other Party may enter upon the Property to remove the same from the Property, whenever the Leasehold Mortgagee or Other Party elects to enforce such security interest, if given by TENANT; provided, however, the Leasehold Mortgagee or Other Party shall repair any material damage to the Property caused by the removal of any such Personal Property to the reasonable satisfaction of COUNTY. Such

SECTION II – ADDITIONAL LEASE PROVISIONS

rights will continue for thirty (30) days after the Leasehold Mortgagee or Other Party receives notice in writing from COUNTY that TENANT no longer is in lawful possession of the Property. COUNTY hereby disclaims any title to or rights in such Personal Property of TENANT (or the proceeds thereof) unless such Personal Property is abandoned following Lease termination and auctioned off to reimburse COUNTY for storage costs pursuant to applicable notice and law, and subordinates to the security interest of any and all Leasehold Mortgagees and Other Parties, if any, COUNTY may have pursuant to any COUNTY's lien, encumbrance or other interest which COUNTY may now or hereafter acquire in such Personal Property, whether acquiring the same pursuant to this Lease or pursuant to applicable law. "Personal Property" means any and all fixtures (unless a part of the Improvements), furniture, equipment, apparatus and other similar personal property and any and all renewals, replacements or, additions to and substitutions therefor owned by TENANT and/or any subtenant and located in, attached or affixed to and used in connection with the Improvements; excluding, however, any such items belonging to present or future subtenants.

15. **Tenant Bankruptcy.** If TENANT rejects this Lease pursuant to the Federal Bankruptcy Code, Title 11 U.S.C. ("Bankruptcy Code"), then, within thirty (30) days following TENANT's rejection of the Lease, the Leasehold Mortgagee shall have the right to deliver written notice to COUNTY requesting that COUNTY inform the Leasehold Mortgagee of the sums then owing by TENANT under this Lease and any and all other defaults of TENANT under this Lease, and COUNTY shall, within ten (10) days following COUNTY's receipt of such notice, deliver written notice to the Leasehold Mortgagee of the sums then known by COUNTY as being owed by TENANT and the other defaults of TENANT under the Lease then known by COUNTY. The Leasehold Mortgagee shall have the right, but not the obligation, to serve on COUNTY within thirty (30) days after Leasehold Mortgagee's receipt of the notice provided in the preceding sentence, a notice ("Notice of Assumption") that the Leasehold Mortgagee elects to (i) assume this Lease, and (ii) cure all defaults of TENANT outstanding thereunder that are reasonably susceptible to cure by Leasehold Mortgagee. If the Leasehold Mortgagee fails to serve the Notice of Assumption within such thirty (30) day period, the Leasehold Mortgagee shall be deemed to have waived the rights to assume the Lease pursuant to this Paragraph 13(E)(16). If the Leasehold Mortgagee serves such Notice of Assumption to COUNTY, then, as between the COUNTY and the Leasehold Mortgagee (a) the rejection of this Lease by TENANT shall not constitute a termination of this Lease, (b) the Leasehold Mortgagee shall be deemed to have assumed the obligations of TENANT under this Lease without any instrument or assignment of transfer from TENANT being necessary, (c) this Lease shall be deemed in full force and effect as a direct Lease between the Leasehold Mortgagee and COUNTY, (d) the Leasehold Mortgagee's rights under this Lease shall be subject to the rights of parties in possession, and (e) the Leasehold Mortgagee shall consummate the assumption of this Lease and the payment of the amounts payable by or to COUNTY pursuant to this Paragraph 13(E)(16) within ten (10) days after the Leasehold Mortgagee shall have served the Notice of Assumption and COUNTY shall execute and deliver such agreements, instruments and other documents as Leasehold Mortgagee may require to confirm same. The Leasehold Mortgagee may assign this Lease consistent with the terms and conditions applicable to assignment of this Lease to a transferee. Upon a subsequent assignment of this Lease by the Leasehold Mortgagee and the transferee's assumption of all TENANT obligations under this Lease arising from and after the date of transfer, the Leasehold Mortgagee shall be relieved of all obligations and liabilities arising from and after the date of such transfer. Effective upon the entry of an order for relief with respect to COUNTY under the Bankruptcy Code, or any comparable federal or state statute or law, COUNTY hereby assigns and transfers to the Leasehold Mortgagee a non-exclusive right to apply to the applicable bankruptcy court under Paragraph 365 of the Bankruptcy Code (or any other applicable section), or any comparable federal or state statute or law, for an order extending the period during which

SECTION II – ADDITIONAL LEASE PROVISIONS

this Lease may be rejected or assumed. Nothing contained in this Paragraph 13(E)(16) shall affect, limit, modify or supersede the rights of any Leasehold Mortgagee to obtain a new lease under Paragraph 13(E)(7).

16. **Collateral.** Reference in this Lease to the right or election of a Leasehold Mortgagee to foreclose on TENANT's leasehold hereunder, or to sell, assign or transfer such leasehold or this Lease, includes, without limitation, the right of the Leasehold Mortgagee to elect to assign, sell or transfer any other interest or property held as security under the Leasehold Mortgage, including, without limitation, TENANT's interests in the Improvements (subject to COUNTY's reversionary rights as provided herein).

17. **Liability.** For any period during which a Leasehold Mortgagee becomes and remains the "Tenant" under this Lease (whether pursuant to foreclosure, assignment in lieu, or otherwise) or the tenant under a new lease, such Leasehold Mortgagee's liability under this Lease or such new lease for any indemnity obligations shall be limited to its interests in the Property and any proceeds derived from such interests, including without limitation, any insurance, condemnation or sales proceeds.

18. **Further Assurances.** COUNTY and TENANT shall cooperate to include in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Lender for the purpose of implementing the "lender protection" provisions contained in this Lease and allowing such Lender reasonable means to protect or preserve such Lender's lien and security interest in the Leasehold Estate on the occurrence of a default under the terms of this Lease. COUNTY and TENANT shall execute and deliver (and acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term of this Lease or Rent under this Lease, nor otherwise in any material respect adversely affect any rights of COUNTY under this Lease; and further provided, however, that COUNTY shall not be obligated to encumber its reversionary interest in the Property, execute any document creating personal liability on the part of COUNTY, or otherwise subject COUNTY or COUNTY's interest in the Property to liability whatsoever for such loan.

19. **Rights Upon Bankruptcy, Insolvency.** If Leasehold Mortgagee is prohibited by any order, stay or injunction issued by any court or by reason of any action of any court having jurisdiction of any bankruptcy or insolvency proceedings involving TENANT from commencing or prosecuting foreclosure or other appropriate proceedings to acquire or foreclose upon the Leasehold Estate created hereby and/or obtain possession of the Property, the time periods specified in this Section 13(E) shall be extended for the period of such prohibition.

20. **Successors and Assigns.** The terms of this Section 13(E) shall: (i) inure to the benefit of each Leasehold Mortgagee and its successors and assigns in the Leasehold Mortgage, or any portion thereof or interest therein (and, to the extent applicable), any transferee or purchaser at a foreclosure sale (whether by judicial proceedings or by virtue of any power reserved in the Leasehold Mortgagee, transfer or other conveyance of Leasehold Estate created hereby to Leasehold Mortgagee or the exercise by Leasehold Mortgagee of any right, power or privilege reserved in the Leasehold Mortgagee), any transferee by sale or assignment-in-lieu of foreclosure, and any transferee of Leasehold Mortgagee (by purchase and sale or otherwise) if Leasehold Mortgagee shall acquire the Leasehold Estate created hereby through foreclosure, trustee's sale, assignment-in-lieu of foreclosure or otherwise under the Leasehold Mortgage; and (ii) survive any foreclosure (whether by judicial foreclosure, trustee's sale or otherwise) or acceptance of an assignment-in-lieu of foreclosure or any other exercise of

SECTION II – ADDITIONAL LEASE PROVISIONS

Leasehold Mortgagee's rights under the Leasehold Mortgage or any other documents evidencing, securing or pertaining to the Leasehold Mortgage.

21. **Casualty and Taking Proceeds.** Leasehold Mortgagee may be a named an additional loss payee or an additional insured, as applicable on any insurance policies carried by TENANT. In the event that the Property or any portion thereof is damaged or destroyed or subject to a taking, in whole or in part, Leasehold Mortgagee shall have the right to participate in any settlement, compromise or negotiation regarding any insurance proceeds or taking awards and, to the extent required by the provisions of the applicable loan, TENANT's share of the proceeds therefrom shall be held by Leasehold Mortgagee or by a bank or trust company approved by Leasehold Mortgagee, to be applied in the case of damage or destruction pursuant to the terms of such loan. In the event that at any time prior to expiration of the term of the Lease there shall be a partial or total destruction of the Improvements then on the Premises from any cause, the terms of the Lease shall govern TENANT's obligations to restore the Improvements. Except as hereinafter provided, all proceeds of all casualty insurance shall be disbursed for the purpose of restoring and rehabilitating said improvements, provided that prior to TENANT's receipt of any such funds TENANT shall satisfy any additional conditions to such disbursement as may be set forth in the Leasehold Mortgage. Should the proceeds of such insurance exceed the cost of such restoration and rehabilitation, to the extent required pursuant to the Leasehold Mortgage, the balance shall be paid to Leasehold Mortgagee for application in accordance with the Leasehold Mortgage to the extent required thereunder, and the remaining balance, if any, shall be disbursed in accordance with the Lease. The foregoing notwithstanding, no payment to Leasehold Mortgagee of any insurance proceeds shall reduce the amount due to COUNTY pursuant to the Lease.

22. **Third Party Beneficiary.** Notwithstanding anything to the contrary contained in this Lease, Leasehold Mortgagee is an intended third party beneficiary of this Lease with the right to enforce same.

14. COUNTY'S ENTRY ON PREMISES.

A. COUNTY and its authorized representatives shall have the right to enter the Premises at all reasonable times, upon not less than 24 hours' prior notice to TENANT, for any of the following purposes:

1. To inspect the Premises;
2. To determine whether the Premises are in good condition and whether TENANT is complying with its obligations under this Lease;
3. To do any necessary maintenance or perform any auditing, testing or sampling and to make any restoration to the Premises that COUNTY has the right or obligation to perform;
4. To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
5. To post "for sale" signs at any time during the Term and to post "for rent" or "for lease" signs during the last six (6) months of the Term or during any period while TENANT is in Default;

SECTION II – ADDITIONAL LEASE PROVISIONS

6. To show the Premises to brokers, agents, prospective tenants and other persons interested in leasing or buying the Premises during the last six (6) months of the Term;

7. To abate any interference with aircraft as described in Paragraph 19.B. of this Lease.

B. Provided that COUNTY uses commercially reasonable efforts to minimize interference with TENANT's business at the Premises, COUNTY shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of COUNTY's entry on the Premises as provided in this paragraph, except for property damage resulting from the negligent acts or omissions of COUNTY or its authorized representatives. Provided that COUNTY uses commercially reasonable efforts to minimize interference with TENANT's business at the Premises, TENANT shall not be entitled to an abatement or reduction of rent if COUNTY exercises any rights reserved in this paragraph. COUNTY shall conduct COUNTY's activities on the Premises pursuant to this paragraph in a manner that will cause the least possible inconvenience, annoyance, or disturbance to TENANT.

15. **DAMAGE OR DESTRUCTION OF PREMISES.** Damaged or destroyed buildings, structures or improvements that are owned by TENANT shall be repaired or restored by TENANT at the sole cost of TENANT. TENANT shall commence the repair and restoration of the Premises within forty-five (45) days of the event causing such damage or destruction and shall diligently prosecute such work until completion. TENANT shall comply with all the procedures set forth in Paragraph 11, IMPROVEMENTS as part of TENANT's repair and restoration work. If TENANT fails to commence the repair or restoration work in a timely manner, or fails to diligently prosecute such work, or fails to comply with the requirements of Paragraph 11, IMPROVEMENTS, COUNTY shall have the right to terminate this Lease under Paragraph 21, DEFAULT AND RIGHT TO TERMINATE. Notwithstanding the foregoing, to the extent such damage or destruction of the Premises occurs during the last five (5) years of the then-existing Term, and the cost to repair or restore exceeds Two Million and No/100 Dollars (\$2,000,000.00), as an alternative to such repair or restoration obligation set forth in this Paragraph 15, TENANT may instead (i) remove the Improvements and restore the Property to a graded pad condition, (ii) assign to COUNTY the insurance proceeds related to such damage or destruction, after deducting the cost incurred by TENANT under item (i) hereinabove, and (iii) terminate this Lease, effective as of a date designated by TENANT in its written election notice for the alternative contemplated by this sentence.

16. **CONDUCT OF EMPLOYEES.** TENANT shall be responsible for the conduct of its employees, volunteers, agents, members, guests, patrons and spectators on the entire Airport property. In addition, TENANT agrees to abide by, and ensures that all such persons abide by the rules and regulations of the County Airports while on the Premises to the extent applicable to the Premises.

17. **ERECTION OF SIGNS.** TENANT may erect signs on the Premises or the structures on the Premises, but erection or application of said signs shall be allowed only with the written permission of the COUNTY, in its reasonable discretion. All signs shall be approved by COUNTY, in its reasonable discretion, and if approved, shall be erected in conformity with the County and City codes, ordinances, and policies with regard to signage.

18. Intentionally Omitted.

SECTION II – ADDITIONAL LEASE PROVISIONS

19. SPECIAL USE COVENANTS AND RESTRICTIONS.

A. **Right of Flight.** COUNTY, its successors and assigns, hereby reserves for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, including, but not limited to, landing at, taking off from, or flight to or from the Airport. TENANT agrees not to make any claim or institute legal action against COUNTY under any theory of recovery for any interference with TENANT's use and enjoyment of the Premises which may result from the operation of aircraft to or from the Airport.

B. **Noninterference With Aircraft and Continuing Restrictions.** TENANT, by accepting this Lease expressly agrees for itself, its successors and assigns, that the TENANT will not: (1) make use of the Premises in any manner which might interfere with the landing and/or taking off of aircraft from the Airport, or any part therein or otherwise constitute a hazard to navigation in the use of the Airport by aircraft, (2) interfere with air navigation and communication facilities serving the airport; or (3) erect any structures, grow or allow the growth of natural objects that would constitute an obstruction to air navigation. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Premises and cause the abatement of such interference at the sole cost and expense of the TENANT.

C. **Federal Aviation Administration Requirements.** TENANT agrees to conform to all applicable federal, state and county rules and regulations and to further conform to any, and all requirements or regulations of the Federal Aviation Administration as may be applicable to the TENANT and the TENANT's use of the Premises.

D. **Hazardous Substances.**

1. **Definitions.** The following terms shall have the meanings set forth in this paragraph:

a. **Applicable Requirements** shall mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of COUNTY's engineers and/or consultants, relating in any manner to the Premises now in effect or which may hereafter come into effect.

b. **Hazardous Substance** shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, or the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of COUNTY to any governmental agency or third party under any Applicable Requirements or common law theory; and, as applied to (i-iii) above, substances which are now or hereafter designated under any law, statute, ordinance, rule, regulation, order or ruling of any agency of the state in which the Premises is located, the United States Government (including but not limited to, those listed as hazardous by the United States Department of Transportation) or the CAL OSHA "Director's list of Hazardous Substances" or any local governmental authority, including, but not be limited to aviation fuel, hydrocarbons, petroleum products, gasoline, crude oil or any products or by-products thereof.

SECTION II – ADDITIONAL LEASE PROVISIONS

c. **Reportable Use** shall mean the installation or use of any above or below ground (i) storage tank or (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority

2. **Tenant's Covenants.** TENANT, at its sole cost, shall comply with any, and all the Applicable Requirements with respect to Hazardous Substances, including but not limited to the following:

a. California Health & Safety Code, Division 20, Chapters 6.5, Hazardous Waste Control (inclusive); 6.7, Underground Storage of Hazardous Substances (inclusive); and 6.95, Hazardous Materials Release Response Plans and Inventory (inclusive);

b. California Code of Regulations Title 22, Division 4.5; Title 23, Division 3, Chapter 16, Underground Storage Tank Regulations; and

c. Title 2, Division 3, entitled "Fire Protection and Explosives and Hazardous Materials", and Title 3, Division 3, Chapter 8, entitled "Waste Management" of the San Bernardino County Code.

TENANT shall not engage in any activity in or about the Premises or at the Airport which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of COUNTY, in its sole discretion, and compliance in a timely manner (at TENANT's sole cost and expense) with all Applicable Requirements. Notwithstanding the foregoing, TENANT may, without COUNTY's prior consent, but upon notice to COUNTY and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by TENANT in the normal course of the Use set forth on the Reference Pages, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose COUNTY to any liability therefore. COUNTY may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by TENANT upon TENANT's giving COUNTY such additional assurances as COUNTY, in the reasonable discretion of the Director of Airports, deems necessary to protect itself, the public, the Premises, the Airport, and the environment against damage, contamination or injury and/or liability therefore, including, but not limited to, the installation (and, at COUNTY's option, and TENANT's sole cost and expense) of reasonably necessary protective modifications to the Premises and/or the deposit of an additional Security Deposit under Paragraph 7 hereof. TENANT shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system) or the Airport.

3. **Duty to Inform COUNTY.** If TENANT knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises or the Airport, other than as previously consented to by COUNTY, TENANT shall promptly give COUNTY notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including, but not limited to, all such documents as may be involved in any Reportable Use involving the Premises or the Airport to be followed up in writing within two (2) days. If TENANT installs any storage tank, TENANT will provide to COUNTY, prior to the termination of this Lease agreement, a soil test and a fuel tank

SECTION II – ADDITIONAL LEASE PROVISIONS

test that will indicate if any leakage has occurred from any tank located on or under the Premises or at the Airport and used by TENANT. If any leakage is found, TENANT shall repair the tanks and remove any contaminated soil at TENANT's sole cost and expense.

4. **Indemnification.** TENANT shall indemnify, protect, defend and hold COUNTY, its officers, agents, employees, and volunteers and the Premises, harmless from and against any, and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including COUNTY's reasonable attorneys' and consultants' fees) arising out of or involving any Hazardous Substance brought onto the Premises by or for TENANT or by anyone under TENANT's control. COUNTY shall indemnify, defend, reimburse and hold TENANT harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including TENANT's reasonable attorneys' and consultants' fees) arising out of or involving as a result of (x) any Hazardous Substances deposited or released onto the Property prior to the Effective Date, (y) any migration of Hazardous Substances on, under or about the Property from any source other than the Property, and/or (z) any Hazardous Substance located on the Property which are caused by the negligence or willful misconduct of COUNTY and/or not otherwise caused by TENANT, TENANT's subtenants or invitees (collectively, the "Excepted Matters"). Either party's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by the other party, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and TENANT shall release TENANT from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by COUNTY in writing at the time of such agreement.

E. **Reserved.**

F. **Priority of Agreements with United States.** This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States relative to the development, operation or maintenance of the Airport.

G. **Licenses and Certifications.** TENANT agrees that before commencing any use of, or business operations at the Premises, TENANT will acquire, provide, and maintain those notices, certifications, licenses, approvals and permits required by any federal, state or local jurisdiction or authority for carrying out the purpose of this Lease. Failure to comply with this provision will constitute a default and right to terminate by COUNTY under subparagraph 21, DEFAULT AND RIGHT TO TERMINATE of this Lease.

H. **Rules and Regulations.** TENANT agrees to abide by, keep and observe all minimum standards, reasonable rules and regulations which COUNTY may make from time to time for the management, safety, care, cleanliness of the grounds, parking areas, and the preservation of good order, as well as for the convenience of other tenants, occupants, or visitors to the Airport.

I. **Auctions.** TENANT shall not conduct, nor permit to be conducted, either voluntarily or involuntary, any auction upon the Premises without COUNTY's prior written consent. Notwithstanding Paragraph 25 with regard to reasonableness, COUNTY shall not be obligated to

SECTION II – ADDITIONAL LEASE PROVISIONS

exercise any standard of reasonableness in determining whether to consent to any requested auction.

20. **CONDEMNATION.** If the Premises or any part thereof are taken under the power of eminent domain, this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession thereof. In such event, the rent shall be reduced in the proportion that the floor area (or other surface area), taken bears to the total floor area (or other surface area), prior to the taking. If more than twenty percent (20%) of the floor area of the buildings or the Premises or more than fifty percent (50%) of the surface area leased to TENANT but not occupied by any building, is taken by condemnation, TENANT may, at TENANT's option, and upon securing approval of the LENDER identified under Paragraph 11, IMPROVEMENTS, terminate this Lease. If TENANT elects to exercise its option to terminate this Lease pursuant to this paragraph, TENANT shall give written notice of termination to COUNTY within thirty (30) days after the condemning authority takes such possession and this Lease shall terminate sixty (60) days thereafter. If TENANT does not exercise TENANT's right to terminate this Lease, then the rent payable shall be reduced as set forth above and this Lease shall remain in full force and effect. Any compensation awarded as damages for the taking of the Premises or COUNTY owned improvements, together with any severance damage, shall be the sole property of the COUNTY, except that any compensation awarded for TENANT's improvements, trade fixtures, equipment and moving costs shall be paid to TENANT or TENANT's LENDER if any.

21. **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 business 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. Reserved.

3. TENANT's failure to make any payment of Minimum Monthly Rent, the Fees or any other monetary payment required to be made by TENANT hereunder as and when due, the failure of TENANT to provide COUNTY 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) business days, or such longer reasonable time as agreed by COUNTY, following written notice thereof by or on behalf of COUNTY to TENANT.

4. The failure by TENANT to provide COUNTY with reasonable written evidence (in duly executed original form, if applicable) (in compliance with minimum standards that may be promulgated by COUNTY) of (a) compliance with Applicable Requirements per Paragraph 19.D., (b) the inspection, maintenance and service contracts required under Paragraph 12.A., (c) the rescission of an unauthorized assignment or subletting per Paragraph 13, or (d) any other documentation or information which COUNTY may reasonably require of TENANT under the terms of this Lease, where any such failure continues for a period of thirty (30) days following written notice by or on behalf of COUNTY to TENANT.

SECTION II – ADDITIONAL LEASE PROVISIONS

5. A Default by TENANT as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 19.H. hereof that are to be observed, complied with or performed by TENANT in compliance with minimum standards that may be promulgated by COUNTY, other than those described in subparagraphs 21.A.(1) through (4) inclusive, where such Default continues for a period of thirty (30) days or more after written notice thereof by or on behalf of COUNTY 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. Reserved;

7. 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.

8. The discovery by COUNTY that any financial statement of TENANT was materially false.

B. Remedies.

1. Other than as provided in Paragraph 21.A., 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), COUNTY 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 COUNTY shall be due and payable by TENANT to COUNTY within ten (10) days of COUNTY's demand.

2. In the event of a Breach of this Lease by TENANT (as defined in Paragraph 21.A.), with or without further notice or demand, and without limiting COUNTY in the exercise of any right or remedy which COUNTY may have by reason of such Breach, COUNTY may:

a. Upon thirty (30) days prior notice to TENANT, and TENANT'S failure to cure the breach of Lease during such thirty (30) day period, 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 COUNTY. In such event COUNTY 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

SECTION II – ADDITIONAL LEASE PROVISIONS

amount of such rental loss that the TENANT proves could be reasonably avoided; and (iv) any other amount necessary to compensate COUNTY 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, reasonable attorneys' fees, and that portion of any leasing commission paid by COUNTY 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%). COUNTY's attempt to mitigate damages caused by TENANT's Default or Breach of this Lease shall not waive COUNTY's right to recover damages under this Paragraph 21.B. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, COUNTY shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or COUNTY 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. COUNTY and TENANT agree that the limitations on assignment and subletting in this Lease are reasonable. COUNTY's maintenance of the Premises or efforts to relet the Premises, or the appointment of a receiver to protect the COUNTY'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 COUNTY under the laws or judicial decisions of the State of California.

3. If, at any time TENANT is in default of any monetary obligation as defined in Paragraph 4.E. as Rent 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, COUNTY 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.** TENANT covenants and agrees that immediately upon termination of this Lease, TENANT shall remove and properly dispose of all of TENANT's personal property, machinery or fixtures from the Premises. If TENANT fails to remove any such personal property, COUNTY may remove such personal property and place the same in storage at the expense of TENANT and without liability to COUNTY for losses. TENANT agrees to pay COUNTY for all expenses incurred by COUNTY in connection with the removal, and storage charges of TENANT's personal property, including attorney's fees and court costs. Alternatively, COUNTY 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 COUNTY may obtain. COUNTY 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.

SECTION II – ADDITIONAL LEASE PROVISIONS

E. **No Waiver by County.** COUNTY'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 COUNTY 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 COUNTY's notice of termination, unless otherwise agreed in writing by COUNTY. COUNTY's acceptance of the keys to the Premises or any other act of the COUNTY 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 COUNTY.

22. **HOLDING OVER.** If the TENANT continues in possession of the Premises after the expiration of the Term or after any termination of this Lease prior to the expiration of the Term, and if said occupancy is with the written consent of the COUNTY, then TENANT shall be deemed to be holding the Premises on a month-to-month tenancy subject to all the provisions of this Lease. The Minimum Monthly Rent payable during such period of holding over shall initially be one hundred fifty percent (150%) of the Minimum Monthly Rent that was payable in the month immediately preceding the commencement of the period of holding over and such Minimum Monthly Rent shall thereafter be subject to the same adjustments set forth in Paragraph 5.

23. **TIME OF ESSENCE.** Except as otherwise specifically provided, time is of the essence for each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.

24. **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.

25. **CONSENT.** Unless otherwise specified in the Lease, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

26. **EXHIBITS.** All exhibits referred to in this Lease or attached to this Lease are incorporated herein by reference.

27. **LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of California.

28. **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 a party hereto and payable under Paragraph 8, HOLD HARMLESS, payable on account of either party's violation of Paragraph 19.D., or payable under Paragraph 39, PUBLIC RECORDS DISCLOSURE.

29. **VENUE.** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court which would allow it 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 commercially reasonable efforts to obtain a change of venue to the San Bernardino District of San Bernardino County.

SECTION II – ADDITIONAL LEASE PROVISIONS

30. **COMPLIANCE WITH LAW.** TENANT and its officers, employees, agents and assigns shall be bound by and comply with all applicable federal, state and local laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations, rights and performance under the terms of this Lease.

31. **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 interpretation.

32. **NOTICES.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally or sent by a nationally recognized overnight courier to the other party at the address listed in the Reference Pages. Any such 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. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective 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 by a nationally recognized overnight courier.

33. **OPTION TO EXTEND TERM.** In the event the Reference Pages provide that TENANT is given one or more options to extend the Term, the following provisions shall apply:

A. **Tenant's Option Notice.** TENANT shall notify COUNTY of TENANT's intention to exercise TENANT's option to extend the Term of this Lease by giving written notice of the exercise of the option ("Option Notice") to COUNTY which must be received no earlier than (12) months, and no later than six (6) months, prior to the expiration of the current term (unless otherwise provided).

B. **Options Personal to Original TENANT and Permitted Transferee Assignee.** Each option granted to TENANT in this Lease is personal to the original TENANT (and any Permitted Transferee Assignee) and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original TENANT or its Permitted Transferee Assignee, while the original TENANT (or its Permitted Transferee Assignee) is in full and actual possession of the Premises without the written consent of the COUNTY.

C. **Effect of Default on Options.** If TENANT is in Default at any time during the Term of this Lease or any extended term TENANT shall have no right to exercise any Option, and the Option Notice shall be totally ineffective. If TENANT is in Default on or at any time prior to the date the extended term is to commence, the extended term shall not commence, and this Lease shall expire at the end of the current Term.

D. **Multiple Options.** In the event that TENANT has multiple options to extend this Lease, a later option cannot be exercised unless the prior options to extend this Lease have been validly exercised and/or consented to.

E. **Minimum Monthly Rent.** The Minimum Monthly Rent, for each extended term, shall be set in accordance with Paragraph 5 of this Lease.

34. **RECORDATION OF LEASE.** The Option Agreement and Lease shall be described in a memorandum recorded on the Property executed by the parties at the time of the execution of the Option Agreement. TENANT shall pay all charges incident to such recording.

SECTION II – ADDITIONAL LEASE PROVISIONS

35. **INTENTIONALLY OMITTED.**

36. **SEVERANCE.** If any provision of this Lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37. **SURVIVAL.** The obligations of the parties, which by their nature continue beyond the term of this Lease, will survive the termination of this Lease.

38. **REPRESENTATIONS AND AUTHORITY.** If TENANT is a corporation, TENANT represents or warrants that TENANT has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. If TENANT is a partnership, limited liability company, trust or other legal entity, TENANT represents or warrants that TENANT has complied with all applicable laws, rules and governmental regulations relative to its right to do business in the State of California and that all persons signing on behalf of such entity were authorized to do so by any and all appropriate actions. TENANT agrees to furnish upon COUNTY's request a corporate resolution, or other appropriate documentation evidencing the authorization of TENANT to enter into this Lease.

39. **PUBLIC RECORDS DISCLOSURE.** TENANT acknowledges and agrees that all information received by the COUNTY from any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Sections 7920.000 et seq., the Ralph M. Brown Act, or any other open records laws ("Public Records Laws"). TENANT further acknowledges and agrees that, although all information received by COUNTY in connection with the Lease or the Property is intended for the exclusive use of COUNTY, such information is potentially subject to disclosure under Public Records Laws. In the event TENANT, at the time any information is provided to COUNTY, has reasonably requested in writing that certain information as to the Lease be held in confidence and a request for disclosure of such information is thereafter received by COUNTY, COUNTY shall endeavor to notify TENANT of said request and shall thereafter disclose the requested information unless TENANT, within five (5) days of COUNTY's notice of such disclosure request: (i) requests that the information not be disclosed; (ii) provides a legally sound basis for nondisclosure (as determined in COUNTY's reasonable discretion); and (iii) agrees in writing to indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of or related to the required disclosure. Notwithstanding anything to the contrary in the Lease, if COUNTY does not notify TENANT of such disclosure request or if COUNTY does not deem TENANT's basis for nondisclosure to be legally sufficient, as determined by COUNTY in its reasonable discretion, COUNTY shall not be liable for any claims for damages, lost profits, or other injuries of any and all kinds and TENANT waives any and all such claims against COUNTY. TENANT's indemnity obligation shall survive the expiration or earlier termination of the Lease.

40. **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.

SECTION II – ADDITIONAL LEASE PROVISIONS

41. **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.

42. **AMENDMENT.** No waiver, modification or amendment of any term condition or provision of this Lease shall be valid or shall have any force or effect unless made in writing and signed by all of the parties hereto. This provision shall not apply to amendment of such Lease pursuant to Paragraph 5 or 7.

43. **NO RELIANCE.** In entering into this agreement, each of the parties acknowledges, represents and warrants that it has not relied upon any promise, statement or representation, express or implied, of any other party or such other party's agents, employees, or attorneys, not contained in this agreement.

44. **FORMER COUNTY OFFICIALS.**

A. TENANT agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent TENANT. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of TENANT. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, 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 "J", List of Former County Officials.)

45. **MATERIAL MISREPRESENTATION.** If during the course of the administration of this Lease, the COUNTY determines that the TENANT has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Lease may be immediately terminated. If this Lease is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

46. **LEVINE ACT CAMPAIGN CONTRIBUTION DISCLOSURE.** TENANT has disclosed to the COUNTY using Exhibit "M" – Levine Act Campaign Contribution Disclosure, whether it has made any campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract.

In the event of a proposed amendment to this Lease, the TENANT will provide the COUNTY a written statement disclosing any campaign contribution(s) of more than \$500 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

SECTION II – ADDITIONAL LEASE PROVISIONS

Campaign contributions include those made by any agent/person/entity on behalf of the TENANT or by a parent, subsidiary or otherwise related business entity of TENANT.

47. **ELECTRONIC SIGNATURES.** This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Lease. The parties shall be entitled to sign and transmit an electronic signature of this Lease (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic request.

48. **AUTHORIZED SIGNATURES.** All parties to this Lease represent that the signators executing this document are fully authorized to enter into this agreement.

SECTION II – ADDITIONAL LEASE PROVISIONS

IN WITNESS THEREOF, the parties executed this agreement.

COUNTY:
SAN BERNARDINO COUNTY

TENANT:
PARKCREST CONSTRUCTION, INC.

By: _____
Terry W. Thompson, Director

By: _____
Andy Sehremelis

Title: President

Date: _____

Date: _____

Approved as to Legal Form:

TOM BUNTON, County Counsel
San Bernardino County, California

By: _____
John Tubbs II, Deputy County
Counsel

Date: _____

EXHIBIT "A"

PREMISES



EXHIBIT "A"

EXHIBIT "B"

COMPUTATION OF MONTHLY RENT AND INFRASTRUCTURE ALLOWANCE REIMBURSEMENT CHARGES

<u>Rent Year During Term*</u>	<u>Minimum Monthly Rent</u>	<u>Monthly Improvement Allowance Reimbursement**</u>	<u>Total Monthly Rent</u>
1	\$350,000.00	\$26,841.08	\$376,841.08
2	\$360,500.00	\$26,841.08	\$387,341.08
3	\$371,315.00	\$26,841.08	\$398,156.08
4	\$382,454.45	\$26,841.08	\$409,295.53
5	\$393,928.08	\$26,841.08	\$420,769.16
6	\$405,745.93	\$26,841.08	\$432,587.01
7	\$417,918.30	\$26,841.08	\$444,759.38
8	\$430,455.85	\$26,841.08	\$457,296.93
9	\$443,369.53	\$26,841.08	\$470,210.61
10	\$456,670.61	\$26,841.08	\$483,511.69
11	\$470,370.73	\$26,841.08	\$497,211.81
12	\$484,481.85	\$26,841.08	\$511,322.93
13	\$499,016.31	\$26,841.08	\$525,857.39
14	\$513,986.80	\$26,841.08	\$540,827.88
15	\$529,406.40	\$26,841.08	\$556,247.48
16	\$545,288.60	\$26,841.08	\$572,129.68
17	\$561,647.25	\$26,841.08	\$588,488.33
18	\$578,496.67	\$26,841.08	\$605,337.75
19	\$595,851.57	\$26,841.08	\$622,692.65
20	\$613,727.12	\$26,841.08	\$640,568.20
21	\$632,138.93	\$26,841.08	\$658,980.01
22	\$651,103.10	\$26,841.08	\$677,944.18
23	\$670,636.19	\$26,841.08	\$697,477.27
24	\$690,755.28	\$26,841.08	\$717,596.36
25	\$711,477.94	\$26,841.08	\$738,319.02
26	\$732,822.28	\$26,841.08	\$759,663.36
27	\$754,806.94	\$26,841.08	\$781,648.02
28	\$777,451.15	\$26,841.08	\$804,292.23
29	\$800,774.69	\$26,841.08	\$827,615.77
30	\$824,797.93	\$26,841.08	\$851,639.01

* Term of Lease is 30 years from Lease Commencement Date. Rent Commencement Date occurs during Lease Term upon the latter of (a) TENANT receiving the Certificate of Occupancy, and (b) the end of the Construction / Development Period. Thus, Rent Years may be less than the 30 Lease Years, unless the term of the Lease is extended.

EXHIBIT "B"

**COMPUTATION OF MONTHLY RENT AND INFRASTRUCTURE ALLOWANCE
REIMBURSEMENT CHARGES**

** Monthly Improvement Allowance Reimbursement amount is based on the assumption that the entire \$5,000,000.00 in improvement funds will be disbursed. This number may need to be adjusted based on the actual amount of funds disbursed.

EXHIBIT "C"

RESERVED

EXHIBIT "C"

EXHIBIT "D"

PROPERTY REAPPRAISAL PROCEDURE

1. **Property Reappraisal Adjustment.** The Minimum Monthly Rent set forth in Paragraph 4, as adjusted by Paragraph 5.A., shall be reestablished on the exercise of any option to extend the term of this Lease to be effective with the commencement date of such option period, hereafter referred to as the "Property Reappraisal Date", to the Fair Market Rental of the Premises. The term "Fair Market Rental" shall mean the most probable monthly lease rate, in terms of money, which the Premises, not including any consideration for the existing improvements, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, based on the highest and best use of the Premises and after consideration of the current requirements of COUNTY, Airport Department and the FAA and any applicable law. Fair Market Rental shall be reestablished in accordance with terms, conditions and procedure set forth in this paragraph.

2. **Appraisal Procedure.** Unless otherwise agreed by the parties, the appraisal shall be made by a senior designated member of a nationally recognized professional appraisal association, as mutually selected by Tenant and County, that examines its designated members. The association shall be a member of the Appraisal Foundation and subscribe to the Uniform Standards of Professional Appraisal Practice. The appraiser may also be an employee of the appraising party provided that the appraiser meets the above criteria. In accomplishing the appraisal and determining Fair Market Rental for the Premises, the appraiser shall:

- a. Use a valuation date ("Valuation Date") six (6) months prior to the Property Re-appraisal Date;
- b. Apply appropriate approaches to valuation consistent with current FAA (or the appropriate successor regulatory agency over aviation at the time) appraisal guidelines.
- c. Determine the Fair Market Rental as of the Valuation Date.

3. **County Notification.** Prior to the Property Reappraisal Date, COUNTY shall notify TENANT of the new Minimum Monthly Rent to be effective on the Property Reappraisal Date. The new Minimum Monthly Rent shall be based upon the Fair Market Rental determined in accordance with the Appraisal Procedure set forth above, provided, however, that the new Minimum Monthly Rent shall not be less than the Minimum Monthly Rent payable immediately prior to the Property Reappraisal Date. TENANT shall pay the new Minimum Monthly Rent commencing on the Property Reappraisal Date, unless and until changed by an amendment to this Lease or the Arbitrator's Decision (as defined and provided below). All time limits concerning TENANT's obligations pursuant to this paragraph shall be strictly construed.

4. **Tenant's Right to Object and Appraise the Premises.**

a. **Notice of Objection.** In the event TENANT does not agree with the new Minimum Monthly Rent established in accordance with the appraisal procedure set forth above, then TENANT shall notify COUNTY of TENANT's disagreement within thirty (30) calendar days of TENANT's receipt of COUNTY's notice to TENANT setting the new Minimum Monthly Rent. Concurrently with TENANT's notice of objection to COUNTY, TENANT shall provide COUNTY with TENANT's proposal with respect to the new Minimum Monthly Rent for the Premises. Upon COUNTY's receipt of TENANT's notice and proposal for the new Minimum Monthly Rent, COUNTY and TENANT shall meet and attempt to agree on the Minimum Monthly Rent.

EXHIBIT "D"

PROPERTY REAPPRAISAL PROCEDURE

TENANT's failure to timely notify COUNTY of TENANT's disagreement with the new Minimum Monthly Rent or failure to provide COUNTY with an alternative proposal for the Minimum Monthly Rent, shall waive TENANT's rights to appraise the Premises and elect binding arbitration.

b. **Tenant's Appraisal.** If within thirty (30) days of COUNTY's receipt of TENANT's notification and proposal with respect to Minimum Monthly Rent, COUNTY and TENANT have not reached an agreement for the new Minimum Monthly Rent, then TENANT shall have the right, at TENANT's sole cost, to conduct its own appraisal of the Premises to determine the Fair Market Rental ("Tenant's Appraisal"). TENANT shall complete its appraisal and deliver a complete copy of the appraisal to COUNTY, within one hundred and twenty (120) calendar days after TENANT's receipt of COUNTY's notice to TENANT reestablishing the Minimum Monthly Rent. Failure of TENANT to timely complete and deliver its appraisal to COUNTY shall waive TENANT's rights to appraise the Premises and elect binding arbitration. Within ten (10) days of COUNTY's receipt of a complete copy of TENANT's appraisal, COUNTY shall deliver a complete copy of its appraisal to TENANT, if COUNTY has not already done so. COUNTY may, but COUNTY shall not be obligated to, provide TENANT with a copy of or access to its appraisal, prior to COUNTY's receipt of a complete copy of the TENANT's Appraisal. Within the thirty (30) days following COUNTY's receipt of TENANT's Appraisal, COUNTY and TENANT shall meet and attempt agree on the Fair Market Rental and the Minimum Monthly Rent.

5. **Tenant's Right to Elect Arbitration.** If within thirty (30) days of COUNTY's receipt of a complete copy of TENANT's appraisal, TENANT and COUNTY have not reached agreement with respect to Minimum Monthly Rent, TENANT shall (after the thirty (30) days have passed) have the right to elect binding arbitration on the issue of Fair Market Rental by giving COUNTY notice of its election to arbitrate within sixty (60) days following COUNTY's receipt of a complete copy of TENANT's appraisal. Failure of TENANT to timely so notify COUNTY of TENANT's election to arbitrate shall waive TENANT's right to arbitration. The arbitration shall be conducted in accordance with the following procedures:

a. **Selection of Arbitrator.** Within thirty (30) days of COUNTY's receipt of TENANT's notice of election of arbitration, the appraiser who prepared COUNTY's appraisal and the appraiser who prepared TENANT's appraisal shall select an arbitrator to arbitrate the issue of Fair Market Rental. The arbitrator shall be an appraiser familiar with properties in San Bernardino County and specifically airport properties, and who meets the qualifications prescribed herein. Further, the arbitrator must: (i) not be currently employed by either party; (ii) be willing to perform the binding arbitration as set forth herein; and (iii) charge fees which are reasonable and customary for appraisers in San Bernardino County. As soon as the arbitrator is selected, the appraisers shall provide COUNTY and TENANT with the name, address, and estimated fee to be charged by the arbitrator, in writing. If the two appraisers are unable to agree on the selection of an arbitrator, the arbitrator shall be selected by the president of the Appraisal Foundation.

b. **Submissions to the Arbitrator.**

(1) TENANT shall, within ten (10) days of its receipt of the notice of appointment of the arbitrator, pay the arbitrator's estimated fee and deliver to the arbitrator an exact duplicate of the complete appraisal the TENANT previously supplied to COUNTY. TENANT shall also, within five (5) days of complying with the above, notify COUNTY of its compliance.

EXHIBIT "D"

PROPERTY REAPPRAISAL PROCEDURE

(2) COUNTY shall, within ten business (10) days of its receipt of the notice of appointment of the arbitrator, deliver to the arbitrator an exact duplicate of the complete appraisal the COUNTY previously supplied to TENANT.

(3) The parties shall not add to, delete or in any way amend their own appraisal after they have given each other complete copies thereof. Further, neither party shall make any comment on, rebut, or supply any information or other evidence about the other party's appraisal to the arbitrator.

c. **Arbitration Procedure.** The arbitrator shall review both appraisals and select the one which in the arbitrator's professional opinion should be used to set the Fair Market Rental. In making the selection, the arbitrator shall act within the powers and limitations set forth below:

(1) The arbitrator may, but is not required to, make an on-site inspection of the Premises and its environs, subject to subparagraph (ii) below;

(2) The arbitrator shall not have the power to question either party, their employees, or any third persons concerning the Premises, nor to receive and/or demand any information or other evidence from either party, their employees or any third persons beyond the respective appraisals and a copy of this Lease, except as required to ascertain the location of the Premises if an on-site inspection is made under subparagraph (i) above;

(3) The arbitrator shall not make an appraisal of the Premises;

(4) The arbitrator shall select one of the parties' appraisals and may not make any other decision, recommendation or modifications;

(5) The arbitrator shall notify both parties of his selection within thirty (30) days of receiving both appraisals (the "Arbitrator's Decision"). The Arbitrator's Decision shall be in writing and shall state only that both appraisals were reviewed, an on-site inspection was or was not made, and which appraisal should be used to set the Fair Market Rental. The arbitrator shall not give any reason(s) for the Arbitrator's Decision.

d. **Adjustments based on Arbitrator's Decision.**

(1) In the event the COUNTY's appraisal is selected, the TENANT shall continue to pay the Minimum Monthly Rent established by the property appraisal performed by COUNTY unless the Arbitrator's Decision was made before the Property Reappraisal Date, in which case TENANT shall commence to pay the new Minimum Monthly Rent on the Property Reappraisal Date. COUNTY and TENANT shall not be reimbursed for any costs associated with establishing the Minimum Monthly Rent and TENANT shall pay all of the arbitrator's fees and costs.

(2) In the event TENANT's appraisal is selected, the Minimum Monthly Rent shall be adjusted in accordance with the TENANT's Appraisal as of the Property Reappraisal Date, provided however that the Minimum Monthly Rental shall not be less than the Minimum Monthly Rental for the month immediately preceding the Property Reappraisal Date. In the event the Arbitrator's Decision was made after the Property Reappraisal Date and TENANT paid the

EXHIBIT "D"

PROPERTY REAPPRAISAL PROCEDURE

Minimum Monthly Rent based upon the COUNTY's appraisal as of the Property Reappraisal Date in accordance with this Lease, any excess rent payments shall be credited to future rents payments due from TENANT until TENANT is repaid in full. Further, the amount TENANT paid the arbitrator for the Arbitrator's estimated charge shall be credited to future rent payments due from TENANT until TENANT is repaid in full. Neither COUNTY nor TENANT shall be reimbursed for the cost of their appraisals or other costs associated with establishing the Minimum Monthly Rent. COUNTY shall pay any arbitrator's fee if in excess of the estimated charge.

6. It is the intent of the parties that the appraisal and arbitration process set forth above shall be the exclusive remedy available to TENANT to challenge the Minimum Monthly Rent established for this Lease and shall be binding on the parties unless vacated as provided for by Code of Civil Procedure Section 1285 et seq. Further, the arbitration process set forth above and arbitration in general is not to be used to resolve any other issue, beyond the determination of fair market rental under this Lease.

EXHIBIT "E"

DEFINITION OF PLANS

A. Schematic Plans

Schematic Plans shall include a site layout of all land and drainage flow areas showing uses, buildings, landscape development, and other features, schematic floor plans of all structures, simple elevations of buildings, architectural theme, and a detailed description of improvements and methods of operation, and a general outline specification indicating materials and methods of construction, and an estimate of the total cost of improvements planned.

B. Preliminary Plans

Preliminary plans shall consist of the following:

1. A detailed site plan of all land and water areas showing all improvements planned for the site. This plan shall include any easements set forth in the lease, location of all utilities, drainage plan and grade elevations of all structures;
2. Floor plans, elevations, and sections of all structures;
3. Landscape plans;
4. Complete outline specifications to cover all phases of the work;
5. A detailed cost estimate of all improvements;
6. Exterior color scheme; and
7. Colored rendering or model.

C. Working Drawings

These shall consist of the following:

1. Complete architectural, landscape, and engineering working drawings;
2. Complete specifications; and
3. Construction schedule.

EXHIBIT "G"

CONSENT TO HYPOTHECATION

The COUNTY OF SAN BERNARDINO, hereinafter referred to as "COUNTY" and _____ hereinafter referred to as "TENANT", entered into a Lease Agreement dated _____, hereinafter after referred to as "Lease", covering certain real property located in the County of San Bernardino, State of California, hereinafter referred to as "Demised Premises".

By use of the following documents which are attached hereto and made a part hereof, and hereinafter collectively referred to as "Documents", TENANT proposes to hypothecate its leasehold estate created under said Lease:

These documents are for financing related to leasehold development of said Demised Premises.

On this _____ day of _____, _____, COUNTY hereby consents to the execution, delivery, and recordation of the above stated documents subject to the following terms and conditions:

1. That _____, hereinafter referred to as "LENDER", shall fully reconvey all interest in said real property upon repayment of the loan described in the loan document since the sole purpose of the hypothecation of the subject leasehold estate is to secure the loan amount for LENDER.

2. Except as otherwise provided herein, the above-referenced documents and any other future additional instruments which may be approved by COUNTY or its agents, shall be subject to each and every covenant, condition, and restriction set forth in said Lease, and to all rights and interest of the COUNTY therein, none of which are or shall be waived by this Consent.

3. In the event of any conflict between the provisions of said Lease and the provisions of said documents, the provisions of said Lease shall control.

4. Any additions or modifications to said financing documents shall first be approved by the COUNTY. TENANT warrants that all documents and agreements pertaining to the hypothecation of its leasehold have been fully disclosed to COUNTY.

5. The proceeds of the loan to TENANT shall be used solely for payment of expenses incident to construction on the Demised Premises of the improvements allowed under Paragraph 11, IMPROVEMENTS, of the Lease and describe in the loan documents.

EXHIBIT "G"

CONSENT TO HYPOTHECATION

SAN BERNARDINO COUNTY

By: _____

Dated: _____

PARKCREST CONSTRUCTION, INC

By: _____
(Authorized signature – sign in blue ink)

Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM:

TOM BUNTON, County Counsel
San Bernardino County, California

By: _____
Deputy County Counsel

Dated: _____

EXHIBIT “H”

RESERVED

EXHIBIT "H"

-1-

EXHIBIT “I”

RESERVED

EXHIBIT “I”

EXHIBIT "J"

LIST OF FORMER COUNTY OFFICIALS

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

OFFICIAL'S NAME:

REQUIRED INFORMATION

EXHIBIT "K"

FORM OF COUNTY CONSENT TO SUBLEASE OR ASSIGNMENT

COUNTY CONSENT TO SUBLEASE OR ASSIGNMENT

This County Consent to Sublease or Assignment ("Consent") is made by and between the County of San Bernardino ("County") and _____ ("Tenant"), and _____ ("Subtenant" or "Assignee") and shall be effective as of the date the last of the parties executes this Consent ("Effective Date").

RECITALS

A. The County, as landlord, and the Tenant, as tenant, have previously entered into a Lease Agreement, Contract No. _____ (the "Master Lease") pursuant to which the County leases to the Tenant and the Tenant leases from the County certain real property commonly known as _____, consisting of approximately _____ acres of land ("Premises"), located at Chino Airport in San Bernardino County, California for a term that is currently scheduled to expire on _____.

B. The Tenant now desires to sublease or assign the Premises ("Subleased Premises" or "Assigned Premises") to the Subtenant or Assignee.

C. The Tenant and the Subtenant or Assignee desire to enter into a sublease agreement ("Sublease") or Assignment Agreement attached hereto as Exhibit A pursuant to which the Tenant would sublease or assign to the Subtenant or Assignee and the Subtenant or Assignee would sublease from the Tenant the Subleased Premises or assume the Lease from the Tenant.

D. In accordance with Paragraph 13, Assignment and Subletting of the Master Lease, the Tenant has requested the County's consent to the Sublease or Assignment.

AGREEMENT

NOW THEREFORE, in consideration of the payment of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) by the Tenant, the foregoing recitals, which are incorporated herein by reference, the mutual covenants contained in this Consent, and for other good and valuation consideration, the sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Consent to the Sublease or Assignment.** The County hereby consents to the Sublease or Assignment of the Subleased or Assigned Premises from the Tenant to the Subtenant or Assignee on the terms and conditions set forth in this Consent.

2. **Conditions to the County's Consent.** Without in any way limiting the provisions of this Consent, the County's consent to the Sublease or Assignment is conditioned upon the compliance of the Tenant and the Subtenant or Assignee with all of the following:

EXHIBIT "K"

(a) Consent Review Payment. At the time the Tenant executes this Consent, the Tenant shall pay to the County the sum of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00), as required under the Master Lease.

(b) Representation and Warranties of Tenant. The Tenant hereby represents, warrants, and covenants to the County, which shall remain true and accurate for the duration of this Consent and the Sublease or Assignment, that: (i) Exhibit A is a true, complete, and accurate copy of the Sublease or Assignment Agreement and that no amendments or modifications of the Sublease or Assignment Agreement shall be made without the prior written consent of the County; (ii) the Tenant has delivered a true, complete, and accurate copy of the Master Lease to the Subtenant or Assignee; and (iii) the Base Rent set forth in the Sublease is the only Rent payable by the Subtenant to the Tenant. For purposes of this Consent, the term "Rent" shall mean and include all consideration paid by or given, directly or indirectly, for the use of the Subleased Premises or any portion thereof. The term "consideration" shall mean and include all money, services, property, and other thing of value, such as payment of costs, cancellation of indebtedness, discounts, rebates, improvement allowances, rent-free periods, leasing inducements, and the like.

(c) Representation and Warranties of Subtenant or Assignee. The Subtenant or Assignee hereby represents, warrants, and covenants to the County, which shall remain true and accurate for the duration of this Consent and the Sublease or Assignment, that: (i) Exhibit A is a true, complete, and accurate copy of the Sublease or Assignment Agreement and that no amendments or modifications of the Sublease or Assignment Agreement shall be made without the prior written consent of the County; (ii) the Subtenant or Assignee has received a true, complete, and accurate copy of the Master Lease from the Tenant; (iii) the Base Rent set forth in the Sublease is the only Rent payable by the Subtenant to the Tenant; (iv) the financial statements and other information submitted to the County regarding the Subtenant or Assignee in accordance with Paragraph 13, Assignment and Subletting of the Master Lease are true, complete, and accurate as of the date such statements and information are delivered to the County; and (v) the Subtenant or Assignee agrees to assume all of the obligations of the Tenant under the Master Lease with respect to the Subleased or Assigned Premises.

(d) Master Lease Governs. Notwithstanding anything to the contrary in the Sublease, Assignment, or this Consent: (i) the term of the Sublease or Assignment shall not commence prior to the Effective Date of this Consent; (ii) the term of the Sublease or Assignment shall not exceed the expiration date or earlier termination of the Master Lease; (iii) the use of the Subleased or Assigned Premises shall not exceed the use permitted for the Premises pursuant to the Master Lease; (iv) all options in favor of the Tenant in the Master Lease are personal to the Tenant and shall not be exercisable by or transferred (in whole or in part) to the Subtenant, except to the extent expressly provided in the Master Lease; (v) the Sublease or Assignment shall at all times be subject and subordinate to the Master Lease and the terms of the Sublease or Assignment shall not be construed in any way to modify, waive, release, or otherwise affect any of the terms and conditions of the Master Lease or waive any breach of the Master Lease by the Tenant; and (vi) the Master Lease shall govern and the County is not bound by any of the terms of the Sublease or Assignment Agreement nor shall the Subtenant have any rights to enforce the Master Lease against the County.

e) Reserved.

EXHIBIT "K"

(f) Reserved.

(g) Reserved.

(h) Assignment of Rents. As required by the Master Lease, the Tenant irrevocably assigns to the County, as security for the Tenant's obligations under the Master Lease, all rent due to the Tenant under the Sublease. The County, as assignee and as attorney-in-fact for the Tenant, may collect such rent and apply it toward the Tenant's obligations under the Master Lease except that, until the occurrence of a default by the Tenant under the Master Lease or this Consent, the Tenant shall have the right to collect such rent. In the event that Tenant is in default in accordance to the terms and conditions of the Master Lease or this Consent, the Tenant's right to collect such Rent shall automatically terminate, without the requirement of notice to the Tenant or the Subtenant, and the County may, at its option, upon notice to the Subtenant, collect, directly from the Subtenant, all Rent thereafter due and payable under the Sublease. Notwithstanding the foregoing, the County's collection of Rent directly from the Subtenant, regardless of the circumstances or reasons, therefore, shall in no manner whatsoever be deemed an attornment by the Subtenant to the County or serve to release the Tenant from any liability under the terms and conditions of the Master Lease in the absence of a specific written agreement signed by the County to such an effect. The County shall not, by reason of this paragraph of the Consent nor by reason of the collection of the Rent from the Subtenant be deemed liable to the Subtenant for any failure of the Tenant to perform and comply with the Tenant's obligations under the Sublease. The Tenant hereby irrevocably authorizes and directs the Subtenant, and the Subtenant agrees, upon receipt of any written notice from the County stating that the Tenant is in default in accordance with terms of the Master Lease or this Consent, to pay to the County all Rent payable under the Sublease. The Tenant agrees that: (i) the Subtenant shall have the right to rely upon any such written notice from the County, and (ii) the Subtenant is hereby instructed to pay Rent to the County without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from the Tenant to the contrary. The acceptance of Rent by the County from the Subtenant shall not be deemed a waiver by the County of any terms and conditions of the Master Lease.

(i) Continuing Liability of Tenant. Notwithstanding anything to the contrary in the Sublease or this Consent, as to a Sublease: (i) the Tenant shall remain primarily liable for and shall not be discharged nor released from the full and faithful performance of any of the provisions of the Master Lease (whether past, present, or future); and (ii) the County shall be entitled to pursue all remedies available in the event of any default by the Tenant of the Tenant's obligations under the Master Lease without regard to the Subtenant's performance or non-performance of the Subtenant's obligation under the Sublease and any default under the Master Lease (whether by the Tenant or the Subtenant) shall be a default of the Tenant under the Master Lease.

(j) Effect of Consent. This Consent is effective only for this Sublease and any subsequent sublease or assignment of the Premises or the Subleased Premises (in whole or in part) requires the County's separate written consent in accordance with the Master Lease. This Consent is not a consent to any improvements or alterations to or in the Subleased or Assigned Premises, and prior to the undertaking by the Tenant or the Subtenant or Assignee of any improvements or alterations to or in the Subleased or Assigned Premises, the Tenant shall obtain the County's prior written consent in accordance with the Master Lease.

EXHIBIT "K"

(k) **Effect of Tenant Default on Sublease.** In the event that that the Tenant is in default in accordance with terms of the Master Lease or this Consent, then the County may, at its option: (i) terminate the Master Lease, in which event, the Sublease shall simultaneously terminate on the date the County exercises said option and the Subtenant shall vacate the Subleased Premises within thirty (30) days thereafter; or (ii) without being obligated to do so, unilaterally require the Subtenant to attorn to the County, in which event, the Subtenant agrees to be bound to the County under the terms and conditions of the Sublease as if the County were the landlord under the Sublease from the time of the County's exercise of said option until the expiration or earlier termination of the Sublease, provided that in no event shall the County be liable to the Subtenant for any prepaid Rent nor any security deposit paid by the Subtenant to the Tenant nor shall the County be liable for any other defaults of the Tenant (whether accrued or continuing as of the date of attornment) under the Sublease. Such attornment shall be self-operative without the execution of any further instruments except that the Subtenant shall execute such instrument as the County may require. This subparagraph shall not limit the County's remedies against the Tenant pursuant to the Master Lease or this Consent.

3. **Notices.** Any notice, demand, request, consent, approval or communication that the parties desire or are required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally or sent by prepaid, first-class mail. Any such notice, demand, request, consent, approval or communication that any party desires or is required to give to another party shall be addressed to said party. Any party may change its address by notifying the other parties of the change of address. Notices shall be deemed communicated two (2) working days from the time of mailing if mailed as provided in this paragraph to the addresses set forth below:

If to County: San Bernardino County
 Department of Airports
 268 Hospitality Lane, Suite 302
 San Bernardino, CA 92408-0831

If to Tenant:

If to Subtenant:

4. **Miscellaneous.** The following provisions shall apply to this Consent: (a) this Consent shall be construed and interpreted in accordance with the laws of the State of California; (b) 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, (c) if any provision of this Consent is determined to be void by any court of competent jurisdiction, then such

EXHIBIT "K"

determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; (d) as this Consent was prepared by the parties, the language in all parts of this Consent shall be construed, in all cases, according to its fair meaning, and not for or against any party hereto; (e) this Consent, including the recitals, constitutes a single, integrated agreement, 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, expressed or implied; (f) no waiver, modification or amendment of any term, condition, or provision of this Consent shall be valid or shall have any force or effect unless made in writing and signed by the parties hereto; and (g) the parties to this Consent represent that the signators executing this Consent are fully authorized to enter into this Consent.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS THEREOF, the parties executed this Consent.

COUNTY: San Bernardino County

By: _____

Title: _____

Date: _____

TENANT:

By: _____

Title: _____

Date: _____

SUBTENANT or ASSIGNEE:

By: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM

TOM BUNTON, County Counsel
San Bernardino County, California

By: _____
Deputy County Counsel

Date: _____

EXHIBIT "L"

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements:

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. Payroll Records:

- a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
 - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
 - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
 - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
 - b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.
- 6. Limits on Hours of Work:**
- Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.
- 7. Penalty for Excess Hours:**
- The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
- 8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirement for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This Project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
 - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:

"A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

- (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
- (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.
- (d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:
- (1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.
 - (2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.
 - (3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).
- (e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.
- (f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."
- c. Labor Code section 1771.1 states the following:
- "(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- (b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
- (c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
- (1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works

until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work. (2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish

the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with [California Labor Code section 1777.5](#) requires all public works contractors to:

- a. Submit Contract Award Information (DAS-140):
 - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
 - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice*.
 - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.

- iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
 - v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
- i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
 - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
 - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
 - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
 - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
 - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
 - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
 - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
 - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.
- 3. Exemptions to Apprenticeship Requirements:**
- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:

- i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
- ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
- iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
- iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
- v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
 - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
 - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
 - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. Contractor's Compliance:

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner



Exhibit "M"

Levine Act Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

TENANT must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of TENANT:

2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐ If yes, skip Question Nos. 3 - 4 and go to Question No. 5.

No ☐

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision:

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of TENANT:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

Company Name	Subcontractor(s):	Principal and/or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☐ If **no**, please skip Question No. 10.
form.

Yes ☐ If **yes**, please continue to complete this

10. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing this Amendment, TENANT certifies that the statements made herein are true and correct. TENANT understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

Signature

Date

Print Name

Print Entity Name, if applicable

Attachment 2



Levine Act Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (4) One business entity has a controlling ownership interest in the other business entity;
- (5) there is shared management and control between the entities; or
- (6) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

TENANT must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of TENANT: **PARKCREST CONSTRUCTION, INC.**

2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐ If yes, skip Question Nos. 3 - 4 and go to Question No. 5.

No ☒

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: **ANDY SEHREMELIS**

4. If the entity identified in Question No. 1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

ANDY SEHREMELIS and LESLIE SEHREMELIS

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of TENANT:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

Company Name	Subcontractor(s):	Principal and/or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☐ If no, please skip Question No. 10.
form.

Yes ☒ If yes, please continue to complete this

10. Name of Board of Supervisor Member or other County elected officer:

Curt Hagman

Name of Contributor: Leslie Sehremelis

Date(s) of Contribution(s): 7/01/2025

Amount(s): \$1,000

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing this Amendment, TENANT certifies that the statements made herein are true and correct. TENANT understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

Don't Sign by:
Andy Sehremelis

Signature

Andy Sehremelis

Print Name

08/01/2025

Date

Parkcrest Construction, Inc.

Print Entity Name, if applicable

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☒ If **no**, please skip Question No. 10.
form.

Yes ☐ If **yes**, please continue to complete this

10. Name of Board of Supervisor Member or other County elected officer:

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

~~By signing this Amendment, TENANT certifies that the statements made herein are true and correct.~~
TENANT understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

Andy Sehremelis
Signature

Andy Sehremelis
Print Name

07/31/2025
Date

Parkcrest Construction, Inc.
Print Entity Name, if applicable