

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



**Contract Number**

**SAP Number**

## Regional Parks Department

<b>Department Contract Representative</b>	<u>Beahta R. Davis</u>
<b>Telephone Number</b>	<u>909-387-2340</u>
<b>Contractor</b>	<u>South Coast Air Quality Management District</u>
<b>Contractor Representative</b>	<u>Nicole Saavedra</u>
<b>Telephone Number</b>	<u>909-396-2434</u>
<b>Contract Term</b>	<u>May 23, 2023 – May 22, 2028</u>
<b>Original Contract Amount</b>	<u>\$2,500</u>
<b>Amendment Amount</b>	<u>N/A</u>
<b>Total Contract Amount</b>	<u>\$2,500</u>
<b>Cost Center</b>	<u>6522141000</u>

### IT IS HEREBY AGREED AS FOLLOWS:

This License Agreement is for five years with one five-year option to renew the term of the License for the use of approximately 400 square feet of a County-owned building and approximately 1200 square feet of County-owned land located in Lake Gregory Regional Park. The County will receive revenue in the amount of \$2,500 during the term of the agreement.

**SAN BERNARDINO COUNTY  
REGIONAL PARKS DEPARTMENT  
LAKE GREGORY REGIONAL PARK  
LICENSE AGREEMENT**

**I. PARTIES**

This License Agreement ("Agreement" or "License") is between SAN BERNARDINO COUNTY, a political subdivision of the State of California ("COUNTY"), and South Coast Air Quality Management District ("LICENSEE").

The LICENSEE intends to occupy a portion of the County-owned property located at 24171 Lake Drive in Crestline, CA, for the purposes of operating and maintaining an air quality monitoring station; and,

The COUNTY, and LICENSEE now desire to enter into a license agreement for the use of a portion of the COUNTY-owned property located at 24171 Lake Drive in Crestline, CA.

For and in consideration of the mutual covenants and agreements herein contained, it is mutually agreed as follows:

**II. USE AREA**

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 grant to LICENSEE a nonexclusive license for a portion of that certain real property situated in Crestline, San Bernardino County, State of California, said property described as 400 square feet of a County-owned building and 1,200 square feet of the COUNTY-owned property located at 24171 Lake Drive in Crestline (the "Property" or "Licensed Area"), as more particularly shown on Exhibit "A."

- A. The COUNTY grants, and LICENSEE accepts, a non-exclusive and non-transferable license to enter upon/use the property owned by COUNTY located at Lake Gregory Regional Park (hereinafter referred to as "Property"). This agreement grants a license for the above-described Property to LICENSEE to operate and maintain an EPA Design Value Site with air quality and data transmission equipment for air quality monitoring of ozone trends for Southern California upon the terms and conditions contained herein.

This license and the rights herein granted to LICENSEE 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 Property with any and all equipment necessary in the preservation of the County-owned property without liability for any damages to LICENSEE's Facilities.

- B. COUNTY will allow LICENSEE to use the area of "Property " shown on Exhibit "A" for an EPA Design Value Site to monitor ozone trends for Southern California.
- C. No vested rights are acquired hereby, including but not limited to appropriate or prescriptive rights.

**III. TERM**

The term of this Agreement shall be five (5) years, commencing upon execution of this agreement and ending on May 22, 2028 ("initial term").

Additionally, COUNTY gives LICENSEE the option to extend this license on the same provisions, conditions, and \$2,500 license fee for one (1) five (5) year period ("extended term") following the

expiration of the initial term, provided that at the time of exercise of the option, LICENSEE is not in default with respect to any of the terms, covenants or conditions to be observed or performed by LICENSEE hereunder, by LICENSEE giving written notice of exercising the option to COUNTY at least nine (9) months, but not more than one (1) year, prior to the expiration of the preceding term.

#### **IV. FEES**

A. LICENSEE shall pay a:

1. One-time fee in the amount of two-thousand five-hundred dollars (\$2,500) for this five (5) year term license no later than **May 23, 2023**.
2. UTILITIES
  - a. COUNTY will provide and bear the cost of all utilities reasonably necessary for the operation of the activities of the LICENSEE with the Property, including, but not limited to, electricity, water, and natural gas. "Reasonably necessary", at the sole discretion of the COUNTY, may be determined by use levels prior to the effective date of this License Agreement.

#### **V. RESERVED**

#### **VI. ASSIGNMENT**

This license is personal to LICENSEE and LICENSEE shall not have the right to assign or otherwise transfer this License. Any attempted assignment or other transfer shall be deemed null and void and without legal effect.

#### **VII. ACCEPTANCE OF PROPERTY**

Upon the acceptance and occupancy of the Property by LICENSEE, the same shall conclusively be deemed to be fit and proper for the purposes for which the same is hereby licensed and to be used with LICENSEE's acknowledgment.

#### **VIII. COUNTY'S ACCESS TO LICENSED AREA**

- A. COUNTY, or duly authorized representative of the COUNTY, reserves the right to enter upon the Licensed Area at any reasonable time for the purpose of inspecting the Licensed Area for conformance to license provisions and for carrying out any routine and emergency maintenance or construction repair work on COUNTY's property that COUNTY may deem expedient nor shall be said COUNTY be liable for damages to LICENSEE's equipment as a result thereof.
- B. COUNTY's activities 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, LICENSEE must allow same to be done without interference. COUNTY shall give LICENSEE reasonable notice of impending activities whenever possible.
- C. LICENSEE shall not interfere with the use of the Property or any part thereof by COUNTY. This license shall be subject to the instructions and direction of the San Bernardino County.
- D. LICENSEE acknowledges and understands that its use of the Licensed Area is non-exclusive and that the Count and other rightsholders may enter onto and use the Licensed Area.

## **IX. MAINTENANCE/REPAIR**

- A. LICENSEE has the right to obtain a certified and licensed tree trimmer at the LICENSEE's expense for the purpose of trimming the trees immediately surrounding the monitoring site to meet EPA requirements for Probe and Monitoring Path criteria. Trimming will be no more than 10 meters circumference (approximately 33 feet) out and up from the monitoring site, and trees cannot be removed, as shown in Exhibit A1.
- B. LICENSEE will ensure the existing monitoring station remains clean and in good condition. LICENSEE will ensure a staff member of SCAQMD visits the site a minimum of twice per week and report any building issues to his/her supervisor.
- C. LICENSEE agrees to maintain the building in its current condition and paint the building every three years, with the first painting of the building to occur no later than June 30, 2027. The licensee shall obtain prior County approval of the paint color to be used for the building. If the LICENSEE fails to paint the building within the three-year period, the County will have the building painted at the LICENSEE's expense.

## **X. RELOCATION**

- A. When LICENSEE's equipment requires relocation or protection because of COUNTY'S construction, the work shall be performed by the LICENSEE at its expense and in advance of COUNTY's work.
- B. The COUNTY has fee title to the Property. The COUNTY reserves the right to allow other uses of the Property. These additional uses may require relocation or protection of existing equipment owned by LICENSEE. The cost of the relocation or protective work shall be the responsibility of the new applicant. COUNTY shall give LICENSEE prior notice of any contemplated new uses of the Property, receive, and consider LICENSEE's comments thereto, and coordinate any new uses with LICENSEE.

## **XI. NO DISCRIMINATION**

During the term of the agreement, LICENSEE shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. LICENSEE shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act, and other applicable Federal, State, and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

## **XII. NO SEGREGATION**

LICENSEE must not discriminate against or cause the segregation of any person or group of persons on account of race, religious creed, color, national origin, ancestry, sex, age, physical handicap, medical condition, or marital status in the occupancy, use, tenure or enjoyment of the Use Area used for the agreement.

## **XIII. INDEMNIFICATION AND INSURANCE CLAUSE**

- A. Indemnification - LICENSEE 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 license 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 indemnities. LICENSEE'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.

- B. Additional Insured - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services 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 2010.1185.
- C. Waiver of Subrogation Rights - LICENSEE shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit LICENSEE and LICENSEE's employees or agents from waiving the right of subrogation prior to a loss or claim. LICENSEE hereby waives all rights of subrogation against the COUNTY.
- D. Policies Primary and Non-Contributory - All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.
- E. Severability of Interests - LICENSEE 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 LICENSEE and the County or between the County and any other insured or additional insured under the policy.
- F. Proof of Coverage - The LICENSEE shall furnish Certificates of Insurance to the Regional Parks Department Administration (268 W. Hospitality Lane, Third Floor, Suite 303, San Bernardino, CA 92408), administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and LICENSEE shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this license, the Licensee shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- G. Acceptability of Insurance Carrier - Unless otherwise approved by the 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".
- H. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by County's Director of Risk Management.
- I. Failure to Procure Coverage - In the event that any policy of insurance required under this License does not comply with the requirements, is not procured, or is canceled and not replaced, the COUNTY has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the COUNTY will be promptly reimbursed by LICENSEE or COUNTY payments to LICENSEE will be reduced to pay for COUNTY purchased insurance.
- J. Insurance Review - Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever 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 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 contract. LICENSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the 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 the County.

#### **XIV. INSURANCE SPECIFICATIONS**

LICENSEE agrees to provide insurance set forth in accordance with the requirements herein. If LICENSEE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, LICENSEE agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, LICENSEE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

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

If Licensee 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.

With respect to Licensees that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

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

1. Premises operation and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).
4. Explosion, collapse and underground hazards.
5. Personal injury.
6. Contractual liability.
7. \$2,000,000 general aggregate limit.

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

If LICENSEE is transporting one or more non-employee passengers; in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If LICENSEE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- D. 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.
- E. Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the permitted use. The required additional insured endorsement shall protect the COUNTY without any restrictions. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the commencement date of this License. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after the expiration or earlier termination of this License.

## **XV. LICENSES AND CERTIFICATION**

- A. LICENSEE shall adopt whatever measures may be necessary to assure compliance with the Occupational Safety and Health Act of 1970, 29 U.S.C Section 651 et seq., and the California Occupational Health and Safety Act of 1973, Labor Code Section 6300 et seq., and Federal Mine Safety and Health Act of 1977, 30 USC Section 801 et seq., with respect to the License granted hereunder.
- B. LICENSEE 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 propose of this license. Failure to comply with the provision will constitute a default and right to terminate by COUNTY under Paragraph XXX of this license.

## **XVI. EMINENT DOMAIN**

If any part of the Premises is taken by any paramount public authority under the power of an eminent domain, then the term of this Agreement will cease to the extent that it relates to the part so taken, without any right of recovery by Licensee for such taking, from the day the possession of that part is required for public purpose. All Agreement fees must be paid up to that day and from that day. If the whole or a substantial part of the Premises be so taken, then upon such taking, Licensee has the right either to cancel this Agreement and declare the same null and void or to continue its operations on the remainder of the Premises under the terms herein provided.

## **XVII. HAZARDOUS MATERIALS**

- A. Definition. For purposes of this agreement, the term "Hazardous Substances" means any (a) substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water

and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq., all as amended (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

- B. In connection with the Agreement, (a) LICENSEE agrees and acknowledges that it has had an opportunity to investigate all of the properties identified on Exhibit "A," Agreement Area Map Premises and their environs for the presence of any hazardous substance; (b) any and all reports, studies, analyses, estimates, maps, drawings, materials, etc. delivered by COUNTY to LICENSEE preceding the execution of this Agreement are delivered to LICENSEE as an accommodation and not with the intent that such items be relied upon by LICENSEE, except to the extent that LICENSEE has independently confirmed the validity of such items; and (c) LICENSEE's decision to enter into this Agreement is based upon the investigation, study and analysis of all of the property identified on Exhibit "A", Agreement Area Map, the Premises and their environs made by LICENSEE or its agents and/or independent contractors, and not upon oral or written statements or representations of COUNTY. It is expressly understood by LICENSEE and COUNTY that all statements and representations made by COUNTY which are not included in this agreement (a) are intended by COUNTY to be made as an accommodation to LICENSEE in COUNTY's investigation and not in lieu of LICENSEE's investigation, and (b) are not to be relied and acted upon by LICENSEE.
- C. LICENSEE shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, re-agreement, burial, or disposal on, under, or about the Premises of any hazardous substance, or the transportation to or from the Premises of any hazardous substance.
- D. LICENSEE agrees, in addition to those obligations imposed upon it pursuant to Paragraph XIII INSURANCE AND INDEMNIFICATION, herein, to indemnify, defend with counsel approved by COUNTY, protect and herein hold harmless COUNTY, its directors, officers, employees, agents, assigns, and any successor or successors to COUNTY's interest in the Premises as it relates to Hazardous Substances as defined in subparagraph A. from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the Premises or any indemnified party directly or indirectly arising from or attributable to (a) any breach by the LICENSEE or any of its agreements, warranties or representations set forth in this Agreement, or (b) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any hazardous substance on, under or about the Agreement caused by LICENSEE's use of the Premises, regardless of whether undertaken due to governmental action. To the fuller extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty, or contract of LICENSEE.
- E. Without limiting the generality of this indemnity, this indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health



and Safety Code Section 25364 to insure, protect, hold harmless and indemnify COUNTY for any liability arising out of Licensee's use of the Premises pursuant to such sections.

#### **XVIII. IMPROVEMENTS**

All property improvements directly related to the operation and maintenance of the air quality monitoring station shall remain the property of LICENSEE. Upon termination of this license or any extension or renewal thereof, and the faithful performance of each and all of the terms, covenants and conditions thereof, the LICENSEE shall remove improvements directly related to such operation and maintenance on or before the termination date. If the LICENSEE does not remove its improvements on or before the termination date, COUNTY shall, at its option, either, at LICENSEE's expense, remove all such improvements or elect to retake possession of the Property together with all such improvements which shall thereupon become the property of the COUNTY without compensation to LICENSEE.

#### **XIX. BUILDING AND SAFETY REQUIREMENT**

All activities under this license 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 LICENSEE's operations. In the event that the LICENSEE's use of the Property conflicts in any way or is in violation of any said rules, regulations, ordinances, statutes, or orders, the LICENSEE shall remove or modify the installation to conform with the applicable regulations within thirty (30) days of receipt of written notice to do so from the COUNTY. COUNTY's determination of conflicting use shall be conclusive.

#### **XX. NO ASSIGNMENT**

No assignment of this License or any interest therein and no sublicense for any purpose shall be granted by LICENSEE.

#### **XXI. NOTICE**

Any notice, demand request, consent, approval or communication that either party desires or is required to give to the other party or permitted to be given under this License including notices under the California Unlawful Detainer Statutes, shall be given to the respective parties in writing either served personally or sent by United States first class mail, postage prepaid, registered or certified mail, postage return receipt requested. Any notice, demand, request, consent approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressed to accept delivery if notice is sent by United States Mail, postage prepaid, certified or registered, return receipt requested.

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|----|-----------------|---|
| A. | If to COUNTY:   | San Bernardino County<br>Department of Regional Parks<br>268 W. Hospitality Lane, Third Floor, Suite 303<br>San Bernardino CA 92408 |
| B. | If to LICENSEE: | South Coast Air Quality Management District<br>21865 Copley Drive<br>Diamond Bar, CA 91765-4178<br>Attn: Nicole Saavedra            |

or at such other address or to such other persons as either of the parties may from time to time designate by written notice given as herein provided.

## **XXII. ATTORNEYS' FEES AND COSTS**

If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and reasonable 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 XIII, INSURANCE AND INDEMNIFICATION CLAUSE.

## **XXIII. VENUE**

The parties acknowledge and agree that this License was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this License will be San Bernardino County. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394) or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this License is brought by any third party, the parties agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

## **XXIV. APPLICABLE LAW**

This License shall be interpreted and construed according to the laws of the State of California.

## **XXV. FORCE MAJEURE/CANCELLATION**

LICENSEE and COUNTY shall not be deemed in violation of this License if it is prevented from performing its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of public enemy, acts of superior governmental authority, weather conditions, riots, rebellions, or any other circumstances for which it is not responsible, or which are not within its control.

## **XXVI. PUBLIC RECORDS DISCLOSURE OF INFORMATION**

All information received by the COUNTY from any source concerning this License, including the License 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"). LICENSEE understands that although all materials received by the COUNTY in connection with this License 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 LICENSEE has requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify LICENSEE of the request and shall thereafter disclose the requested information unless LICENSEE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for nondisclosure, and agrees to indemnify, defend with counsel approved by COUNTY, and hold the COUNTY harmless in any/all actions brought to require disclosure. LICENSEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify LICENSEE of any such disclosure request and/or releases any information received concerning the License received from LICENSEE.

## **XXVII. TAXES**

A. LICENSEE recognizes and understands that this License may create a possessory interest subject to property taxation and that LICENSEE may be subject to the payment of property taxes levied on such interest.

- B. LICENSEE covenants and agrees to pay all taxes, including possessory interest tax, and assessments upon all improvements, fixtures, furniture, and other property owned by LICENSEE and used in the exercise of LICENSEE's rights under this License or levied by reason of LICENSEE's operations pursuant to this License.

## **XXVIII. NO ESTATE**

LICENSEE agrees that it does not and shall not claim at any time an interest or estate of any kind or extent whatsoever in the Use Area or Park by virtue of this License or occupancy or use hereunder.

## **XXIX. GENERAL COVENANTS AND AGREEMENTS**

- A. At any time during the life of the license, the COUNTY may revise, modify or add provisions to the license as may be required to meet the COUNTY's obligations, provided, however that such provisions, modifications, etc., do not substantially interfere with LICENSEE's use of the Property.
- B. LICENSEE agrees not to use said Property, 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 on COUNTY's Property.
- D. Uses granted to LICENSEE under this license 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 LICENSEE are not exclusive.
- E. If the LICENSEE should refuse or neglect to comply with the provisions of the license or the orders of the COUNTY, the COUNTY may have such provisions or orders carried out by others at the expense of the LICENSEE. All the terms, covenants, and conditions set forth herein are to be strictly completed with by the LICENSEE. Any failure to comply therewith shall be grounds for immediate cancellation of the license.
- F. This license is valid only to the extent of the COUNTY's jurisdiction. Permits required by other interested agencies shall be the responsibility of the LICENSEE. **NOTHING CONTAINED IN THIS LICENSE SHALL BE CONSTRED AS RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE COUNTY.**
- G. All exhibits referred to are attached to this License and incorporated by reference.

## **XXX. TERMINATION**

- A. **DEFAULT:** In the event that LICENSEE violates any of the terms and conditions of this Agreement, COUNTY may give LICENSEE notice of specific violation and demand for correction.
- B. LICENSEE agrees that COUNTY may immediately suspend this Agreement, and further, LICENSEE agrees to immediately cease operations at the Premises if LICENSEE fails to meet the insurance requirements, as stated herein or for good cause as determined by the COUNTY.
- C. **TERMINATION FOR DEFAULT:** If within ten (10) days after notice and demand, other than insurance or the payment of money due to COUNTY, LICENSEE has not corrected the violation or shown acceptable cause, therefore, COUNTY has the right to terminate this Agreement immediately and pursue any and all remedies provided by law. COUNTY has the right to terminate this Agreement on account of failure by LICENSEE to correct default in insurance or the payment of money owed to COUNTY within three (3) days after notice and demand for correction. In the event of termination for default, COUNTY has the right of immediate ownership of all buildings and improvements within the Premise.

- D. **TERMINATION FOR CRIMINAL CONVICTION:** COUNTY may give LICENSEE notice of termination of this Agreement which will be effective upon delivery, and the COUNTY may pursue any, and all avenues provided by law to obtain proper compensation for all losses incurred or damages should LICENSEE be found guilty of any criminal activity related directly or indirectly to the use of the facilities or opportunities provided by this Agreement and sentenced (whether actually served or not) to a jail term of ninety (90) days or more.
- E. **LIABILITY FOR BREACH:** Termination for default shall not excuse LICENSEE from any liability for breach of License.
1. On any termination of this Agreement for default by LICENSEE, COUNTY may recover from LICENSEE all of the following:
    - a. The worth at the time of the award of any unpaid money that had been earned at the time of the termination.
    - b. Any other amount necessary to compensate COUNTY for all the detriment proximately caused by LICENSEE's failure to perform obligations under this Agreement, including brokerage commissions and advertising expenses, expenses of remodeling the Lake Gregory Premises for a new LICENSEE (whether for the same or a different use), and any special concessions made to obtain a new LICENSEE.
    - c. Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law
- F. **TERMINATION FOR CONVENIENCE:** Either party shall have the right to terminate this Agreement for its convenience at any time, on at least thirty (30) days written notice prior to the effective date of termination, given to the other party as required herein in the Paragraph XXI, NOTICE.
1. In the event either party terminates this Agreement pursuant to this paragraph, the COUNTY shall have the right to receive from LICENSEE the amount of money that will have been earned at the effective date of termination of this Agreement. Such amounts are due in a lump sum on the date all such rent payments are due under this Agreement.
- G. **COUNTY'S REMEDIES AFTER ABANDONMENT:** In the event of default by LICENSEE, which has not been cured after notice, COUNTY shall have the remedy described in Civil Code Section 1951.4, which provides that when a tenant has the right to sublet or assign (subject only to reasonable limitations), the landlord may continue the Agreement in effect after the tenants' breach and abandonment and recover rent as it becomes due. Accordingly, if COUNTY does not elect to terminate this Agreement on account of any default by LICENSEE, COUNTY may enforce all of COUNTY's rights and remedies under this Agreement, including the right to recover all rent as it becomes due.
- H. The receipt by the COUNTY of any other sum of money paid by LICENSEE after any default, the termination and forfeiture of this Agreement 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 Agreement, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by COUNTY to the LICENSEE prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the COUNTY. Neither acceptance of the keys nor any other act of the COUNTY or its agents or employees during the term of this Agreement shall be deemed to be an acceptance of a surrender of the Lake Gregory, excepting an amendment to the Agreement in writing signed by the COUNTY agreeing to accept such surrender.

**XXXI. HOLDING OVER** If the LICENSEE continues in possession or occupancy of the Licensed Area after the expiration of the Term or after any termination of this Agreement prior to the expiration of the Term,

and if said possession or occupancy is with the express wrote consent of the COUNTY, then LICENSEE shall be deemed to be holding the Licensed Area on a month-to-month tenancy subject to all of the provisions of this Agreement except the Agreement Fee, provided that either party may terminate the Agreement at any time during the holdover period by providing not less than thirty (30) days prior written notice to the other party.

#### **XXXII. DISCLAIMER OF LIABILITY**

COUNTY shall not liable for any claims, actions, loss, damages, liabilities, or injuries to the person or property of any person whomsoever at any time occasioned by or arising out of this License or the use permitted under this License from any cause whatsoever, including (without limitation) any acts, errors, or omissions of LICENSEE, anyone claiming or holding by, through or under LICENSEE (including without limitation LICENSEE's employees, contractors, and agents) or any other person, from the use of the Licensed Area, by, though, or under the LICENSEE (including without limitation LICENSEE's employees, contractors, and agents) or any other person, or whether directly or indirectly from any state or condition of said Licensed Area. LICENSEE, on behalf of itself and its employees, contractors, and agents hereby waive and releases COUNTY from any such claims, actions, loss damages, liabilities, or injuries however arising.

Notwithstanding the application of Section 1542 of the California Civil Code, which provides:

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

The LICENSEE expressly waives and relinquishes all rights and benefits afforded them by said Section 1542, and any and all similar laws of any State or territory of the United States. This provision shall act as a release of future claims whether such claims are currently known, unknown, foreseen, or unforeseen. The LICENSEE understands and acknowledges the significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any claims, actions, loss, damages, liabilities, or injuries that LICENSEE (including without limitation LICENSEE's employees, contractors, and agents or any other person may hereafter incur.

#### **XXXIII. INTERPRETATIONS**

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

#### **XXXIV. AUTHORIZED SIGNATORS**

Both parties to this License represent that the signators executing this document are fully authorized to enter into this License.

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

XXXV. ENTIRE AGREEMENT

This License contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this License, and no prior agreement or understanding pertaining to any such matter is effective for any purpose.

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IN WITNESS WHEREOF, the parties hereto have caused their respective names to be subscribed by their respective proper officers hereto duly authorized.

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SAN BERNARDINO COUNTY

►  
\_\_\_\_\_  
Dawn Rowe, 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

South Coast Air Quality Management District  
(Print or type name of corporation, company, contractor, etc.)

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

Name Jason Low  
(Print or type name of person signing contract)

Title \_\_\_\_\_  
(Print or Type)

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

Address 21865 Copley Drive  
Diamond Bar, CA 91765-4178

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Suzanne Bryant, Deputy County Counsel	► Trevor Leja, Deputy Executive Officer	► Beahtha R. Davis, Director, Regional Parks Department
Date _____	Date _____	Date _____