

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



**Contract Number**

13-702 A-3

**SAP Number**

## Real Estate Services Department

<b>Department Contract Representative</b>	Terry W. Thompson, Director
<b>Telephone Number</b>	(909) 387-5000
<b>Contractor</b>	Vanderbilt Partners, LLC
<b>Contractor Representative</b>	Jian Torkan
<b>Telephone Number</b>	(323) 932-7777
<b>Contract Term</b>	8/1/2014 – 1/31/2030
<b>Original Contract Amount</b>	\$ 17,015,866
<b>Amendment Amount</b>	\$ 12,628,584
<b>Total Contract Amount</b>	\$ 29,644,450
<b>Cost Center</b>	9200001000
<b>GRC/PROJ/JOB No.</b>	6200-3181
<b>Grant Number (if applicable)</b>	

### IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the COUNTY and Vanderbilt Partners, LLC (LANDLORD) have previously entered into Lease Agreement, Contract No. 13-702 dated August 20, 2013, as amended by the First Amendment dated March 11, 2014, the Second Amendment dated October 7, 2014; and, wherein LANDLORD leases certain premises, comprising a total of approximately 70,000 square feet to COUNTY, located at 303 E. Vanderbilt Way, San Bernardino, CA, which Lease expired July 31, 2024 and has continued on a permitted month-to-month holdover; and,

WHEREAS, the COUNTY and LANDLORD now desire to amend the Lease Contract No. 13-702 to reflect a permitted holdover for the period of August 1, 2024 through January 31, 2025, extend the term of the Lease, to revise the rent schedule, to change the date after which the COUNTY may terminate the Lease, add an option to purchase, and update other terms and conditions of the Lease.

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

1. Pursuant to **Paragraph 8, HOLDING OVER**, COUNTY shall, with LANDLORD's express consent granted herein, occupy the Premises on a holdover tenancy for the period from August 1, 2024 through January 31, 2025 at a monthly rental amount of \$154,764 per month.

2. Effective as of February 1, 2025, DELETE in its entirety the existing **Paragraph 3, TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 3, TERM**:

3. **TERM:** The term of the Lease shall be extended from the Initial Term of August 1, 2014 through July 31, 2024, for an additional five (5) years, commencing from February 1, 2025, and continuing through January 31, 2030 ("First Extended Term"). The Initial Term and the First Extended Term shall collectively be referred to as the Lease Term. Two (2) five-year options remain.

3. Effective as of February 1, 2025, DELETE in its entirety the existing **Paragraph 4.A. RENT**, and SUBSTITUTE therefore the following as a new **Paragraph 4.A. RENT**:

4. **RENT:**

A. COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears on the last day of each month, commencing when the Third Extended Term commences and continuing during the Third Extended Term, as more specifically reflected and included in the amounts set forth below:

Lease Year	Total Monthly Rental Payments	Total 5 Year Rental Payment
February 1, 2025 thru January 31, 2030	\$195,000.00	\$11,700,000.00

4. Effective February 1, 2025, DELETE the existing **Paragraph 39, RESERVED** and SUBSTITUTE therefore the following as a new **Paragraph 39, OPTION TO PURCHASE** and **Exhibit "K" PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** attached and incorporated herein, as follows:

39. **OPTION TO PURCHASE:**

A. As additional consideration for COUNTY agreeing to the terms and conditions of this Lease, COUNTY shall have the option to purchase the Premises as set forth in this Paragraph. Should the COUNTY elect to exercise its Option to Purchase the Premises, then the COUNTY shall provide LANDLORD with written notice prior to the end of the twelfth (12<sup>th</sup>) month of the Lease Term. COUNTY to draft Purchase and Sale Agreement in substantially the form attached hereto as Exhibit "K" with agreed upon terms between San Bernardino County through its Administrative Office as Buyer and Landlord as Seller; agree to a purchase price that shall be determined through a mutually-acceptable third-party appraisal process to determine fair market value (FMV). Specifying a closing date that is no earlier than the 12<sup>th</sup> month of the lease term and following substantial completion of the Improvements, but no later than one hundred eighty (180) days following COUNTY'S exercise of the Option. COUNTY and LANDLORD further agree that following (i) full execution of the Purchase and Sale Agreement and (ii) completion of the sale to the COUNTY, this Lease Agreement will

terminate at close of escrow and transfer of title of said property to COUNTY. The Purchase and Sale Agreement is contingent upon approval by the Board of Supervisors. LANDLORD agrees that until the earlier of (a) the end of the twelfth (12<sup>th</sup>) month of the Lease Term (but only if COUNTY has elected not to exercise its Option to Purchase) or (b) the expiration or termination of the Purchase and Sale Agreement for any reason other than a default by LANDLORD thereunder, LANDLORD will not sell the Premises to any party other than COUNTY.

B. Option Consideration: COUNTY shall remit option consideration in the sum of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) (hereinafter referred to as the "Option Fee") to LANDLORD upon execution of the Lease with Option to Purchase, which amount is non-refundable. If COUNTY fails to exercise this option, defaults in the Lease Agreement or fails to close the conveyance, the Option Fee shall not be refunded.

C. Escrow: The sale of the Property shall be consummated through a mutually agreed upon licensed escrow company ("escrow holder"). Escrow shall be deemed to be opened on the date both parties have executed the escrow instructions and the COUNTY has provided a copy of said PSA to the escrow holder. The parties shall execute all standard documents reasonably required by escrow holder to consummate the sale as long as they are consistent with the provisions of this Lease. The parties shall take all actions necessary to close escrow within thirty (30) days after it is opened. Escrow shall be deemed to be closed on the date the grant deed for the Property is recorded.

(1) Title Insurance: At the close of escrow, escrow holder must be prepared to have issued by a title company mutually acceptable to the parties a CLTA Standard Coverage Policy of Title Insurance insuring title to the Property vested in COUNTY subject only to the matters set forth in subparagraph (2), Title to Property, below.

(2) Title to Property: LANDLORD shall deliver to COUNTY an executed grant deed in recordable form conveying the Property. Title to the Property shall be conveyed by LANDLORD to COUNTY free and clear of all liens, encumbrances, covenants, conditions, restrictions, easements, and right of way of record, subleases or other tenancy agreements, and other matters of record, except current taxes, a lien not yet delinquent, those portions of current assessments not yet due and payable, this Lease, and matters which were of record before the full execution of this Amendment.

(3) Proration of Costs: Base Rent shall be prorated at the date of close of escrow.

(4) Closing Costs: Transfer taxes, recording fees on the deed and the cost of title policy referred to in subparagraph (1), Title Insurance, shall be paid by COUNTY. Charges in escrow and all other closing costs shall be paid equally between the parties.

5. Effective as of February 1, 2025, DELETE in its entirety the existing **Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE**, and SUBSTITUTE therefore the following as a new **Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE**:

"40. COUNTY'S RIGHT TO TERMINATE LEASE: Upon the expiration of the term of the Lease (i.e., January 31, 2030), the Lease shall automatically convert to a month to month lease, terminable by either party at any time and for any reason (including whenever COUNTY, in its sole discretion, determines it would be in COUNTY's best interests to terminate this Lease) upon at least one hundred

eighty (180) days' prior written notice to the other party, which termination notice may in no event be given any earlier than August 1, 2029. In the event either party terminates this Lease pursuant to this paragraph, the LANDLORD shall be entitled only to the rent that will have been earned through the date of termination of this Lease. The COUNTY's Director of the Real Estate Services Department (RESA) shall have the authority, on behalf of the COUNTY, to give notice of any termination pursuant to this paragraph."

6. Effective as of February 1, 2025, DELETE in its entirety the existing **Paragraph 41, LANDLORD'S IMPROVEMENTS** and SUBSTITUTE therefore the following as a new **Paragraph 41, LANDLORD'S IMPROVEMENTS, and Exhibit "J" Prevailing Wage Requirements** attached and incorporated herein, as follows:

41. **LANDLORD'S IMPROVEMENTS:**

A. LANDLORD, at its cost, agrees to make the improvements to the Premises as more specifically set forth in Exhibit "B-3", ("LESSOR CAPITAL IMPROVEMENTS "). The LANDLORD will pay the actual costs of the Improvements to the Premises pursuant to the specifications set forth in Exhibit "B-3", such costs shall be at LANDLORD's sole responsibility and sole cost. COUNTY to provide all furniture modifications and removal of existing furniture at COUNTY's sole costs.

B. In the event LANDLORD contracts for the construction of the improvements or any portion thereof, and LANDLORD determines that such work is subject to California Public Contract Code Sections 22000 through 22045 regarding bidding procedures and Labor Code section 1720.2 and 1770 et seq. regarding general prevailing wages then LANDLORD shall comply with the applicable provisions of such code sections, including the requirements in Exhibit "J", Prevailing Wage Requirements. LANDLORD shall indemnify, defend, and hold harmless COUNTY and its officers, employees, contractors, and agents from any claims, actions, losses, damages and/or liability arising out of LANDLORD's non-compliance with the obligations of the applicable provisions of the aforementioned code sections. LANDLORD's indemnity obligations shall survive COUNTY's tenancy and shall not be limited by the existence or availability of insurance.

C. LANDLORD shall not to make any modifications to the improvements without first obtaining COUNTY's written approval in the form of an executed change order as set forth herein. During construction, if COUNTY's authorized COUNTY RESA representative proposes any modifications to or additional work that are not set forth in the specifications for the Improvements as set forth in this Third Amendment, LANDLORD shall, prior to commencing any proposed work, promptly provide pricing and schedule impacts to COUNTY for the proposed work. If the parties mutually agree to proceed with the proposed modification or additional work to the improvements ("COUNTY Change Order Work"), the authorized representatives of the Parties shall execute a change order document ("COUNTY Change Order") setting forth the agreed specifications, costs, and schedule impact, if any, for the COUNTY Change Order Work and LANDLORD shall promptly complete said COUNTY Change Order Work. Any unapproved changes will be at the sole cost and expense of LANDLORD (without any reimbursement by the COUNTY) and not the COUNTY.

D. LANDLORD shall deliver the Improvements completed in accordance with Exhibit B-3, by no later than December 31, 2025, and after coordination with COUNTY provided furniture vendor. All work to be scheduled with the least impact to business operations and all work to be approved by COUNTY. In the event LANDLORD, after exercising all due diligence, is unable to meet the delivery date of December 31, 2025, due to reasons which LANDLORD proves are outside the reasonable control of LANDLORD, such reasons include but are not limited to acts of God, unreasonable acts of governmental agencies causing unavoidable delays (the normal and

reasonable times for review, action and reasonably anticipated delays by governmental agencies are already included in the December 31, 2025 completion date), strikes, or labor troubles, then the Improvements completion date of December 31, 2025 shall be extended for a period equivalent to the period of such delay.

E. During construction of the Improvements set forth in Exhibit "B-3", if COUNTY's authorized representative proposes any modification or addition to the Improvements set forth in Exhibit "B-3", Improvement Specifications, LANDLORD shall, prior to commencing any proposed modification or addition promptly provide pricing and schedule impacts to the COUNTY for the COUNTY's proposed work. If the parties mutually agree to proceed with the proposed modification or addition to the Improvements ("Change Order Work"), the authorized representatives of the parties will execute a written change order ("Change Order") documenting the agreed specifications, costs, and schedule impacts, if any, for the Change Order Work as well as an administrative fee for LANDLORD in the amount of ten percent (10%) of the cost of the Change Order Work. LANDLORD will thereafter promptly complete the Change Order Work in accordance with the Change Order. Upon LANDLORD's Substantial Completion of the Improvements along with any Change Order Work and COUNTY acceptance of possession of the Premises, COUNTY shall pay LANDLORD for the Change Order Work by separate purchase order (and not by additional amortization into the monthly rent) within ninety (90) days after COUNTY's receipt of an itemized invoice, proof of payment, lien releases, and any other documents requested by COUNTY for the Change Order Work provided that such payment shall in no event be due prior to the Commencement Date. COUNTY's authorized representative may process one or more Change Orders in accordance with Paragraph 41.A provided that, notwithstanding anything to the contrary contained in this Lease, the cumulative total of all agreed Change Orders shall not exceed Fifty Thousand and 00/100 Dollars (\$50,000.00). Any proposed Change Order(s) that cause the cumulative total of all agreed Change Orders to exceed Fifty Thousand and 0/100 Dollars (\$50,000.00) shall be processed by a formal amendment to the Lease that is mutually executed by the parties.

7. Effective February 1, 2025, ADD the following as a new **Paragraph 58, CAMPAIGN CONTRIBUTION DISCLOSURE (SB 1439)** and **Exhibit "I" – Campaign Contribution Disclosure (SB 1439)** attached and incorporated herein, which shall read as follows:

"58. **CAMPAIGN CONTRIBUTION DISCLOSURE (SB 1439)**: LANDLORD has disclosed to the County using "Exhibit I" – Campaign Contribution Disclosure Senate Bill 1439, 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 Landlord's proposal to the County, or (2) 12 months before the date this Lease was approved by the Board of Supervisors. LANDLORD acknowledges that under Government Code section 84308, LANDLORD 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 Lease.

In the event of a proposed amendment to this Lease, the LANDLORD 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 LANDLORD or by a parent, subsidiary, or otherwise related business entity of LANDLORD."

8. All other provisions and terms of the Lease shall remain the same and are hereby incorporated

by reference. In the event of any conflict between the Lease and this Third Amendment, the terms and conditions of this Third Amendment shall control.

9. This Third Amendment 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 Third Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Third Amendment (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 Third Amendment upon request.

END OF THIRD AMENDMENT.

SAN BERNARDINO COUNTY

\_\_\_\_\_  
 , Chair, Board of Supervisors

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  
 By \_\_\_\_\_  
 Deputy

VANDERBILT PARTNERS, LLC  
 \_\_\_\_\_  
 (Print or type name of corporation, company, contractor, etc.)

By \_\_\_\_\_  
 (Authorized signature - sign in blue ink)

Name Jian Torkan  
 (Print or type name of person signing contract)

Title Manager  
 (Print or Type)

Dated: \_\_\_\_\_

Address \_\_\_\_\_  
 \_\_\_\_\_

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
_____ John Tubbs II, Deputy County Counsel	_____ _____	_____ Lyle Ballard, Real Property Manager, RESD
Date _____	Date _____	Date _____

## **EXHIBIT "B-3"**

### **("LESSOR CAPITAL IMPROVEMENTS")**

**Lessor shall, at its sole cost and expense, complete Landlord Capital Improvements approved by Lessee at no additional cost to Lessee. The scope of work for Landlords Capital Improvements shall include the following:**

- i. HVAC.
  - o Replace three HVAC Rooftop Units with new (note one out of the 4 has already been replaced)
  - o Put all new HVAC controls throughout property to modernize and create better airflow for the building and convert VAV boxes to new DOC
  - o HVAC: replace and put new hot water valves and actuators: total of 70 of each
  - o Perform testing, adjusting, and balancing to verify operating conditions of the entire system(s) (ASHRAE Standards 111)
- ii. Interior Improvements.
  - o Carpet and Paint: None.
  - o Modernization of Elevators.
    - Required routine maintenance and service agreement with a licensed and bonded Elevator company
    - Upgrading elevator (not limited to):
      - o Controllers, drives, fixtures; and
      - o Electrical (machine room wiring, traveling cables, shaft wiring, car connection, shaft components, and limit switches)
      - o Elevator Door package and controls
  - o Plumbing Systems.
    - Licensed and Bonded plumbing contractor to provide:
      - o Lateral sewer line and connection options to mitigate ongoing sewer line back-up and clogging issues. Limited to replacing p-traps if necessary.
      - o Bathroom, breakroom remodel: None.
- iii. Exterior Improvements
  - o Landscape Irrigation System
    - Through a licensed and bonded Landscape contractor to meet the landscape design:
    - Review landscaping to determine if any of the landscaping system needs upgrading and perform work.
  - o Window Glazing (Glass) Gaskets and Blocks
    - Landlord will investigate and repair any areas of the building that are leaking from the exterior walls or windows.
    - o
    - o Lessor and Lessee will evaluate whether the entire building needs to be done and come to agreement on the scope of work.

All the Capital Improvement work above shall be completed within the first twelve (12) months of the Amendment to Lease Term. Lessee reserves the right to approve of the design and types of systems that the Lessor proposes to upgrade above including the HVAC systems, elevator modernization, window systems and irrigation matters. The Lessee also requires the Lessor to provide the Lessee with copies of any consulting reports on said systems and upgrades in advance of any work being approved and done.

## EXHIBIT "I"



### Campaign Contribution Disclosure (SB 1439)

#### **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.

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



1.	Name of Landlord:	Vanderbilt Partners, LLC										
2.	Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?											
	Yes <input type="checkbox"/> If yes, skip Question Nos. 3 - 4 and go to Question No. 5.											
	No <input checked="" type="checkbox"/>											
3.	Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, <u>if</u> the individual actively supports the matter <u>and</u> has a financial interest in the decision:	Jian Torkan										
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):											
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Company Name</th> <th style="width: 50%;">Relationship</th> </tr> </thead> <tbody> <tr> <td>F&amp;R County Building, LLC</td> <td>Parent Company</td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>			Company Name	Relationship	F&R County Building, LLC	Parent Company					
Company Name	Relationship											
F&R County Building, LLC	Parent Company											
6.	Name of agent(s) of Landlord:											
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Company Name</th> <th style="width: 33%;">Agent(s)</th> <th style="width: 34%;">Date Agent Retained (if less than 12 months prior)</th> </tr> </thead> <tbody> <tr> <td>Vanerbilt Partners, LLC</td> <td>Jian Torkan</td> <td> </td> </tr> <tr> <td>F&amp;R County Building, LLC</td> <td>Jian Torkan</td> <td> </td> </tr> </tbody> </table>			Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)	Vanerbilt Partners, LLC	Jian Torkan		F&R County Building, LLC	Jian Torkan	
Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)										
Vanerbilt Partners, LLC	Jian Torkan											
F&R County Building, LLC	Jian Torkan											
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 <u>and</u> (2) has a financial interest in the decision <u>and</u> (3) will be possibly identified in the contract with the County or board governed special district:											
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Company Name</th> <th style="width: 33%;">Subcontractor(s):</th> <th style="width: 34%;">Principal and/or Agent(s):</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>			Company Name	Subcontractor(s):	Principal and/or Agent(s):						
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.

Yes ☐ If yes, please continue to complete this form.

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 below, Landlord certifies that the statements made herein are true and correct. Landlord 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

Jian Torkan

Print Name

Date

1-14-25  
Vanderbilt Partners, LLC

Print Entity Name, if applicable

## **EXHIBIT "J"**

### **PREVAILING WAGE REQUIREMENTS**

**A. In the event all or a portion of the Scope of Work in the Contract requires the payment of prevailing wages as required by California state law, 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](http://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 requirements 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 "K"**  
**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

This PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Agreement**"), between \_\_\_\_\_, ("**SELLER**"), and San Bernardino County, a public body, corporate and politic ("**BUYER**"), each of them a "**Party**" and jointly the "**Parties**", is entered into as of the date the last of the Parties executes this Agreement ("**Effective Date**").

**RECITALS**

- A. SELLER is the owner of the fee simple interest in certain real property containing approximately \_\_\_\_\_ acres, (vacant or improved with approximately \_\_\_\_\_ square feet of building area), located at \_\_\_\_\_ (APN \_\_\_\_\_) in the (City of/ the unincorporated area of San Bernardino County near the City of \_\_\_\_\_), and more particularly described in the legal description attached hereto as Exhibit "A-1" ("**Property**").
- B. BUYER is a public agency and desires to acquire the Property.
- C. SELLER agrees to sell, and BUYER agrees to purchase the Property in fee simple.

**AGREEMENT**

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SELLER and BUYER agree as follows:

1. PURCHASE AND SALE OF THE PROPERTY.

1.1 Subject to all of the terms, conditions, and provisions of this Agreement, and for the consideration herein set forth, the SELLER agrees to sell to BUYER, and BUYER agrees to purchase from the SELLER, the Property as described in Exhibit "A-1" attached hereto.

1.2 Amount of Purchase Price. The purchase price payable by BUYER to SELLER for the Property, including but not limited to all of SELLER's right, title, and interest to the Property, is the total sum of \_\_\_\_\_ THOUSAND DOLLARS AND 00/100 (\$\_\_\_\_\_) ("**Purchase Price**"), which shall be deposited with Escrow Holder in accordance with this Agreement.

1.3 Within twenty-one (21) business days following the Effective Date of this Agreement, BUYER shall deliver to Escrow Officer, to be determined, ("**Escrow Holder**") an executed copy of this Agreement.

1.4 Consideration Payment. Within fifteen (15) business days of the opening of escrow, BUYER shall deliver to SELLER the sum of One Hundred and 00/100 Dollars (\$100.00) (the "**Consideration Payment**"), as consideration for BUYER's right to purchase the Property and to terminate this Agreement on or prior to the expiration of the Due Diligence Period and for SELLER's execution, delivery, and performance of this Agreement. The Consideration Payment is non-refundable, not applicable to the Purchase Price, and shall be retained by SELLER notwithstanding any other provision of this Agreement.

2. DUE DILIGENCE REVIEW.

2.1 Inspections. BUYER and its agents, contractors, consultants, employees, representatives, engineers, and designees (collectively, "**BUYER's Agents**") shall have reasonable access to the Property at all reasonable times until the expiration of the Due Diligence Period (or earlier termination of this Agreement) for the purpose of conducting tests and inspections of the Property, including surveys and architectural, engineering, geotechnical and environmental inspections and tests. The "**Due Diligence Period**" shall mean the \_\_\_\_\_ (\_\_) Business Day period following the Effective Date. A "**Business Day**" is any day on which the offices of the San Bernardino County, California Recorder are open to the public for business. All inspections shall be performed by BUYER at BUYER's sole cost and expense. Within five (5) business days after the Effective Date, SELLER shall deliver to BUYER copies of all plans, surveys, specifications, studies, reports, test results, and other documents pertaining to the physical, geological, or environmental condition of the Property that is in the possession of SELLER ("**Property Documents**").

2.2 Hazardous Materials; Indemnification. If any hazardous materials or waste (as defined by California Health and Safety Code section 25100, et. seq., and/or 42 U.S.C. §9601, et. seq.) are present on the Property on the date BUYER takes possession of the Property, SELLER shall be responsible for and bear the entire cost of all removal, disposal, cleanup and decontamination which may be required because of these hazardous materials. SELLER agrees to indemnify, defend (with counsel reasonably approved by BUYER) and hold harmless BUYER and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including: 1) the acts, errors or omissions of any person and for any costs or expenses incurred by BUYER on account of any claim except where such indemnification is prohibited by law; and/or 2) all responsibility, liability and claims for damages to persons or property resulting from the existence or use of hazardous materials which are present on the Property on the date BUYER takes possession under this Agreement. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. SELLER's indemnification obligation applies to BUYER's "active" as well as "passive" negligence but does not apply to BUYER's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. Notwithstanding anything in this Section 2.2 to the contrary, Seller's remediation and indemnification obligations shall not extend to any asbestos or lead paint on the Property to the extent such hazardous materials are exacerbated by the actions of BUYER or its officers, employees, agents or contractors (e.g., if modifications or alterations to the Property made by BUYER cause asbestos on the Property to become friable or to otherwise no longer comply with applicable laws). This Section 2.2 shall survive the termination of this Agreement.

2.3 Due Diligence Termination Right. If BUYER is not satisfied with the Property for any reason in BUYER's sole and absolute discretion, BUYER may terminate this Agreement by giving written notice of termination to SELLER and Escrow Holder ("**Due Diligence Termination Notice**") on or before the expiration of the Due Diligence Period. In the event that BUYER fails to deliver BUYER's Due Diligence Termination Notice on or before the expiration of the Due Diligence Period, BUYER shall have conclusively been deemed to have approved its due diligence investigation of the Property and waived its right to terminate this Agreement pursuant to this Section 2.3.

2.4 Review of Title. Following the Effective Date of this Agreement, BUYER shall obtain its own preliminary title report issued by a title company of BUYER's choice ("**Title Company**") and such Title Company shall provide all underlying title documents (collectively, the "**Preliminary Title Report**") and BUYER shall have the right to obtain a survey of the Property from a licensed surveyor sufficient to obtain an ALTA title insurance policy ("**Survey**"). The BUYER's review period for the Preliminary Title Report and the Survey shall mean the period from the Effective Date through the date that is forty-five (45) Business Days after the Effective Date ("**BUYER's Title Review Period**"). At any time during BUYER'S Title Review Period, BUYER shall notify SELLER in writing ("**BUYER's Title Notice**") of any objections BUYER may have to title exceptions or other matters contained in the Preliminary Title Report

or Survey ("**Title Objections**"). If BUYER does not give such notice by the expiration of BUYER's Title Review Period, then it shall conclusively be deemed that BUYER has no Title Objections. If BUYER does timely provide BUYER's Title Notice with Title Objections, SELLER shall have five (5) business days after receipt thereof to notify BUYER that SELLER (a) will endeavor to cause or (b) elects not to cause any or all of the Title Objections disclosed therein to be removed or insured over by the Title Company in a manner reasonably satisfactory to BUYER. SELLER's failure to notify BUYER within such five (5) business day period as to any Title Objections that SELLER is willing to endeavor to cure or cause to be insured over shall be deemed an election by SELLER not to pursue such endeavor to remove or have the Title Company insure over such Title Objections. If SELLER notifies or is deemed to have notified BUYER that SELLER shall not endeavor to remove nor have the Title Company insure over any or all of the Title Objections, BUYER shall have five (5) Business Days after the expiration of SELLER's (5) Business Day period to respond to either (a) terminate this Agreement or (b) waive such Title Objections and proceed to Closing, without any reduction in the Purchase Price on account of such Title Objections. If BUYER does not give notice within the said period, BUYER shall be deemed to have elected to waive the Title Objections pursuant to this Section 2.4.

BUYER shall have the right to request any supplement to the Preliminary Title Report or the Survey, and if any such supplement discloses any new materially adverse title or survey matters not disclosed to BUYER prior to the expiration of the BUYER's Title Review Period, the foregoing right of review and approval shall also apply to said new matter; provided, however, the period for BUYER to deliver BUYER's Title Notice with respect to such new title matter shall be the later of (i) expiration of the BUYER's Title Review Period, or (ii) three (3) Business Days from receipt of the supplemental title report or survey and the underlying document(s) referenced therein.

### 3. ESCROW.

3.1 Opening of Escrow; Closing Date. Closing of the sale of the Property shall take place through an escrow ("**Escrow**") to be established with the Escrow Holder referred to in Section 1.3. Escrow shall be deemed open upon delivery of a fully executed copy of this Agreement to Escrow Holder. Upon receipt of a fully executed copy of this Agreement, Escrow Holder shall execute the Escrow Holder's acceptance attached hereto and notify SELLER and BUYER of the escrow number it assigns to the Escrow. The Close of Escrow shall occur as soon as reasonably practicable following the expiration of the Due Diligence Period, but in no event later than the date that is thirty (30) calendar days following the expiration of the Due Diligence Period ("**Closing Date**"). The terms "**Close of Escrow**" and/or the "**Closing**" shall mean the consummation of the transactions contemplated by this Agreement to occur through the Escrow including SELLER conveyance of the Property to BUYER.

3.2 Escrow Instructions. This Agreement, together with any standard instructions of Escrow Holder, shall constitute the joint escrow instructions of BUYER and SELLER to Escrow Holder as well as an agreement between BUYER and SELLER. In the event of any conflict between the provisions of this Agreement and Escrow Holder's standard instructions, this Agreement shall prevail.

3.3 Deliveries by SELLER. On or before 12:00 noon Pacific Time on the Business Day preceding the scheduled Closing Date, SELLER shall deliver to Escrow Holder: (i) the Grant Deed in the form attached hereto as Exhibit "B" ("**Grant Deed**"), executed and acknowledged by SELLER; (ii) the escrow costs and prorations for which SELLER is responsible pursuant to this Agreement; (iii) an original of the Closing Statement described in Section 3.5, executed by SELLER; and (iv) all other documents reasonably required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement.

3.4 Deliveries by BUYER. On or before 12:00 noon Pacific Time on the Business Day preceding the scheduled Closing Date, BUYER shall deliver to Escrow Holder: (i) the Purchase Price, (ii) the escrow costs and prorations for which BUYER is responsible pursuant to this Agreement, (iii) an

original of the Closing Statement described in Section 3.5, executed by BUYER, and (iv) all other documents reasonably required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement.

3.5 Closing Statement. No later than four (4) business days prior to the Closing Date, Escrow Holder shall prepare for approval by BUYER and SELLER a closing statement ("**Closing Statement**") on Escrow Holder's standard form indicating, among other things, Escrow Holder's estimate of all closing costs and prorations made pursuant to this Agreement.

3.6 Closing, Recording and Disbursements. On the Closing Date, and provided all of the SELLER Conditions to Closing and BUYER Conditions to Closing set forth in Sections 3.10.1 and 3.10.2 of this Agreement have been satisfied or waived in writing by the appropriate party, Escrow Holder shall take the following actions:

(a) *Recording.* Escrow Holder shall cause the Grant Deed to be recorded with the Recorder's Office in San Bernardino County, California.

(b) *Delivery of Documents and Funds.* Escrow Holder shall deliver to BUYER all of the items listed in Section 3.3 above which were delivered by SELLER to Escrow, except that Escrow Holder shall be instructed to record the original Grant Deed with the Recorder's Office in San Bernardino County, California upon Close of Escrow. Escrow Holder shall deliver the Purchase Price to SELLER by wire transfer as provided in written instructions to be furnished to Escrow Holder by SELLER prior to the Close of Escrow, together with one duplicate original of all of the items listed in Section 3.4 above on the Close of Escrow.

3.7 Taxes. Real property taxes will not be prorated between SELLER and BUYER in Escrow. Upon recordation of the Grant Deed, BUYER will request cancellation of the real property taxes for the Property pursuant to California Revenue and Taxation Code Section 4986. If current taxes have not yet been paid as of the Closing Date, then at Closing SELLER shall pay through Escrow or out of SELLER proceeds, the full amount of the installment applicable for the period in which Closing occurs. SELLER shall be entitled to a refund of any excess payment made to the taxing authority on account of the Property, including any taxes paid by SELLER and applicable to any period from and after the Closing Date. The taxing authority will notify SELLER of any refund due SELLER resulting from the subject acquisition after a review and any subsequent proration of the property tax assessment by the County Assessor. SELLER retains the right, following close of escrow, to apply to the County Tax Collector for refund pursuant to Revenue and Taxation Code Section 5096.7

3.8 Payment of Costs. SELLER shall pay for the premium for the standard coverage owner's Title Policy referred to in Section 3.10.2(b), with the cost of any endorsements or extended coverage to be as set forth therein. All other costs and expenses of Escrow not specifically allocated in this Agreement shall be allocated between BUYER and SELLER in accordance with customary practice in the county in which the Property is located. BUYER and SELLER shall each be responsible for their respective attorneys' fees and costs for this Agreement.

3.9 Information Report. Escrow Holder shall file and SELLER and BUYER agree to cooperate with Escrow Holder and with each other in completing any report ("Information Report") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. SELLER and BUYER also agree that SELLER and BUYER, their respective employees and attorneys, and Escrow Holder and its employees

may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither SELLER nor BUYER shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

### 3.10 Conditions to Close of Escrow.

3.10.1 Conditions to SELLER Obligations. In addition to any other condition set forth in this Agreement in favor of SELLER, SELLER shall have the right to condition its obligation to convey the Property to BUYER and close the Escrow upon the satisfaction, or written waiver by SELLER, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the “**SELLER Conditions to Closing**”):

(a) *Delivery of Document and Funds.* BUYER shall have timely executed and deposited into Escrow all escrow and closing documents required to be submitted by BUYER in order to accomplish the close of Escrow for the Property. BUYER shall have deposited with Escrow Holder the Purchase Price and the escrow and closing costs for which BUYER is responsible to pay and all other sums required of BUYER by this Agreement.

(b) *Representations and Warranties.* All representations and warranties made by BUYER in this Agreement are true and correct in all material respects as of the Closing as though made at that time.

(c) *No Default under the Agreement.* BUYER shall not be in material default of any of its obligations under this Agreement and no event shall have occurred that would constitute a default with the giving of notice or the passage of time.

3.10.2 Conditions to BUYER's Obligations. In addition to any other condition set forth in this Agreement in favor of BUYER, BUYER shall have the right to condition its obligation to purchase the Property and close the Escrow upon the satisfaction, or written waiver by BUYER, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the “**BUYER Conditions to Closing**”):

(a) *Delivery of Documents and Funds.* SELLER shall have executed and deposited into Escrow the Grant Deed, and the escrow and closing costs for which SELLER is responsible to pay and all other sums required of SELLER by this Agreement.

(b) *Title Policy.* The Title Company is unconditionally and irrevocably committed to issue to BUYER at Closing a CLTA standard coverage owner's title policy, or, upon BUYER's request, an ALTA extended coverage owner's policy of title insurance (provided BUYER shall be responsible for any survey costs associated therewith and BUYER must deliver an ALTA survey acceptable to the Title Company for the issuance of such extended coverage at least ten (10) business days prior to the Closing Date and BUYER shall be responsible for the additional cost of the extended coverage), insuring BUYER's title to the Property in the amount of the Purchase Price, subject only to the following (collectively, the “**Approved Title Exceptions**”): (i) the standard exceptions and exclusions from coverage contained in such form of the policy; (ii) real estate taxes not yet due and payable; (iii) matters created by, through or under BUYER; (iv) items disclosed by the Survey and Preliminary Title Report (including any supplements) and approved or deemed approved by BUYER pursuant to the title review provisions in Section 2.4, or, if BUYER fails to obtain the Survey, items which would be disclosed by an accurate, updated survey of the Property or a physical inspection of the Property; and (v) any Title Objections that

neither SELLER nor the Title Company has agreed to remove from title or insure over ("**Title Policy**"). The issuance of an ALTA extended coverage policy shall not be a condition precedent to BUYER's obligation to close the Escrow, and BUYER shall not object to the Closing based upon an inability to obtain, or any delays in obtaining such coverage. In addition, and without limiting the foregoing, the issuance of any particular title endorsements requested by BUYER, at BUYER's sole cost and expense, shall not be a condition precedent to BUYER's obligation to close this Escrow and BUYER acknowledges that BUYER is solely responsible for ascertaining the availability of any such endorsements prior to the end of the Due Diligence Period. If endorsements are required to cure defects in title and SELLER has agreed to provide such endorsements as a means of curing such title defects, then SELLER shall pay for such endorsements.

(c) *Condition and Possession.* At least ten (10) Business Days before the Closing Date, SELLER shall remove any of SELLER's personal property, debris, and trash from the Property.

(d) *CEQA.* The requirements under the California Environmental Quality Act, as amended, shall have been complied with. If an environmental review determines that a conveyance of the Property from SELLER to BUYER is not permissible under the CEQA Guidelines, then all preceding negotiations shall be deemed unenforceable, and any executed agreements shall be terminated.

(e) *Non-Foreign Affidavit.* SELLER shall have executed and deposited into escrow a Non-Foreign Affidavit as required by federal law.

(f) *Representations and Warranties.* All representations and warranties made by SELLER in this Agreement are true and correct in all material respects as of the Closing as though made at that time.

(g) *No Default under Agreement.* SELLER shall not be in material default of any of its obligations under this Agreement (and shall not have received notice of a default hereunder which has not been cured)

(h) *Encumbrances.* There are no encumbrances on the Property except for Approved Title Exceptions.

(i) *Contract Termination.* SELLER shall have canceled and terminated all agreements, contracts, and leases relating to the Property with service providers, tenants, or as otherwise required pursuant to this Agreement, and provided BUYER with written evidence of same.

3.10.3 Satisfaction of Conditions. Where satisfaction of any of the foregoing conditions requires action by BUYER or SELLER, each party shall use its diligent efforts, in good faith, and at its own cost, to satisfy such condition.

3.10.4 Waiver. Each party may at any time or times, waive any of their respective Conditions to Closing in this Section 3.10, as set forth above, to their respective obligations hereunder, but any such waiver shall be effective only if contained in writing, signed, and delivered to the other party.

3.10.5 Escrow Termination. In the event each of the Conditions to Closing in this Section 3.10, as set forth above, is not fulfilled on the Closing Date or such earlier time period as provided for herein or waived, any party hereto may at its option terminate this Agreement and the Escrow(s) opened hereunder, provided that party is not in default of this Agreement. No termination under this Agreement



shall release any party then in default from liability for such default. In the event this Agreement is terminated, all documents and funds delivered to Escrow Holder shall be returned immediately to the respective parties.

#### 4. REPRESENTATIONS AND WARRANTIES.

4.1 SELLER Representations and Warranties. SELLER hereby makes the following representations and warranties to BUYER, each of which is material and relied upon by BUYER in making its determination to enter into this Agreement and each of which is re-made as of the Closing Date:

(a) SELLER's execution, delivery, and performance of its obligations under this Agreement does not constitute a default or a breach under any contract, agreement or order to which SELLER is a party or by which it is bound.

(b) SELLER owns the Property in fee simple, without leases or leasehold interests and SELLER has the full right, power, and lawful authority to sell the Property and undertake all obligations as provided herein. The execution, performance, and delivery of this Agreement by SELLER has been fully authorized by all requisite actions on the part of Seller.

(c) There are no pending actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against the Property.

(d) SELLER has not received any notices and has no knowledge of any violation of any laws, ordinances, rules, regulations, or requirements of any governmental agency, body or subdivision affecting or relating to the Property.

(e) SELLER is not the subject of a current or pending bankruptcy proceeding.

Except for Seller's express representations and warranties contained herein, COUNTY acknowledges and agrees that it is purchasing the Property in its "as-is" condition without any representations or warranties of any kind.

4.2 BUYER's Representations and Warranties. BUYER hereby makes the following representations and warranties to SELLER, each of which is material and relied upon by SELLER in making its determination to enter into this Agreement and each of which is re-made as of the Closing Date:

(a) BUYER has the full right, power, and lawful authority to purchase and accept the Property and undertake all obligations as provided herein. The execution, performance, and delivery of this Agreement by BUYER have been fully authorized by all requisite actions on the part of BUYER.

(b) BUYER's execution, delivery, and performance of its obligations under this Agreement does not constitute a default or a breach under any contract, agreement, or order to which BUYER is a party or by which it is bound.

(c) BUYER is not the subject of a current or pending bankruptcy proceeding.

#### 5. RESERVED.

#### 6. DEFAULTS.

6.1 Institution of Legal Actions. Any legal action must be instituted in the Superior Court of

San Bernardino County, State of California.

6.2 Rights and Remedies are Cumulative. Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.3 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## 7. MISCELLANEOUS.

7.1 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be delivered by either (a) personal delivery, (b) a reliable courier service that provides a receipt showing the date and time of delivery, including federal express, or (c) registered or certified U.S. Mail, postage prepaid, return receipt requested. Copies are requested via email as identified below. Notices shall be addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other party hereto:

To SELLER:                      Jian Torkan  
Vanderbilt Partners, LLC, A California Limited  
Liability Company  
4221 Wilshire Blvd, Suite. 240  
Los Angeles, CA, 90010  
323-932-7777

To BUYER:                      San Bernardino County  
c/o Real Estate Services Department  
Attention: Lyle Ballard, Manager of Leasing  
385 North Arrowhead Avenue, 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0180  
Copy via email at: [lyle.ballard@res.sbcounty.gov](mailto:lyle.ballard@res.sbcounty.gov)  
(909) 453-5227

Each notice shall be deemed delivered on the date delivered if by personal delivery or by overnight courier service, or on the date of receipt as disclosed on the return receipt if by mail, or upon confirmation by recipient by email. By giving to the other parties written notice as provided above, the parties to this Agreement and their respective successors and assigns shall have the right from time to time, and at any time during the term of this Agreement, to change their respective addresses.

7.2 Relationship Between SELLER and BUYER. It is hereby acknowledged that the relationship between SELLER and BUYER is not that of a partnership or joint venture and that SELLER and BUYER shall not be deemed or construed for any purpose to be the agent of the other.

7.3 Attorneys' Fees. 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

subsection shall not apply to those costs and attorneys' fees directly arising from any third-party legal action against a party hereto and payable under Section 2.2 ("Hazardous Materials; Indemnification") or Section 7.10 ("Real Estate Brokerage Commission").

7.4 Successors and Assigns; Assignment. This Agreement shall bind and inure to the benefit of SELLER and BUYER and their respective successors and permitted assigns.

7.5 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. Any amendment or modification to this Agreement must be in writing and executed by SELLER and BUYER.

7.6 Prohibited Persons and Transactions. SELLER represents to BUYER that it is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

7.7 Executive Order N-6-22 Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the "EO") regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate agreements with, and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined by the County or the State that SELLER is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. SELLER shall be provided advance written notice of such termination, allowing SELLER at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of BUYER.

7.8 Senate Bill SB 1439. As of January 1, 2023, Senate Bill SB 1439 form became effective and is required to be completed to assist with the compliance with Government Code Section 84308. It ensures the same pay-to-play prohibitions that apply to state agency appointees or appointed local officials when approving a license, permit, or entitlement for use also apply to local elected officials when acting in an identical capacity. Therefore, it applies to any matters seeking approval from the Board.

7.9 Computation of Time. In the event that the day on which a party is required to take any action under the terms of this Agreement is a holiday, Saturday or Sunday, such action shall be taken on the next succeeding County business day. The term "holiday" shall mean all holidays as recognized by the BUYER.

7.10 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California, without regard to conflict-of-interest principles.

7.11 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

7.12 Real Estate Brokerage Commission. Each Party represents and warrants that neither Party has retained any brokers or finders to represent its interest in connection with this transaction. Each Party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages, and expenses, including, without limitation, reasonable attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay any additional broker's commission and/or finder's fee.

7.13 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart. If authorized by law, the parties shall be entitled to manually sign and transmit this Agreement by electronic means (whether by PDF, or other email transmission) and are entitled to electronically sign and transmit this Agreement via DocuSign, Adobe Sign, or other similar digital signature software, 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 Agreement upon request.

7.14 Exhibits. Exhibits "A" and "B" are attached to this Agreement and are incorporated herein by this reference and made a part hereof.

7.15 No Withholding as Foreign Seller. SELLER represents and warrants to BUYER that SELLER is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code section 1445 and that it will deliver to BUYER on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

8. BOARD OF SUPERVISORS APPROVAL: This Agreement is subject to and shall have no force or effect until and unless approved by Board of Supervisors for BUYER.

IN WITNESS WHEREOF, SELLER and BUYER have entered into this Agreement as of the date first set forth above.

**BUYER:**  
**SAN BERNARDINO COUNTY**

**SELLER:**

By: \_\_\_\_\_, Chair  
Board of Supervisors

By: Jian Torkan

Title: Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

LYNNA MONELL, Clerk of the Board of  
Supervisors

By: \_\_\_\_\_ Deputy

Date: \_\_\_\_\_

Approved as to Legal Form:

TOM BUNTON, County Counsel  
San Bernardino County, California

By: \_\_\_\_\_  
John Tubbs II  
Deputy County Counsel

Date: \_\_\_\_\_

**ACCEPTANCE BY ESCROW HOLDER**

The undersigned hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

\_\_\_\_\_, 2025

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Escrow No. \_\_\_\_\_

**EXHIBIT “A-1”**

Legal Description of the Property

APN: 0281372020000

**EXHIBIT “B-1”**

GRANT DEED  
(conveyance document)

Follows this page



RECORDING REQUESTED BY:  
San Bernardino County  
Real Estate Services Department  
385 N. Arrowhead Ave., 3<sup>rd</sup> Floor  
San Bernardino, CA 92415-0180

WHEN RECORDED MAIL TO:  
Same as above

RECORDER: EXEMPT:  
This instrument is for the benefit of the  
San Bernardino County and is entitled to  
be recorded without fee subject to Govt.  
Code 27383 and 6103, and Rev. & Tax  
Code 11922

A.P.N: 0281372020000

**GRANT DEED EXAMPLE**

Dept. Code:

The undersigned grantor(s) declare(s):  
DOCUMENTARY TRANSFER TAX \$0.00 Conveyance to Government Entity.  
R&T 11922

☐ computed on full value of property conveyed, or  
☐ computed on full value less liens and encumbrances remaining at the time of  
sale

FOR A

☒ Unincorporated Area ☐ City

VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

\_\_\_\_\_, husband and wife as joint tenants

hereby GRANT(S) to **SAN BERNARDINO COUNTY, a body corporate and politic of the State of California**, the following real property in the unincorporated area of the City of Victorville, San Bernardino County, State of California:

SEE EXHIBIT "A-1", LEGAL DESCRIPTION

**GRANTOR:**

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_



**SAN BERNARDINO COUNTY**  
**CERTIFICATE OF ACCEPTANCE**

APN: 0281372020000

This is to certify that the interest in real property conveyed by the within the instrument to San Bernardino County, a body corporate and politic of the State of California, is hereby accepted by the undersigned officer/agent on behalf of the Board of Supervisors pursuant to authority conferred by resolution of the Board of Supervisors adopted on March 27, 2012, and the Grantee consents to recordation thereof by its duly authorized officer/agent.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Terry W. Thompson, Director  
Real Estate Services Department