



Contract Number

17-775 A-1

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5000
Contractor	Sweeten Hall, L.P.
Contractor Representative	Alain Romero
Telephone Number	(626) 676-7498
Contract Term	10/1/2017-7/31/2026
Original Contract Amount	\$544,584.00
Amendment Amount	\$186,438.32
Total Contract Amount	\$731,022.32
Cost Center	
GRC/PROJ/JOB No.	59003741
Internal Order No.	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County ("COUNTY"), as tenant, and Cucamonga Service Club, Inc., as landlord, entered into Lease Agreement, Contract No. 17-775 dated September 26, 2017 (the "Lease"), whereby the COUNTY leases certain premises at 9324 San Bernardino Road, Rancho Cucamonga, California, as the premises is more specifically set forth in the Lease, for a term that is currently scheduled to expire on September 30, 2032; and

WHEREAS, Sweeten Hall, L.P. subsequently acquired all of Cucamonga Service Club, Inc.'s right, title, and interest to the real property on which the premises is situated and became the successor landlord under the Lease; hereinafter all references to LANDLORD shall mean Sweeten Hall, L.P.; and

WHEREAS, following LANDLORD's expressed interest in exercising its right to terminate the Lease pursuant to Paragraph 38, LANDLORD provided COUNTY with notice dated December 31, 2020 wherein LANDLORD exercised said right to terminate the Lease with an effective termination date of March 1, 2021 ("Landlord Termination Notice"), which COUNTY acknowledges having received. LANDLORD has agreed to suspend the effectiveness of the Landlord Termination Notice while the parties negotiate an amendment to the Lease in lieu of termination; and

WHEREAS, in consideration of LANDLORD's forbearance to exercise its right to terminate the Lease pursuant to Paragraph 38 prior to the delivery of the Landlord Termination Notice, its rescission of the delivered Landlord Termination Notice, and its agreement to amend Paragraph 38, Termination, to remove each parties' right to terminate the lease at any time during the term by providing not less than sixty (60) days notice LANDLORD and COUNTY now desire to amend the Lease to: reflect Sweeten Hall, L.P. as the successor landlord under the Lease, reduce the existing 15-year term of the Lease by six (6) years and two (2) months, changing the end date from September 30, 2032 to July 31, 2026, expand the square footage of the premises by adding approximately 22,933 square feet of additional area, comprising paved parking spaces, paved drive lanes, and unpaved land, for COUNTY's exclusive use, to the existing premises of approximately 30,500 square feet of unimproved land for a total premises of approximately 54,433 square feet, provide for certain one-

time payments to settle any and all outstanding matters related to the Lease, adjust the rental rate schedule, and amend certain other terms of the Lease as more specifically set forth in this amendment ("First Amendment"), such First Amendment to be effective as of August 1, 2021 (the "First Amendment Effective Date").

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree the Lease is amended as follows:

1. Effective as of the First Amendment Effective Date, CHANGE that portion of **Paragraph 1, PARTIES**, which now reads "...Cucamonga Service Club, Inc...." to read ".... Sweeten Hall L.P..".

2. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 2, PREMISES LEASED** and the existing Exhibit "A", Premises, and SUBSTITUTE therefore the following as a new **Paragraph 2, PREMISES LEASED** and a new Exhibit "A", Premises.

"2. **PREMISES LEASED:**

A. LANDLORD leases to COUNTY and COUNTY leases from LANDLORD certain premises of approximately 54,433 square feet for COUNTY's exclusive use, comprising (a) approximately 30,500 square feet of unimproved land ("Original Premises"), and (b) approximately 22,933 square feet of additional area, comprising paved parking spaces, paved drive lanes, and unpaved land ("Expanded Premises"), (unless individually referred to, the Original Premises and the Expanded Premises shall hereinafter be collectively referred to as the "Premises"), located on a portion of the real property commonly known as 9324 San Bernardino Road, Rancho Cucamonga, California ("Property"). The Original Premises is more particularly depicted in shaded blue and the Expanded Premises is more particularly depicted in shaded yellow in **Exhibit A, "Premises"**, attached hereto and incorporated herein by reference. The parties hereby agree that the Premises shall not be re-measured at any time during the term of the Lease, including any extensions thereof.

B. Along with the Premises, LANDLORD grants to COUNTY, at no additional cost for the duration of the Initial Term and any extensions thereof the right of ingress and egress on and over the shared access lanes at the Property, as shown on Exhibit "A," in the direction indicated ("Shared Access Lanes").

3. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 3, TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 3, TERM**:

"3. **TERM: Initial Term.** This Lease's initial term ("Initial Term"), which commenced on October 1, 2017 ("Commencement Date") shall end on July 31, 2026 ("Ending Date") unless the Lease is earlier terminated in accordance with this Lease. For avoidance of doubt, the parties acknowledge and agree that, in consideration of the terms and conditions of this First Amendment, LANDLORD herein formally rescinds the Landlord Termination Notice and the Lease shall remain in full force and effect as if the Landlord Termination Notice had not been delivered by LANDLORD, but subject to the terms of this First Amendment.

4. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 4, RENT**, and SUBSTITUTE therefore the following as a new **Paragraph 4, RENT**:

"4. **RENT:**

A. As a material inducement to LANDLORD'S forbearance to exercise its right to terminate the Lease pursuant to Paragraph 38 prior to the delivery of the Landlord Termination Notice, its rescission of the delivered Landlord Termination Notice, and its agreement to amend Paragraph 38, Termination, to remove each parties' right to terminate the lease at any time during the term by providing not less than sixty (60) days notice, and as part of LANDLORD'S consideration hereunder, notwithstanding anything to the contrary in the Initial Lease, COUNTY shall, within ten (10) business days following the mutual execution of this First Amendment, pay LANDLORD a one-time payment in the total amount of \$61,487.76, comprising (i) \$58,468.54 as a one-time market rent adjustment for the Original Premises for the period from July 1, 2020 through July 31, 2021; and (ii) \$3,019.22 as a one-time reimbursement for the monthly water service fees paid by LANDLORD to the Cucamonga Valley Water District for the Original Premises and the Expansion Premises, as applicable, for the period from December 1, 2020 to November 30, 2021.

B. Due to the addition of the Expansion Premises as of August 1, 2021, the parties acknowledge and agree as follows for the period from August 1, 2021 to February 28, 2022: (i) notwithstanding anything to the contrary in the initial Lease, the COUNTY has paid an interim monthly rent payment of \$5,746.00 for the Original Premises and the Expansion Premises for a total payment of \$40,222.00 for said period, the receipt of such total payment is acknowledged herein by LANDLORD, pending the parties' agreement on the revised monthly rent for the Original Premises

and the Expansion Premises; (ii) the revised monthly rent payment for the Original Premises and the Expansion Premises, as agreed by the parties in this First Amendment, shall be \$8,330.43 (net of LANDLORD's in-kind contribution under Section 39 herein but shall not modify said monthly payment) for a total amount due of \$58,313.01 for said period; and (iii) the COUNTY's total payment of \$40,222.00 for interim rent shall be deducted from the total amount payable of \$58,313.01 per the First Amendment, resulting in a difference of \$18,091.01, which shall be due from the COUNTY within ten (10) business days following the mutual execution of this First Amendment.

C. As of March 1, 2022 and continuing monthly until the Ending Date, COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears not later than the last day of each month, based on the total Premises of approximately 54,433 square feet.

March 1, 2022 thru July 31, 2022 - monthly payments of \$8,330.43
August 1, 2022 thru July 31, 2023 - monthly payments of \$8,746.95
August 1, 2023 thru July 31, 2024 - monthly payments of \$9,184.30
August 1, 2024 thru July 31, 2025 - monthly payments of \$9,643.51
August 1, 2025 thru July 31, 2026 - monthly payments of \$10,125.69

For the avoidance of doubt, the monthly payments shown above are net of LANDLORD's in-kind contribution under Section 39 but shall not modify said monthly payment.

D. The parties agree that the COUNTY's use of the Shared Access Lanes under this Lease is at no additional cost to the COUNTY during the Term, including at any time prior to the date of the First Amendment Effective Date and any extended term.

E. LANDLORD accepts the sums set forth in Section 4.A through 4.C and the terms and conditions of this First Amendment, and COUNTY, solely in its capacity as a tenant, accepts LANDLORD'S forbearance to terminate the Lease prior to the delivery of the Landlord Termination Notice, rescission of the delivered Landlord Termination Notice. agreement to amend Paragraph 38, Termination, to remove each parties' right to terminate the lease at any time during the term by providing not less than sixty (60) days notice, and the terms and conditions of this First Amendment, as full and final settlement of and a waiver and release of any and all claims they may each have against the other related to Lease prior to the First Amendment Effective Date, including (but not limited to) the rent, all utilities, and any other amounts due or claimed to be due from COUNTY, the amount of premises leased by COUNTY, the Landlord Termination Notice, and any alleged defaults under the Lease, and LANDLORD and COUNTY, in its capacity as a tenant and not in any regulatory capacity, hereby does each respectively waive and relinquish all rights and benefits afforded them under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

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

LANDLORD and COUNTY each acknowledges that the foregoing waiver under the provisions of Section 1542 was separately bargained for and is an essential and material term of this First Amendment.

LANDLORD's Initials _____

COUNTY's Initials _____

F. Rent for any partial month from and after March 1, 2022 shall be prorated based on the actual number of days of the month. LANDLORD shall accept all rent and other payments from COUNTY under this Lease via electronic funds transfer (EFT) directly deposited into the LANDLORD'S designated checking or other bank account. LANDLORD shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

G. LANDLORD has registered through the San Bernardino County's Electronic Procurement Network (ePro) system at <https://epro.sbcounty.gov/epro/>."

5. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 5, OPTION TO EXTEND TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 5, RESERVED**, which shall read as follows:

"5. RESERVED."

6. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 6, HOLDING OVER**, and SUBSTITUTE therefore the following as a new **Paragraph 6, HOLDING OVER**, which shall read as follows:

"6. **HOLDING OVER:** In the event COUNTY shall hold over and continue to occupy the Premises with the express written consent of LANDLORD, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, as existed and prevailed at the time of the expiration of the term of this Lease; provided, however, that the monthly rental rate during the holdover term shall be increased by fifteen percent (15%) of the monthly rent that existed and prevailed at the expiration of the immediately preceding term but excluding any amortized amounts for improvements, if any. Notwithstanding Paragraph 38, TERMINATION, either party shall have the right to terminate the Lease with not less than sixty (60) days prior written notice to the other Party during any holdover term."

7. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 8, USE**, and SUBSTITUTE therefore the following as a new **Paragraph 8, USE & RELATED IMPROVEMENTS**, which shall read as follows:

"8. **USE AND RELATED IMPROVEMENTS:** COUNTY shall have the right to use the Premises for the operation of a Head Start preschool education program. Consistent with such use, COUNTY shall have the right to improve the Premises by: (a) the placement, installation, substitution, addition, and removal at any time during the Term, including any extensions thereof, of one or more modular building units for office and classroom space, (b) an exterior playground area with a shade structure and playground equipment, and (c) for parking and circulation of vehicles. COUNTY shall have the further right to construct a security fence and gate around the Premises or portions thereof, upon obtaining the approval of LANDLORD to such construction plans, which approval shall not be reasonably withheld, delayed, or conditioned. COUNTY shall not use or permit the Premises to be used for any other purpose than as stated in this Paragraph 8."

8. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 11, MAINTENANCE**, and SUBSTITUTE therefore the following as a new **Paragraph 11, MAINTENANCE**, which shall read as follows:

"11. **MAINTENANCE:**

A. COUNTY at its cost shall be responsible for all maintenance and repairs of the Premises, and all expenses related thereto, including without limitation, all routine, capital and extraordinary costs for the maintenance and repair of the Premises, including the pre-existing improvements at the Premises, such as the landscaping features, and any improvements installed by COUNTY pursuant to Paragraph 6 and any subsequent alterations to the Premises made by COUNTY that may be permitted by LANDLORD in accordance with Paragraph 12 below, provided that COUNTY's foregoing obligations extend only to keep the Premises in as good a condition and repair as it exists on the First Amendment Effective Date, reasonable wear and tear excluded. The Premises shall further be maintained in a clean and neat manner. In addition, COUNTY shall solely be responsible for the maintenance and repair of any COUNTY personal property installed on the Premises, including any modular building units, playground equipment, shade structures, fences or gates.

B. LANDLORD at its cost shall maintain the "Shared Access Lanes" located on the Property in good working order, condition, and repair and COUNTY and LANDLORD will equally share the cost of routine maintenance of the Shared Access Lanes, provided that COUNTY'S share of such routine costs shall in no event exceed Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per every 12-month period during the term of the Lease. LANDLORD shall solely be responsible for the cost of any nonroutine maintenance, repairs, or replacements of the Shared Access Lanes, including but not limited to capital and extraordinary costs. LANDLORD shall invoice COUNTY monthly for COUNTY's share of the routine maintenance costs for the Shared Access Lanes, subject to said \$2,500 per 12-month period limit, along with supporting invoices documenting the costs incurred by LANDLORD and COUNTY'S share. COUNTY shall have the right to audit LANDLORD's records to verify the routine maintenance costs incurred by LANDLORD."

9. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 12, ALTERATIONS**, and SUBSTITUTE therefore the following as a new **Paragraph 12, ALTERATIONS**, which shall read as follows:

"12. **ALTERATIONS:** COUNTY shall not make any structural or exterior improvements or alterations to the Premises without LANDLORD's prior written consent. Any such alterations shall remain on and be surrendered with the Premises on expiration or termination of the Lease, provided that, for avoidance of doubt, COUNTY shall have the right

to remove its modular units, playground equipment, shade structures, fencing and other improvements installed by COUNTY.”

10. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 14, UTILITIES**, and SUBSTITUTE therefore the following as a new **Paragraph 14, UTILITIES**, which shall read as follows:

“14. **UTILITIES:** LANDLORD shall have no obligation to furnish any utilities to the Premises. COUNTY agrees to obtain, in its own name and on its own account, any water, sewer, electricity, or gas utilities it may require at the Premises, which the parties agree are currently separately metered from the remainder of the Property, and shall pay all service charges and any related taxes that may be due for such utilities pursuant to said meter(s). In addition, COUNTY shall pay all service charges and related taxes for trash, telephone, and Internet services for the Premises in its own name and on its own account. Under no circumstances shall LANDLORD have any responsibility for utilities and services that are furnished to the Premises, except as set forth in Paragraph 11.B.”

11. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 15, INDEMNIFICATION**, and SUBSTITUTE therefore the following as a new **Paragraph 15, INDEMNIFICATION**, which shall read as follows:

“15. **INDEMNIFICATION:**

A. The LANDLORD agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out LANDLORD’s breach of its obligations under this Lease. The LANDLORD’s indemnification obligation shall survive the COUNTY’s tenancy. The insurance provisions in **Paragraph 16, INSURANCE REQUIREMENTS AND SPECIFICATIONS** shall not be interpreted in a manner that limits the indemnification obligation.

B. COUNTY agrees to indemnify and hold harmless the LANDLORD, its officers, agents, volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the COUNTY’s negligent acts or omissions which arise from the COUNTY’s breach of its obligations under this Lease.

C. In the event COUNTY and/or the LANDLORD is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Lease the COUNTY and/or LANDLORD shall indemnify the other to the extent of its comparative fault.

12. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 16, INSURANCE REQUIREMENTS AND SPECIFICATIONS**, and SUBSTITUTE therefore the following as a new **Paragraph 16, INSURANCE REQUIREMENTS AND SPECIFICATIONS**, which shall read as follows:

“16. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. COUNTY is a self-insured public entity for purposes of professional liability, general liability and workers' compensation.

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

(1) Workers' Compensation/Employers Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the LANDLORD and all risks to such persons under this Lease.

(a) If LANDLORD has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by COUNTY'S Director of Risk Management.

(b) If, LANDLORD is a non-profit corporation, organized under California or Federal law, volunteers for LANDLORD are required to be covered by Workers' Compensation insurance.

(2) Commercial/General Liability Insurance - The LANDLORD shall carry General Liability Insurance covering all operations performed by or on behalf of the LANDLORD providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) RESERVED
- (b) RESERVED
- (c) Broad form property damage (including completed operations).
- (d) RESERVED
- (e) Personal injury
- (f) Contractual liability
- (g) \$2,000,000 general aggregate limit

(3) RESERVED

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

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

C. RESERVED

D. Additional Insured - All policies, except for the Workers' Compensation, shall contain endorsements naming the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this lease hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 201 0.1 1 85.

E. RESERVED

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

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

H. Proof of Coverage - The LANDLORD shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RESDD) administering the lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESDD, and LANDLORD shall maintain such insurance from the time LANDLORD commences use under the lease hereunder until the end of the period of the lease. Within fifteen (15) days of the commencement of this Lease, the LANDLORD shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

I. Acceptability of Insurance Carrier - Unless otherwise approved by the COUNTY Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

J. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by COUNTY'S Director of Risk Management.

K. Insurance Review - Insurance requirements are subject to periodic review by the COUNTY. Any failure, actual or alleged, on the part of RESD or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESD or the COUNTY.

L. Failure to Procure Insurance. All insurance required must be maintained in force at all times by LANDLORD. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the COUNTY to give notice to immediately suspend all LANDLORD's business activities on the Premises. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Lease, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by LANDLORD to COUNTY upon demand but only for the pro rata period of non-compliance.

M. Miscellaneous. 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 a partner or joint venturer with LANDLORD in LANDLORD's operations.

N. RESERVED"

13. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 17, DESTRUCTION OF PREMISES**, and SUBSTITUTE therefore the following as a **Paragraph 17, DESTRUCTION OF PREMISES** which shall read as follows:

"17. **DESTRUCTION OF PREMISES**: In the event the Premises or any portion thereof is damaged or destroyed and not usable or accessible by COUNTY for the permitted uses, then COUNTY shall have the right to terminate this Lease upon written notice to the LANDLORD. For the avoidance of doubt, the foregoing right of termination shall not apply in the event that any improvements to the Premises installed by COUNTY are damaged, destroyed, or are otherwise not usable or accessible by COUNTY for any reason."

14. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 19, COUNTY'S REMEDIES ON LANDLORD'S DEFAULT**, and SUBSTITUTE therefore the following as a new **Paragraph 19, COUNTY'S REMEDIES ON LANDLORD'S DEFAULT**, which shall read as follows:

"19. **COUNTY'S REMEDIES ON LANDLORD'S DEFAULT**: Whenever any Event of Default referred to in Paragraph 18 hereof shall have happened and be continuing, it shall be lawful for the COUNTY to exercise any and all remedies available pursuant to law or granted pursuant to this Lease. Each and every covenant hereof to be kept and performed by the LANDLORD is expressly made a condition and upon the breach thereof the COUNTY may, at its option, terminate this Lease and COUNTY shall be entitled to all remedies available at law or in equity. In the event of such Event of Default, the LANDLORD shall continue to remain liable for damages for breach of this Lease and the performance of all conditions herein contained."

15. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 20, COUNTY'S DEFAULT**, and SUBSTITUTE therefore the following as a new **Paragraph 20, COUNTY'S DEFAULT**, which shall read as follows:

"20. **COUNTY'S DEFAULT**: The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by COUNTY:

A. The vacating for more than thirty (30) consecutive days or abandonment of the Premises by COUNTY.

B. The COUNTY's failure or refusal to perform any material provision of this Lease, including the payment of rent, and such failure or refusal to perform is not cured within thirty (30) days following COUNTY'S receipt of written notice of default from LANDLORD, unless another time limit is expressly provided herein. If the default cannot reasonably be cured within thirty (30) days, COUNTY shall not be in default of this Lease if COUNTY commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default. The purpose of this notice requirement is to extend the notice requirements of the unlawful detainer statutes of California."

16. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 21, LANDLORD'S REMEDIES ON COUNTY'S DEFAULT**, and SUBSTITUTE therefore the following as a new **Paragraph 21, LANDLORD'S REMEDIES ON COUNTY'S DEFAULT**, which shall read as follows:

"21. **LANDLORD'S REMEDIES ON COUNTY'S DEFAULT:** Whenever any Event of Default referred to in Paragraph 20 hereof shall have happened and be continuing, it shall be lawful for the LANDLORD to exercise any and all remedies available pursuant to law or in equity, or is otherwise granted pursuant to this Lease; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Rent or otherwise declare any Rent not then in Default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the COUNTY is expressly made a condition and upon the breach thereof the LANDLORD may, at its option, terminate this Lease. In the event of such Event of Default, the COUNTY shall continue to remain liable for the payment of the Rent and/or damages for breach of this Lease and the performance of all conditions herein contained and in the event such rent and/or damages shall be payable to the LANDLORD only at the same time and in the same manner as provided for the payment of monthly rent."

17. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 23, NOTICES**, and SUBSTITUTE therefore the following as a new **Paragraph 23, NOTICES**, which shall read as follows:

"23. **NOTICES.**

A. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally, delivered by courier service, or sent by United States mail, postage prepaid, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt if such notice is personally delivered; (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is delivered by a reputable courier service; or (iii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested. Any notices received after 5 pm local time on a business day shall be deemed delivered on the following business day.

LANDLORD's address: Sweeten Hall, L.P.
c/o Alain Romero
251 S. Lake Avenue
Suite 800
Pasadena, CA 91101

COUNTY'S address: San Bernardino County
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

B. If LANDLORD intends to transfer its majority ownership interest in the Premises to a third party, LANDLORD shall notify COUNTY of such transfer at least fifteen (15) COUNTY working days prior to completion of such transfer. In the event of a transfer of controlling interest in the Premises, LANDLORD shall provide COUNTY with evidence of completion of transfer, including but not limited to a grant deed and an assignment of this Lease; in which case, the new property owner and COUNTY shall reflect by written amendment the new property owner as the successor landlord. In addition, the new property owner, as the successor landlord, shall, within five (5) days of acquiring the subject real property and becoming the successor landlord, provide COUNTY with evidence that it has obtained insurance in compliance with **Paragraph 15, INDEMNIFICATION** and **Paragraph 1.6 INSURANCE REQUIREMENTS AND SPECIFICATIONS**. The COUNTY's RESD Director shall have the authority on behalf of COUNTY to execute a COUNTY standard amendment to this Lease with any successor landlord solely for the purposes of reflecting the successor landlord as the LANDLORD under the Lease and to update the LANDLORD's notice address and for no other purpose. The successor landlord's execution of such COUNTY standard amendment and submission of a valid W-9 are pre-requisites for Rents under this Lease to be paid to the successor landlord;.

18. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 36, ATTORNEYS' FEES AND COSTS**, and SUBSTITUTE therefore the following as a new **Paragraph 36, ATTORNEYS' FEES AND COSTS**, which shall read as follows:

“36. **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 COUNTY or LANDLORD, including without limitation such costs and attorneys’ fees payable under **Paragraph 15, INDEMNIFICATION, Paragraph 49, HAZARDOUS SUBSTANCES**, and **Paragraph 50, PUBLIC RECORDS DISCLOSURE; CONFIDENTIALITY**.”

19. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 38, TERMINATION**, and SUBSTITUTE therefore the following as a new **Paragraph 38, TERMINATION**, which shall read as follows:

“38. **TERMINATION:**

“A. Each Party may only terminate this Lease in accordance with the express terms of this Lease, including without limitation, LANDLORD’S and COUNTY’S default of their obligations hereunder, as more particularly set forth in Paragraph 18 (“LANDLORD’S DEFAULT”) and Paragraph 20 (“COUNTY’S DEFAULT”), respectively, and with respect to the COUNTY, in the exercise of the right of termination arising under Paragraph 38.B below. Notice of any termination permitted under this Lease shall be given to the other Party in accordance with Paragraph 23 (“NOTICES”).

B. Notwithstanding anything to the contrary in Paragraph 38.A, if federal funding to Preschool Services affecting the program(s) for which COUNTY has entered into this Lease is reduced by twenty percent (20%) or more, or if federal funding is not received by COUNTY, COUNTY may terminate this Lease upon not less than thirty (30) days written notice to LANDLORD; provided, however, this right of termination shall become null and void after the passing of ninety (90) days from the date COUNTY first received notice of such reduction or cessation in federal funding.”

C. If COUNTY opts to terminate the Lease pursuant either of the above subsections of this paragraph, the Director of the Real Estate services Department (RESD) shall have the authority, on behalf of COUNTY, to give LANDLORD notice as required herein and LANDLORD shall have the right to receive from COUNTY only the rents due and payable up to the effective termination date.”

20. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 39, IN-KIND AND COST SHARING REPORTING**, and SUBSTITUTE therefore the following as a new **Paragraph 39, IN-KIND AND COST SHARING REPORTING**, which shall read as follows:

“39. **IN-KIND AND COST SHARING REPORTING:** As a condition of this lease, LANDLORD shall provide reports to COUNTY for in-kind services, including volunteer services, playground and/or equipment on a monthly and annual basis per program year, as part of the Preschool Services Department’s non-federal share of cost for Federal funding. These reports are required by the U.S. Department of Health and Human Services - Head Start Program Performance Standards, 45-CFR-1304.

A. “Third party in-kind contributions means property or services which benefit a grant supported project or program and which are contributed by non-Federal third parties without charge to the grantee, subgrantee or a cost-type contractor under the grant and subgrant.” (HDS-Attachment A, Title 45: Subpart G:74.51).

B. “Third party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payment would be allowable costs.” (HDS-Attachment A, Title 45: Subpart G:74.53).”

C. The parties agree the in-kind contributions for the Premises equates to \$2,082.61 per month, commencing as of the First Amendment Effective Date, which in-kind contribution increases by 5% on anniversary of the First Amendment Effective Date.

21. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 40, LANDLORD’S IMPROVEMENTS**, and SUBSTITUTE therefore the following as a new **Paragraph 40, LANDLORD’S IMPROVEMENTS**, which shall read as follows:

“40. **RESERVED**”

22. Effective as of the First Amendment Effective Date, DELETE in its entirety the existing **Paragraph 49, HAZARDOUS SUBSTANCES**, and SUBSTITUTE therefore the following as a new **Paragraph 49, HAZARDOUS SUBSTANCES**, which shall read as follows:

“49. **HAZARDOUS SUBSTANCES:**

A. LANDLORD hereby represents and warrants that, to the best of LANDLORD'S knowledge, information and belief: (i) the Premises and the property on which the Premises forms a part of have not been exposed to Hazardous Substances and are presently free of all Hazardous Substances; (ii) neither the LANDLORD nor any of the other current tenants or licensees, if any, on the property of which the Premises forms a part is in violation of or subject to an existing, pending or threatened investigation by any governmental authority under any applicable federal, state or local law, regulation, ordinance or other legislation pertaining to air, water, or soil quality or the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances; (iii) any handling, transportation, storage, treatment, disposal, or use of toxic or Hazardous Substances to date has been in compliance with applicable laws; and (iv) no reportable use has occurred on the Premises and the property on which the Premises forms a part of to date, and the soil, groundwater and vapor on or under the Premises and the property on which the Premises forms a part of is free of Hazardous Substances as of the Commencement Date.

B. **Hazard Substance Indemnity**

(1) LANDLORD shall indemnify defend (with counsel reasonably approved by COUNTY) and hold COUNTY harmless from and against any and all losses and/or damages, liabilities, judgments, costs, claims, expenses, penalties, including attorneys' and consultant's fees, arising out of or involving the existence of any Hazardous Substances located in, about or under the Premises and the property on which the Premises forms a part of,; (i) existing prior to the Commencement Date of this Lease; and (ii) occurring during the term hereof, including any extended terms, to the extent caused by the negligence or intentional misconduct of LANDLORD, its employees, agents, contractors, other tenants, licensees, or any person acting under LANDLORD'S direct control and authority. Additionally, the issuance of an order by any governmental authority directing the LANDLORD or any of LANDLORD'S other tenants or licensees on the property of which the Premises forms a part to cease and desist any illegal action in connection with a Hazardous Substance, or to remediate a contaminated condition caused by the negligence or intentional misconduct of LANDLORD, its employees, agents, contractors, other tenants, licensees, or any person acting under LANDLORD'S direct control and authority is a breach of this Lease, and LANDLORD shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by COUNTY in connection with or in response to such order. LANDLORD'S obligations under this paragraph shall include, but shall not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by COUNTY, and the cost of investigation, removal, remediation, restoration and/or abatement thereof. LANDLORD'S obligations under this provision shall survive the expiration or early termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and LANDLORD shall release LANDLORD from its obligations under this Lease with regard to Hazardous Substances unless specifically agreed to by COUNTY in writing.

(2) COUNTY shall indemnify and hold LANDLORD harmless from and against any and all losses and/or damages, liabilities, judgments, costs, claims, expenses, penalties, including attorneys' and consultant's fees, arising out of or involving the existence of any Hazardous Substances located in, about or under the Premises and the property on which the Premises forms a part of, occurring during the term hereof, including any extended terms, to the extent caused by the negligence or intentional misconduct of COUNTY or its employees, agents, contractors, or any person acting under COUNTY's direct authority or control. Additionally, the issuance of an order by any governmental authority directing the COUNTY or any of COUNTY'S tenants or licensees at the Premises to cease and desist any illegal action in connection with a Hazardous Substance, or to remediate a contaminated condition caused by the negligence or intentional misconduct of COUNTY, its employees, agents, contractors, any tenants or licensees, or any person acting under COUNTY'S direct control and authority is a breach of this Lease, and COUNTY shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by LANDLORD in connection with or in response to such order. COUNTY'S obligations under this paragraph shall include, but shall not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by LANDLORD, and the cost of investigation, removal, remediation, restoration and/or abatement thereof. COUNTY'S obligations under this provision shall survive the expiration or early termination of this Lease. No termination, cancellation or release agreement entered into by LANDLORD and COUNTY shall release COUNTY from its obligations under this Lease with regard to Hazardous Substances unless specifically agreed to by LANDLORD in writing.

C. For the purposes of this paragraph, the following definitions shall apply:

(1) "Hazardous Substance," as used in this Lease, shall mean any product, substance or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises and the property on which the Premises forms a part of, is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises and the property on which the Premises

forms a part of; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of LANDLORD or COUNTY under any applicable statute or common law theory.

(2) "Reportable use" shall mean (i) the installation or use of any above- or below-ground storage tank; (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 and/or (iii) the presence at the Premises and the property on which the Premises forms a part of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises and the property on which the Premises forms a part of or neighboring properties.

(3) The term "applicable requirements" shall be deemed to refer to all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances."

23. Except as expressly set forth herein, all other terms and conditions of the Lease, including its exhibit, shall remain the same and are hereby incorporated by reference. In the event of any conflict between the Lease and this First Amendment, the terms and conditions of this First Amendment shall control.

SAN BERNARDINO COUNTY

SWEETEN HALL, L.P.

►

Curt Hagman, Chairman, Board of Supervisors

By ► _____
(Authorized signature - sign in blue ink)

Dated: _____
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

Name Alain Romero

Title _____

By _____
Deputy

Dated: _____

Address 251 S. Lake Ave., Suite 800
Pasadena, CA 91101

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Agnes Cheng, Deputy County Counsel Date _____	► _____ Date _____	► Lyle Ballard, Manager, RESD Date _____

EXHIBIT A

The Premises (comprising the blue and yellow shaded areas but excluding the orange shaded area)

