



Contract Number 20-686

SAP Number _____

Regional Parks Department

| | |
|---|---------------------------------------|
| Department Contract Representative | <u>Beahtha Davis, Director</u> |
| Telephone Number | <u>(909) 387-2340</u> |
| Contractor | <u>Prado Recreation, Incorporated</u> |
| Contractor Representative | <u>Ruben Llamas, President</u> |
| Telephone Number | <u>909-597-6366</u> |
| Contract Term | <u>9/1/2020 – 8/31/2025</u> |
| Original Contract Amount | <u>\$60,000.00 (Minimum)</u> |
| Amendment Amount | <u>\$60,000.00 (Minimum)</u> |
| Total Contract Amount | <u>\$60,000.00 (Minimum)</u> |
| Cost Center | <u>652220 1000</u> |
| GRC/PROJ/JOB No. | <u>32004043</u> |
| Internal Order No. | _____ |

Briefly describe the general nature of the contract:
 This lease agreement is for a period of five (5) years. Premises consist of approximately 502.62 acres of unimproved land located in the Prado Dam Basin area in the City of Chino, CA for the maintenance and operation of a dog training facility containing a clubhouse, entrance gate, comfort stations, agricultural area for field trials, kennel facilities, fencing, and a paved area for automobile parking. County will receive monthly revenue of \$1,000.00 or 10% of the annual gross income, whichever is greater.

| | | |
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| Approved as to Legal Form Dawn Martin, Deputy County Counsel Date <u>7/14/20</u> | Reviewed for Contract Compliance Patrick Scabizzi, Community Services Operations and Finance Chief Date _____ | Reviewed/Approved by Department Beahtha R. Davis, Director, Regional Parks Department Date <u>7/17/2020</u> |
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COUNTY OF SAN BERNARDINO

SUB-LEASE AGREEMENT

LESSEE: Prado Recreation Incorporated
17505 S. Euclid Ave.
Chino, CA 91710

COUNTY: COUNTY OF SAN BERNARDINO
Regional Parks Department
777 E. Rialto Avenue
San Bernardino, CA 92415-0180

PREMISES: Approximately 502.62 of unimproved land in the Prado Dam Basin Area (also known as Prado Regional Park) located at 16700 S. Euclid Ave. Chino, CA.

TERM OF LEASE: The term of said Lease shall be: (a) a month-to-month tenancy; and (b) at such time as the COUNTY obtains a lease of five years or greater with United States Army Corps of Engineers (ACOE), the term shall be for five (5) years duration less any time that has passed since the execution of this Lease by both parties.

COMMENCEMENT DATE OF LEASE: For the period of September 1, 2020 through August 31, 2025.

CONTRACT NO.

REV. 3/1/2011

TYPED:

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LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into by and between the County of San Bernardino, a body politic and corporate, hereinafter designated as "COUNTY" and Prado Recreation Incorporated, hereinafter called "TENANT" for the operation and maintenance of a dog training facility ("the Facility") situated on approximately 502.62 acres of unimproved land located within Prado Regional Park, located at 17505 S. Euclid Ave. Chino, CA; and,

WHEREAS, COUNTY and TENANT now desire to enter into a lease agreement for the use of a certain portion of federal lands leased by the COUNTY from the United States Army Corps of Engineers, which portion is more specifically described in this Lease; and,

NOW, THEREFORE, in consideration of mutual covenants and conditions, the Parties hereto agree to the following:

In consideration of the covenants and agreements hereinafter contained being fully kept and performed, and in consideration of the benefits to be derived by each Party, COUNTY does hereby lease to TENANT the use of that certain portion of real property, comprising approximately 502.62 acres ("Premises") located at Prado Regional Park 16700 Euclid Ave., Chino, CA ("Regional Park"), as said premises is more particularly described in Exhibit "A" (the "Premises"), for use as a dog training facility, attached hereto and made a part hereof.

COVENANTS AND AGREEMENTS:

(1) **USE:** The COUNTY leases to the Premises to TENANT for the purpose of operating, repairing, modifying, upgrading and maintaining, subject to Paragraph 12, a dog training facility containing a clubhouse, entrance gate, comfort stations, agricultural area for field trials, kennel facilities, fencing and a paved area for automobile parking ("TENANT's Improvements") as more particularly described on Exhibit "B" attached hereto and made a part hereof and for no other use. TENANT shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or a nuisance, or causes damage to the Premises, the Regional Park or neighboring properties. TENANT shall not do or permit anything to be done in, on, under or about the Premises, which will in any way obstruct, interfere, injure annoy or disturb the rights of other TENANTS, or occupants of the Regional Park, or visitors to the Regional Park. TENANT shall not sell or permit the sale of any alcoholic beverages from the Premises without the prior written consent of COUNTY. TENANT shall not store any of TENANT's personal property on the Premises without the prior written consent of COUNTY. If COUNTY authorizes TENANT to store property outside, said property will be stored in a neat and orderly manner. Unattractive and/or unsightly outside storage shall not be permitted in public view under any circumstances. TENANT shall comply with all laws, ordinances and regulations applicable to the use of the Premises. TENANT shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in or upon, or in connection with Premises, at TENANT's sole expense. Upon use of Premises by TENANT the same shall conclusively be deemed to be fit and proper for the purposes for which TENANT shall use the Premises.

This Lease and the rights herein granted to TENANT shall be subject to the paramount legal duties and obligations of COUNTY including, but not limited to, the right to cross over and/or occupy the Premises with any and all equipment necessary in the preservation of the surrounding County-leased property without liability for any damages to TENANT's Improvements except to the extent caused by the intentional misconduct or gross negligence of COUNTY. COUNTY shall give reasonable advance notice either verbally or in writing of its intent to enter and cross the Premises. TENANT understands and acknowledges that the Premises is owned by the United States Army Corp of Engineers (ACOE), which is leased to the COUNTY. TENANT acknowledges and agrees that the rights of TENANT hereunder are subordinate and subject to any COUNTY tenancy or lease agreement by and between ACOE and COUNTY relating to the Premises and to any covenants, conditions and restrictions contained therein or applicable thereto. To the extent that the ACOE and COUNTY agree and execute a formal Lease Agreement for County's use of the Regional Park, which includes the Premises, TENANT shall be subject to the covenants, conditions and restrictions of record of such Lease Agreement.

2. **TERM:** The term of said Lease shall be: (a) a month-to-month tenancy; and (b) at such time as the COUNTY obtains a lease of five years or greater with ACOE, the term shall be for five (5) years duration less any time that has passed since the execution of this Lease by both parties (the "Term").

Notwithstanding the foregoing, TENANT understands and acknowledges that this Lease is subject to approval by ACOE

3. **FEES:**

A. TENANT shall pay to COUNTY either a minimum monthly lease fee or a percentage of gross income, on a monthly basis, whichever is greater.

(1) Minimum Monthly Fee: TENANT shall pay to COUNTY One Thousand and 00/100 Dollars (\$1,000.00) per month ("Minimum Monthly Fee") or ten percent (10%) of Gross Receipts, whichever is greater.

(2) All Lease payments are due and payable on or before the tenth day of the calendar month following the month to which such payments relate and must be accompanied by the monthly statement of gross receipts received by TENANT for this same time period.

(3) On or before the tenth (10th) day of July of each year during the term of the Lease, TENANT shall submit to COUNTY a statement of the gross receipts for the preceding fiscal year, designated as July 1st of the preceding calendar year through June 30th of the calendar year in which the statement is to be submitted.

B. If any Minimum Monthly Fee or other amounts are not paid when due and payable, TENANT shall pay to COUNTY an additional amount of Fifty and 00/100 Dollars (\$50.00) for each overdue Minimum Monthly Fee, or other amount as an administrative processing charge. The Parties agree that this administrative charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late payment by TENANT. Acceptance of any administrative charge shall not constitute a waiver of TENANT's default with respect to the overdue Minimum Monthly Fee or other amount or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY. The Minimum Monthly Fee and other amounts not paid when due shall bear simple interest from the date due at the rate of one and one-half percent (1½%) per month until paid in full.

4. **SECURITY DEPOSIT:**

A. On or before the execution of this Lease by the COUNTY, TENANT shall pay to COUNTY a deposit in the amount of One Thousand and 00/100 Dollars (\$1,000.00) as set forth herein as TENANT's Security Deposit, which shall be not be required to be held by COUNTY in an interest bearing account. The Security Deposit shall secure TENANT's faithful performance of TENANT's obligations under this Lease. The COUNTY's Director of the Regional Parks Department may, in the County's sole discretion, determine the form of the Security Deposit.

B. If TENANT fails to pay the Minimum Monthly Fee or any other amounts which TENANT is obligated to pay pursuant to this Lease or defaults on the performance of any of the terms, provisions, covenants and conditions contained in this Lease, COUNTY may withdraw the Security Deposit from the deposit account and use, apply, or retain the whole or any part of the Security Deposit for the payment of any amount in default or for any other amounts which the COUNTY may spend or be required to spend by reason of TENANT's default. The Security Deposit or any balance of the Security Deposit remaining shall be returned to TENANT at the termination or expiration of the Term. COUNTY may require, at any time, that the Security Deposit be increased in proportion to the amount of any increase in the Minimum Monthly Rent and TENANT shall provide such increase deposit within ten (10) days of TENANT's receipt of written notice from the COUNTY. In the event COUNTY uses part or all of the Security Deposit as provided herein, TENANT shall replenish the amount used by COUNTY within ten (10) days of TENANT's receipt of written notice from COUNTY.

5. **TENANT RESPONSIBILITIES:**

A. TENANT will operate and manage the Premises, its service and facilities in a professional, business-like manner. TENANT must, at all times conduct themselves in a professional manner to customers,

COUNTY agents or its employees, or other TENANTS, and conform to all applicable rules, regulations, and requirements now in force in the COUNTY, as well as rules and regulations as hereafter may be promulgated or put into operation by the COUNTY.

B. TENANT will ensure that its employees at all times conduct themselves in a professional manner, to customers, COUNTY agents or its employees, or other TENANTS of County-leased land adjacent to the Premises, and that they conform to all applicable rules, regulations, and requirements now in force in the COUNTY, as well as rules and regulations as hereafter may be promulgated or put into operation by the COUNTY. TENANT must maintain a staff adequate to operate and administer all facilities located on the Premises in a safe and orderly manner. TENANT agrees to replace personnel whenever demanded by COUNTY, when cause is shown. Employees of TENANT will wear an easily identifiable visual uniform which is clean, neat and presentable in appearance, so the public can recognize this person as associated with TENANT.

6. **CONDITION OF PREMISES:** The Premises are provided to TENANT in its AS-IS condition without any representations or warranties whatsoever, including but not limited to its condition or suitability for TENANT's Improvements or TENANT's intended use and TENANT expressly acknowledges that COUNTY shall not be in any way liable for and TENANT assumes all risk of injury, damage, or loss in its use of the Premises, including without limitation, any risk of injury, damage, or loss regardless of cause to TENANT, TENANT's Improvements, or TENANT's personal property, if allowed, located on the Premises except to the extent caused by the intentional misconduct or gross negligence of COUNTY. Upon the commencement of TENANT's use of the Premises, the same shall conclusively be deemed that TENANT finds the Premises fit and proper for the purposes for which TENANT shall use the Premises.

7. **ASSIGNMENT:** This Lease shall not be assigned, subleased, or otherwise transferred without the express written approval of the COUNTY, which approval shall not be unreasonably withheld, conditioned or delayed. Except as provided in this Lease, any assignment, sublease, or other transfer by operation of law without the written approval of the COUNTY shall be null and void. Any change in control or ownership of the TENANT shall be deemed an assignment for purposes of this paragraph for which COUNTY consent is required.

8. **COUNTY'S ACCESS TO PREMISES:**

A. COUNTY, or a duly authorized representative of the COUNTY, reserves the right to enter upon the Premises at any reasonable time for the purpose of inspecting the Premises for conformance to Lease provisions and for carrying out any routine and emergency maintenance or construction repair work on the Premises that COUNTY may deem expedient nor shall said COUNTY be liable for damages to TENANT's Authorized Equipment as a result thereof except to the extent caused by the intentional misconduct or gross negligence of COUNTY or COUNTY's agents.

B. COUNTY's activities at the Site shall take precedence at all times, and when any work or activity must be performed to carry out the functions and purposes of the COUNTY, TENANT must allow same to be done without interference. COUNTY shall give TENANT reasonable notice of impending activities whenever possible and shall, to the extent possible, minimize any disruptions to TENANT's operations at the Premises.

9. **MAINTENANCE/REPAIRS:**

A. Maintenance and inspection of TENANT's Improvements and the Premises will be the sole responsibility of the TENANT and regular inspections are required as necessary to ensure that TENANT's Improvements and the Premises are maintained in a good and safe condition. Any damage to COUNTY's property or property of others resulting from said maintenance activities shall be the sole responsibility of TENANT. If TENANT's Improvements becomes a hazard to COUNTY's or other tenants of COUNTY-leased land adjacent to the Premises or located within the Regional Park, the TENANT will be required to eliminate the hazard.

B. TENANT shall have twenty (20) days from the creation of the need to maintain and repair to perform its obligation to maintain and repair under this paragraph 9, except that TENANT shall begin to perform its obligations immediately, if the nature of the problem presents a threat to life, health, or safety of persons or destruction of property. If TENANT does not perform its obligations within the time limitations in this paragraph

9, COUNTY can, upon written notice to the TENANT, perform the obligations and has the right to be reimbursed for the sum it actually expends (including charges for COUNTY's equipment and personnel) in the performance of TENANT's obligations.

10. **HAZARDOUS MATERIALS:**

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

B. TENANT shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Premises of any Hazardous Substance, or the transportation to or from the Premises or the Site of any Hazardous Substance.

C. TENANT shall be solely responsible, at its cost, for any violation of applicable Hazardous Substances laws by TENANT or its employees, contractor, and agents. TENANT shall further indemnify, protect, defend and hold COUNTY and their officers, agents, employees, and volunteers and the Premises and the Site, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including COUNTY's attorneys' and consultants' fees) arising out of or involving any Hazardous Substances brought onto the Premises or the Site by or for TENANT or by anyone under TENANT's control. TENANT's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by TENANT, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and TENANT shall release TENANT from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by COUNTY in writing at the time of such agreement.

D. TENANT shall comply with all applicable laws, statutes, regulations, and orders concerning Hazardous Substances, as defined in subparagraph 10A, relating to TENANT's Improvements on the Premises.

E. During the Term, TENANT shall maintain and inspect TENANT's Authorized Equipment located on the Premises and immediately inform COUNTY of any release of Hazardous Substances. Upon reasonable notice to TENANT, COUNTY may inspect TENANT's Authorized Equipment on the Premises to determine if any release of Hazardous Substances has occurred, or may occur, from or related to TENANT's Authorized Equipment. In removing or modifying LISENSEE's Equipment as provided in this Lease, TENANT shall also remove all residue of Hazardous Substances related thereto.

11. **UTILITIES:** COUNTY shall have no obligation to furnish to the Premises any electric, gas, water, trash, and or any other utilities. In the event that TENANT desires to connect to, maintain, repair, upgrade, remove or replace existing utility related equipment at the Premises, TENANT shall obtain COUNTY's prior written approval and shall comply with Paragraph 12.

12. **IMPROVEMENTS:** TENANT shall not make any improvements or alterations to the Premises or TENANT's Improvements as detailed in Exhibit "B" ("TENANT's Improvements") without COUNTY's prior written consent, not to be unreasonably withheld, conditioned or delayed. In the event that TENANT desires to alter TENANT's Improvements, or the Premises, TENANT shall, along with its consent request, submit all plans and specifications and any other information reasonably requested by COUNTY for said improvements or alterations. All improvements shall be completed in: (i) accordance with the plans and specifications approved by COUNTY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, and any and all applicable permits. TENANT shall provide COUNTY with not less than ten (10) days' notice prior to the commencement of any work in, on, or under the Premises for the approved Improvements so that COUNTY, at COUNTY'S option, may post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be acceptable to COUNTY. In the event TENANT contracts for the construction of any Improvements or portion thereof, TENANT shall comply with the applicable provision of the California Public Contract Code 22000 through 22045 regarding bidding procedure and Labor Code Section 1720.2 and 1170 et seq. regarding general prevailing wages, including the provisions set forth in **Exhibit "D", Prevailing Wage Requirements**. TENANT shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents, and volunteers from any claims, actions, losses, damages, and/or liability arising out of the obligations set forth herein. TENANT's indemnity obligation shall survive the TENANT's tenancy and shall not be limited by the existence or availability of insurance. All approvals required by COUNTY in this paragraph, including all sub-paragraphs, shall be granted or denied in COUNTY's sole discretion. Upon termination of this Lease, the TENANT's Improvements shall become the property of the COUNTY without compensation to TENANT. The Premises shall be returned to COUNTY in as good a condition and repair as it was initially received by TENANT, reasonable wear and tear excepted, and TENANT shall repair any damage to the Premises, at the Regional Park, or on adjacent County-leased property caused by TENANT or TENANT's use of the Premises.

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

A. If there should be any default in payment by TENANT of the Minimum Monthly Fee or any other sums provided herein or if TENANT fails to continuously operate and maintain the TENANT's Improvements and the dog training concession throughout the Term of the Lease, including any extensions thereof, for a period of three (3) months or more (provided that both the Minimum Monthly Fee and Annual Lease Fee shall be paid during said year) or abandons TENANT's Improvements, COUNTY may give TENANT written notice of such default. This Lease will not be terminated if within ten (10) days after receipt of such written notice the TENANT shall cure the default or breach for a monetary default and thirty (30) days for a non-monetary default. If the non-monetary default is of a nature that it cannot reasonably be cured within said thirty (30) day period, this Lease may not be terminated if TENANT commences its cure of such default within said thirty (30) day period and thereafter diligently proceeds to fully cure such default but in no event shall the total cure period exceed sixty (60) days after the occurrence of such default.

B. If TENANT should fail to perform, keep or observe any of the terms, conditions or covenants as set forth in this Lease, other than payment of fees as provided hereinabove, COUNTY may give TENANT written notice to correct such condition or cure such default.

(1) This Lease will not be terminated if within thirty (30) days after receipt of such written notice, the TENANT shall cure the condition or default.

(2) If such condition or default should continue for thirty (30) days after receipt of written notice of default, COUNTY may at its option elect to terminate this Lease. Such election to terminate shall not be construed as a waiver of any claim the COUNTY may have against TENANT, consistent with such termination.

(3) If, however, TENANT shall have commenced the elimination of such default within thirty (30) days after receipt of such notice and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction.

C. If, however, in the sole discretion of COUNTY, and notwithstanding the cure periods in Paragraph 13.A, the problem or default represents a hazard or emergency, TENANT shall perform its obligations immediately. If TENANT fails to perform its obligations immediately, COUNTY may perform the obligations and have the right to be reimbursed for the sum it actually expends (including charges for COUNTY's equipment and personnel) in the performance of TENANT's obligations.

D. Upon any termination of this Lease, TENANT covenants and agrees to surrender the Premises peaceably to the COUNTY immediately upon any such termination. If TENANT continues to use the Premises after any termination of this Lease without County consent, COUNTY shall have the right to pursue all available rights and remedies available at law or in equity.

E. The receipt by the COUNTY of any fees or of any other sum of money paid by TENANT after any default, the termination of this Lease for any reason, or after the giving by COUNTY of any notice to effect such termination, shall not waive the default, reinstate, continue or extend the Term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by COUNTY to TENANT prior to the receipt of any such sum of money or other consideration, unless so agreed to be in writing and signed by COUNTY. Any act of the COUNTY or its agents or employees during the Term of this Lease shall not be deemed to be an acceptance or a surrender of said Premises, excepting an agreement in writing signed by the COUNTY agreeing to accept such surrender.

14. **HOLDING OVER:** If TENANT continues using the Premises after the expiration of the Term or after any termination of this Lease prior to the expiration of the Term, and if said use is with the consent of the COUNTY, then TENANT shall be deemed to be holding over the Premises on a month-to-month basis subject to all the provisions of this Lease, except, during such holdover, the Minimum Monthly Fee shall increase to an amount equal to one hundred fifty percent (150%) over the Minimum Monthly Fee immediately in effect prior to the initiation of holdover, which shall be pro-rated and payable monthly during any month-to-month holdover. In no case shall the holding over the Premises exceed a period of six months beyond the termination or expiration of this Lease.

15. **LICENSES AND CERTIFICATIONS:** TENANT agrees that it will acquire and maintain those certifications, licenses, approvals and permits required by any Federal, State or local jurisdiction or authority for carrying out the purpose of this Lease and TENANT shall comply with all laws and regulations and industry standard safety measures for the access and use of the TENANT's Improvements on the Premises. Failure to comply with this provision will constitute a default and right to terminate by COUNTY under Paragraph 13, DEFAULT AND RIGHT TO TERMINATE, of this Lease.

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

17. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

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

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

(1) Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with Two Hundred Fifty Thousand Dollars (\$250,000.00) limits covering all employees providing services on behalf of the TENANT and all risks to such persons under this Lease.

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

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

(2) Commercial/General Liability Insurance – The TENANT shall carry General Liability Insurance covering all operations performed by or on behalf of the TENANT providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000.00), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000.00 general aggregate limit.

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

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage, per occurrence.

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

C. If TENANT performs any construction of the Premises on behalf of the COUNTY, TENANT shall also procure and maintain coverages as follows:

(1) For construction contracts for projects over One Million Dollars (\$1,000,000.00) and less than Three Million Dollars (\$3,000,000.00) require limits of not less than Three Million Dollars (\$3,000,000.00) in General Liability and Auto Liability coverage.

(2) For construction contracts for projects over Three Million Dollars (\$3,000,000.00) and less than Five Million Dollars (\$5,000,000.00) require limits of not less than Five Million Dollars (\$5,000,000.00) in General Liability and Auto Liability coverage.

(3) For construction contracts for projects over Five Million Dollars (\$5,000,000.00) and less than Ten Million Dollars (\$10,000,000.00) require limits of not less than Ten Million Dollars (\$10,000,000.00) in General Liability and Auto Liability coverage.

(4) Subcontractor Insurance Requirements. The TENANT agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Lease to provide insurance covering the contracted operation with the basic requirements for all contracts in B1 and the insurance sections for all contracts in B2, (including waiver of subrogation rights) and including the COUNTY as an additional insured. The TENANT agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(5) Course of Construction/Installation (Builder's Risk) Property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

D. Additional Insured – All required liability policies, except for the Workers' Compensation, shall contain endorsements including the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this Lease hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

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

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

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

H. Proof of Coverage – The TENANT shall furnish Certificates of Insurance to the COUNTY's Real Estate Services Department (RESA) administering the Lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and TENANT shall maintain such insurance from the time TENANT commences use under the Lease hereunder until the end of the period of the Lease.

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

J. Insurance Review – Insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the COUNTY's Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the

COUNTY. In addition, the COUNTY's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Lease. TENANT agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of REGIONAL PARKS DEPARTMENT or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of REGIONAL PARKS DEPARTMENT or the COUNTY.

K. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions shall be commercially reasonable for the telecommunications industry.

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

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

The TENANT agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of this Lease to provide insurance covering such use with the basic requirements and including the COUNTY as additional insured. TENANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

18. **TAXES, ASSESSMENTS AND LICENSES:** TENANT shall pay before delinquency any and all taxes, if any, assessments, fees, or charges, including possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures, if any, installed or belonging to TENANT and located within the Premises. TENANT shall also pay all license or permit fees necessary or required by law for the conduct of its operation and/or in accordance with Section 107 of the California Revenue and Taxation Code. TENANT recognizes and understands that this Lease may create a possessory interest subject to property taxation and that the TENANT may be subject to the payment of property taxes levied solely on such interest, unless the Parties otherwise agree in writing prior to the start of construction or installation.

19. **BUILDING AND SAFETY REQUIREMENTS:** All TENANT's activities under this Lease must conform to all applicable rules, regulations, laws, ordinances, codes, statutes or orders of any governmental authority, Federal, State or local lawfully exercising authority over TENANT's operations. In the event that the TENANT's use of the Premises conflicts in any way with other uses at the property of which the Premises is a part (COUNTY's determination of such conflicting uses shall be conclusive), or in the event the TENANT's use of the Premises is in violation of any of said rules, regulations, ordinances, statutes or orders, the TENANT shall remove or modify the TENANT's Improvements to conform with the applicable regulations within thirty (30) days of receipt of written notice to do so from the COUNTY.

20. **GENERAL COVENANTS AND AGREEMENTS:**

A. At any time during the Term of this Lease, COUNTY may revise, modify, or add provisions to the Lease as may be required to meet the COUNTY's obligations or purposes, provided that such revisions, modifications and additions to the Lease are documented in an amendment to the Lease executed by both parties.

B. TENANT agrees not to use said Premises, or any part thereof, for any purpose which causes injury to any neighboring property, nor for any purpose in violation of valid applicable laws or ordinances.

C. No political signs shall be permitted at the Site.

D. Uses granted to TENANT under this Lease are valid only to the extent of the COUNTY's existing rights and may be subject to other existing easements and encumbrances. Rights granted to the TENANT are not exclusive.

E. If the TENANT should refuse or neglect to comply with the provisions of the Lease, or the orders of the COUNTY, the COUNTY may have such provisions or orders carried out by others at the expense of the TENANT. All the terms, covenants and conditions set forth herein are to be strictly complied with by TENANT. Any failure to comply therewith shall be grounds for immediate cancellation of the Lease.

F. This Lease is valid only to the extent of COUNTY jurisdiction. Permits required by other interested agencies shall be the responsibility of the TENANT. NOTHING CONTAINED IN THIS LEASE SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE COUNTY.

21. **TERMINATION:** TENANT or COUNTY may terminate this Lease at any time and for any reason by giving the other Party written notice of any termination pursuant to this paragraph at least one-hundred and eighty (180) days' notice prior to the date of termination. TENANT shall perform all necessary removals or repairs to the Premises on or before the expiration of the Lease. COUNTY's Regional Parks Director shall have the authority on behalf of COUNTY to provide TENANT with notice of any termination pursuant to this paragraph. Notwithstanding the preceding, this Lease shall terminate immediately if at any time during the Term hereof, the COUNTY ceases to possess a leasehold over the Premises. In the event of such termination, COUNTY shall have no liability to TENANT for any losses or damages incurred by TENANT as a result of termination.

22. **INCORPORATION OF PRIOR AGREEMENT:** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

23. **WAIVERS:** No waiver by either Party of any provisions of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either Party of the same or any other provisions.

24. **AMENDMENTS:** No provision of this Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successor in interest, expressing by its terms an intention to modify this Lease.

25. **SUCCESSORS:** This Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto.

26. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.

27. **CONSENT:** Except as otherwise expressly specified, whenever consent or approval of either Party is required that Party shall not unreasonably withhold such consent or approval.

28. **EXHIBITS:** All exhibits referred to are attached to this Lease and incorporated by reference.

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

30. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this Lease shall have no effect on its interpretations.

31. **SEVERANCE:** If any provision of this Lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions

shall remain in full force and effect provided, however, that the purpose of the Lease is not frustrated. It is the intention of the Parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

32. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the requested other Party or any other person shall be in writing and either served personally, sent via a nationally recognized overnight courier, or sent by United States, postage prepaid, first-class mail, certified or registered, return receipt. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party shall be addressed to the other party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed delivered and effective upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, United States first-class mail, certified or registered, return receipt requested or via a nationally recognized overnight courier.

COUNTY's address: County of San Bernardino
Regional Parks Department
777 E. Rialto Avenue
San Bernardino, CA 92415-0180

TENANT's address: Prado Recreation Incorporated
17505 S. Euclid Ave.
Chino, CA 91710

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

34. **VENUE:** The Parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any party to this Lease will be the Superior Court of California, County of San Bernardino. Each Party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Lease, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino. This Lease shall be construed and interpreted in accordance with the laws of the State of California.

35. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under Paragraph 16, INDEMNIFICATION and those arising from COUNTY's collection efforts (whether prior to or as a result of a court action) due to non-payment of the fee or any other amounts overdue under this Lease.

36. **FORMER COUNTY OFFICIALS:** TENANT agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent TENANT. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five (5) years and who are now officers, principals, partners, associates or members of the business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of your business. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "C", List of Former County Officials.)

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

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

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

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

41. **RESERVED:**

42. **COUNTERPARTS.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

43. **AUTHORIZED SIGNATORS:** Both Parties to this Lease represent that the signators executing this document are fully authorized to enter into this Lease.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (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 Agreement upon request.

END OF LEASE.

COUNTY OF SAN BERNARDINO

TENANT: Prado Recreation Incorporated

By: *Curt Hagman*
Curt Hagman, Chairman, Board of Supervisors

By: *Ruben Llamas*
Ruben Llamas

Date: AUG 25 2020

Title: President
Date: July 6, 2020

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

By: *Elena Llamas*
Elena Llamas

LYNNA MONELL, Clerk of the Board of Supervisors

Title: Secretary
Date: July 6, 2020

By: *Lynna Monell*
Deputy
Date: AUG 25 2020

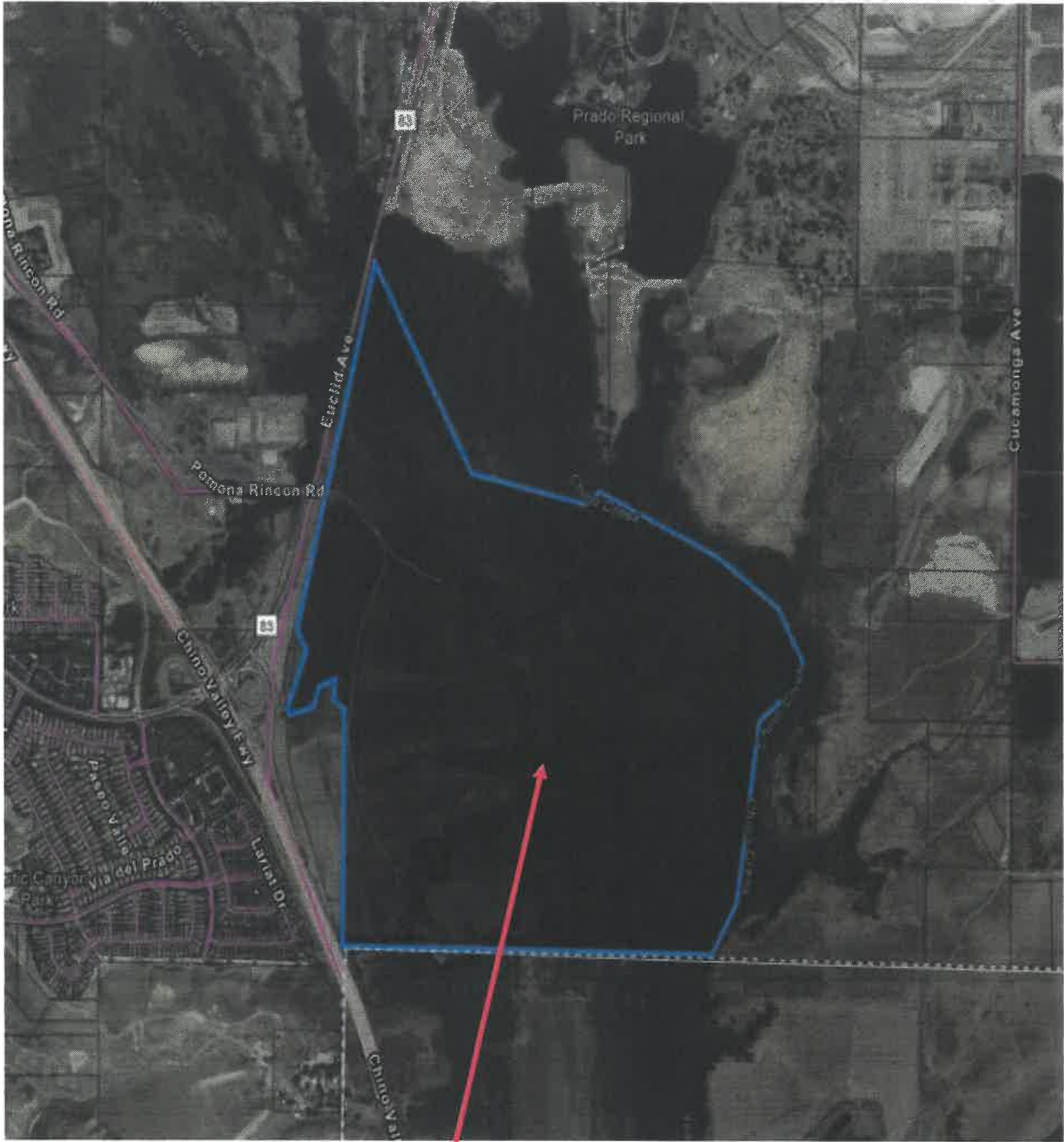
Approved as to Legal Form:

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

By: *Dawn Martin*
Dawn Martin, Deputy County Counsel

Date: 7/14/20
110588.13

EXHIBIT "A"
PREMISES DEPICTION-MAP



Premises map
Approximate boundary in Blue

EXHIBIT "B"
TENANT'S IMPROVEMENTS

1. One (1) club house
2. One (1) entrance gate
3. Lease area fencing
4. Dog kennels
5. Comfort stations
6. Paved parking area
7. Walkways
8. Sewer Line
9. Power line
10. Water line

EXHIBIT "C"
LIST OF FORMER COUNTY OFFICIALS

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

OFFICIAL'S NAME:

REQUIRED INFORMATION

N/A



EXHIBIT "D"
PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Improvements in the Lease requires the payment of prevailing wages and compliance with the following requirements in this exhibit. As used in this exhibit, the term "Contractor" shall include Landlord and Landlord's contractors and/or subcontractors and the term "Improvements" shall include the improvements to be performed by Landlord pursuant to the Lease.

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., 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 Improvements is to be performed. Copies of said rates are on file with County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Improvements, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Improvements, 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 Improvements, 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 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 Improvements. 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 www.dir.ca.gov. 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 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 Improvements.

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 Improvements. 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 Landlord Improvements 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 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 County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to 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 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 Improvements shall not be marked or obliterated. The Contractor shall inform 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 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 Improvements or upon any part of the Improvements, 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 County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Improvements 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 (submitted on or after March 1, 2015) 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 (awarded on or after April 1, 2015) 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 new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) 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 on 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 Improvements 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 Improvements. 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:

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.