



ORIGINAL

Contract Number

12-738 A-3

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	NCWPCS MPL 24 - Year Sites Tower Holdings, LLC, a Delaware limited liability company
Contractor Representative	Melanie Webb, Senior Transaction Manager
Telephone Number	(724) 416-2000
Contract Term	6/1/1993 – 10/31/2033
Original Contract Amount	\$98,698.00
Amendment Amount	\$822,100.00
Total Contract Amount	\$920,798.00
Cost Center	7810001000
GRC/PROJ/JOB No.	67002660
Internal Order No.	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino ("COUNTY"), as successor-in-interest to the original landlord, and NCWPCS MPL 24 - Year Sites Tower Holdings, LLC, a Delaware limited liability company, by and through CCATT LLC, a Delaware limited liability company, its attorney in fact ("TENANT"), as successor-in-interest to the original tenant, are parties to Lease Agreement, Contract No. 12-738 dated June 1, 1993, as amended by the First Amendment dated October 7, 2003 and as amended by the Second Amendment dated September 25, 2012 (collectively the "Lease"), wherein COUNTY leases certain property commonly known as a portion of APN 0234-231-03 to the TENANT for a term that is currently scheduled to expire on October 31, 2023; and,

WHEREAS, the COUNTY and TENANT now desire to amend the Lease to confirm the TENANT's automatic exercise of the first of its three five-year options to extend the Lease, extending the term through its current expiration date of October 31, 2023, reflect, with the COUNTY's express consent, the TENANT's concurrent early exercise of the second and third of its three five-year options to extend the Lease, extending the term from November 1, 2023 through October 31, 2033, and amend certain other terms of the Lease as set forth in this amendment ("Third Amendment").

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

1. Pursuant to **Paragraph 2, Additional Terms and Renewals**, the parties hereby confirm the TENANT's automatic exercise of the first of its three five-year options to extend the Lease, extending the term

as provided in **Paragraph 1, Term and Commencement** from November 1, 2018 through its current expiration date of October 31, 2023 ("First Additional Term").

2. Effective June 23, 2020, pursuant to TENANT's concurrent early exercise of the second and third of its three five-year options set forth in **Paragraph 2, Additional Terms and Renewals**, EXTEND the term of the Lease as provided in **Paragraph 1, Term and Commencement** from November 1, 2023 through October 31, 2033 (collectively, the "Second Additional Term").

3. Effective June 23, 2020, DELETE in its entirety the existing **Paragraph 5, Rent**, and SUBSTITUTE therefore the following as a new **Paragraph 5, Rent**:

5. **Rent:**

a. Except as set forth below, TENANT shall pay to COUNTY the following monthly Rent in advance on or before the first day of each calendar month, subject to increases, as more specifically reflected and included in the amounts set forth below:

(1) First Additional Term: The parties confirm the existing Rent due for the period from November 1, 2018 through June 30, 2020 and set forth the adjusted Rent due for the remainder of the First Additional Term:

November 1, 2018 thru October 31, 2019 – monthly payment of \$1,735.00
November 1, 2019 thru June 30, 2020 - monthly payment of \$2,005.00
July 1, 2020 thru October 31, 2020 – monthly payment of \$3,713.00
November 1, 2020 thru October 31, 2021 – monthly payment of \$3,861.00
November 1, 2021 thru October 31, 2022 – monthly payment of \$4,015.00
November 1, 2022 thru October 31, 2023 – monthly payment of \$4,176.00

(2) Second Additional Term: The parties acknowledge and agree that, as of June 23, 2020, there is no outstanding Rent due from TENANT for the First Additional Term and set forth the Rent due for the remainder of the Second Additional Term:

November 1, 2023 thru October 31, 2024 – monthly payment of \$4,343.00
November 1, 2024 thru October 31, 2025 – monthly payment of \$4,517.00
November 1, 2025 thru October 31, 2026 – monthly payment of \$4,698.00
November 1, 2026 thru October 31, 2027 – monthly payment of \$4,888.00
November 1, 2027 thru October 31, 2028 – monthly payment of \$5,081.00
November 1, 2028 thru October 31, 2029 – monthly payment of \$5,284.00
November 1, 2029 thru October 31, 2030 – monthly payment of \$5,495.00
November 1, 2030 thru October 31, 2031 – monthly payment of \$5,715.00
November 1, 2031 thru October 31, 2032 – monthly payment of \$5,944.00
November 1, 2032 thru October 31, 2033 – monthly payment of \$6,182.00

b. Remit monthly Rent to:

County of San Bernardino
Real Estate Services Department
385 N. Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0180
Attn: Fiscal Department

c. If any Rent or other sum due are not paid when due and payable, TENANT shall pay to COUNTY an additional Fifty and 00/100 Dollars (\$50.00) for each Rent or other sum due as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late payment by TENANT. Acceptance of any late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount or prevent COUNTY

from exercising any of the other rights and remedies available to COUNTY. Rent or other sums not paid when due shall bear simple interest from date due at the rate of one and one-half percent (1½%) per month until paid in full.

4. Effective June 23, 2020, DELETE in its entirety the existing **Paragraph 14, Insurance**, and SUBSTITUTE therefore the following as a new **Paragraph 14, Insurance Requirements and Specifications**:

14. 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 \$250,000 limits covering all employees and including volunteers 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), per occurrence. The policy coverage shall include:

- (a) Premises operations.
- (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 meeting the indemnification obligations herein.
- (g) \$2,000,000 general aggregate limit.

(3) Commercial Property Insurance providing all risk coverage for the TENANT's real and personal property on the Premises, including its building, fixtures and equipment 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) 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) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars in General Liability and Auto Liability coverage.

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

(3) For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (\$10,000,000) 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 contract to provide insurance covering the contracted operation with insurance as determined by TENANT in accordance with its qualified vendor insurance requirements. 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 policies, except for the Workers' Compensation, property and builders risk policies, shall contain endorsements naming the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this Lease hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 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, and volunteers. 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.

g. Severability of Interests – The TENANT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured, except with respect to limits, 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 San Bernardino 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. The policies shall provide thirty (30) days prior written notice of cancellation by the insurer for any reason other non-payment of premium 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. Within fifteen (15) days of the commencement of this contract, the TENANT shall furnish a certificate of insurance for all applicable policies and endorsements required herein immediately upon request.

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

j. 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 RESD or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESD or the COUNTY.

k. 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 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.

l. 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.

m. 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. COUNTY agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

5. Effective June 23, 2020, DELETE in its entirety the existing **Paragraph 24, California Law**, and SUBSTITUTE therefore the following as a new **Paragraph 24, Venue**:

24. **Venue**: The parties acknowledge and agree that this Lease was entered into and intended to be performed in County of San Bernardino, 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.

6. Effective June 23, 2020, DELETE in its entirety the existing **Paragraph 27, Attorneys’ Fees**, and SUBSTITUTE therefore the following as a new **Paragraph 27, Attorneys’ Fees and Costs**:

27. **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 the COUNTY, including such costs and attorneys' fees payable under Paragraph 8, Indemnification, and Paragraph 36, Public Records Disclosure.

7. Effective June 23, 2020, DELETE in its entirety the existing **Paragraph 30, Notices**, and SUBSTITUTE therefore the following as a **new Paragraph 30, Notices**:

30. **Notices:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, including, but not limited to notices required under the California unlawful detainer statutes, or any other person shall be in writing and either served personally or sent by postage prepaid, first-class United States mail, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery, if such notice is sent as stipulated above.

TENANT's address: NCWPCS MPL 24 - Year Sites Tower Holdings LLC
Legal Department
Attn: Network Legal, Legal Department
208 S. Akard Street
Dallas, TX 75202-4206

With copy to: CCATT LLC
Attn: Legal – Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317

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

8. Effective June 23, 2020, DELETE in its entirety the existing **Paragraph 31, Operational Phase Termination**, and SUBSTITUTE therefore the following as a new **Paragraph 31, Default And Right To Terminate**:

31. **Default And Right To Terminate:**

a. If there should be any default in payment by TENANT of the Rent or other sums provided herein, COUNTY may give TENANT written notice of such default. This Lease will not be terminated if within thirty (30) days after receipt of such written notice, the TENANT shall cure the default or breach.

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 Rent or other sums as provided above, COUNTY may give TENANT written notice to correct such condition or cure such default.

(1) This Lease will not be terminated if within sixty (60) days after receipt of such written notice, the TENANT shall cure the condition or default.

(2) If such condition or default should continue for sixty (60) 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 sixty (60) 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. Upon any termination of this Lease, TENANT covenants and agrees to surrender and to forfeit this Lease, and deliver up the Premises peaceably to the COUNTY within a reasonable time upon any such termination. In addition, on termination of the Lease for default, pursuant to this paragraph, COUNTY shall have the right to recover from TENANT for any and all damages which may be the direct or indirect result of such default, including but not limited to the following:

(1) The worth at the time of the award of the unpaid monthly rent that had been earned at the time of termination of this Lease, and;

(2) The worth at the time of the award of the amount by which the unpaid monthly rent that would have been earned after the date of termination of this Lease, until the time of award exceeds the amount of the loss of monthly rent that TENANT proves could have been reasonably avoided, and;

(3) The worth at the time of the award of the amount by which the unpaid monthly rent for the balance of the term after the time of award exceeds the amount of the loss of monthly rent that TENANT proves could have been reasonably avoided, and;

(4) Any other amount and court costs necessary to compensate COUNTY for all detriment proximately caused by TENANT's default, except those amounts TENANT proves could have been reasonably avoided.

"The worth at the time of the award", as used in "A" and "B" of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth at the time of the award", as referred to in "C" of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%)."

d. The receipt by the COUNTY of any Rent or of any other sum of money paid by TENANT after any default, the termination and forfeiture 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 the 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.

9. Effective June 23, 2020, ADD a new **Paragraph 36, Public Records Disclosure** as follows:

36. **Public Records Disclosure:** All information received by the COUNTY from the TENANT or 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, except to the extent arising from the COUNTY's gross negligence or willful misconduct.

10. Effective June 23, 2020, ADD a new **Paragraph 37, Holding Over** as follows:

37. **Holding Over:** In the event the TENANT shall hold over and continue to occupy the Premises with the consent of the COUNTY, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions as existed and prevailed at the time of the expiration of the term of this Lease. Notwithstanding Paragraph 31, Default And Right To Terminate, either party shall have the right to terminate the Lease with not less than ninety (90) days prior written notice to the other party during any holdover tenancy.

11. Effective June 23, 2020, ADD a new **Paragraph 38, Tenant's Improvements** as follows, and ADD a new **Exhibit "C"** attached to this Third Amendment and incorporated herein by reference:

38. **Tenant's Improvements:** There are no improvements being constructed by TENANT as of the date of this Third Amendment. In the event that TENANT desires to make improvements in the Premises subsequent to the execution of this Third Amendment, TENANT shall comply with the applicable provisions of California Public Contract Code 22000 through 22045 regarding bidding procedures and Labor Code Section 1720.2 and 1770 et seq. regarding general prevailing wages as set forth in **Exhibit "C", Prevailing Wage Requirements**, attached hereto and incorporated herein by reference, as applicable. TENANT shall indemnify and hold harmless COUNTY and its officers, employees, and agents from any claims, actions, losses, damages and/or liability arising out of the obligations set forth in this paragraph, except to the extent arising from the COUNTY's gross negligence or willful misconduct. The COUNTY's indemnity obligations shall survive the TENANT's tenancy and shall not be limited by the existence or availability of insurance.

12. Effective June 23, 2020, ADD a new **Paragraph 39, Hazardous Materials** as follows:

39. **Hazardous Materials:**

a. **Definition.** For purposes of this agreement, 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. In connection with the Lease of the Premises by TENANT, (a) TENANT agrees and acknowledges that it has had an opportunity to investigate all of the 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 TENANT preceding execution of this Lease are delivered to TENANT as an accommodation and not with the intent that such items be relied upon by TENANT, except to the extent that TENANT has independently confirmed the validity of such items; and (c) TENANT's decision to enter into this Lease is based upon the investigation, study and analysis of all of the Premises and their environs made by TENANT or its agents and/or independent contractors, and not upon oral or written statements or representations of COUNTY. It is expressly understood by TENANT and COUNTY that all statements and representations made

by COUNTY which are not included in this Lease (a) are intended by COUNTY to be made as an accommodation to TENANT in COUNTY's investigation and not in lieu of TENANT's investigation; and (b) are not to be relied and acted upon by TENANT.

c. With the exception of electronics, cables, common cleaning supplies, and batteries that are commonly used in the provision of TENANT'S wireless telecommunications services that may contain Hazardous Substances, all of which shall not exceed any quantities permitted by law and must be handled in accordance with applicable law, 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 of any hazardous substance.

d. TENANT agrees, in addition to those obligations imposed upon it pursuant to Paragraph 8, 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 TENANT or any of its agreements, warranties or representations set forth in this Lease, 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 Premises caused by TENANT's use of the Premises, except to the extent arising from COUNTY's sole negligence or willful misconduct.

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 TENANT's use of the Premises pursuant to such sections.

13. Effective June 23, 2020, ADD a new **Paragraph 40, Taxes, Assessments and Licenses** as follows:

40. **Taxes, Assessments and Licenses:** TENANT shall pay before delinquency, if any, property taxes, assessments, fees or charges, including possessory interest taxes which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to TENANT and located within the Premises. TENANT shall also pay all licenses or permit fees necessary or required by law for 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 on such interest.

14. Effective June 23, 2020, ADD a new **Paragraph 41, Former County Officials** as follows, and ADD a new **Exhibit "D"** attached to this Third Amendment and incorporated herein by reference:

41. **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 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 "D", List of Former County Officials.**)

15. All other provisions and terms of the Lease shall remain the same and in full force and effect and are hereby incorporated by reference. In the event of any conflict between the Lease and this Third Amendment, the provisions and terms of this Third Amendment shall control.

END OF THIRD AMENDMENT.

COUNTY OF SAN BERNARDINO

**NCWPCS MPL 24 - YEAR SITES TOWER HOLDINGS
LLC, A DELAWARE LIMITED LIABILITY COMPANY**



Curt Hagman, Chairman, Board of Supervisors

Dated: JUN 23 2020

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
of the County of San Bernardino

By 

Deputy



By: CCATT LLC,
a Delaware limited liability company
Its: Attorney In Fact

By 

Name Melanie Webb

Title Senior Transaction Manager

Dated: 6-2-2020

Address 208 S. Akard Street

Dallas, TX 75202-4206

Approved as to Legal Form


Agnes Cheng, Deputy County Counsel

Date 6/5/2020

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Jim Miller, Real Property Manager, RESD

Date

EXHIBIT "C"
PREVAILING WAGE REQUIREMENTS

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

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., the Tenant will obtain 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 Tenant Improvements is to be performed. Copies of said rates are on file with the Tenant, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Tenant 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 Tenant 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 Tenant 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 the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Tenant 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 <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Tenant 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 Tenant 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 Tenant 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 the County, the Division of Labor Standards Enforcement of the DIR;
 - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
 - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Tenant Improvements shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Tenant Improvements or upon any part of the Tenant 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 the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Tenant 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) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
 - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.
- b. Labor Code section 1725.5 states the following:
- "A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.
- (a) To qualify for registration under this section, a contractor shall do all of the following:
- (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
- (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.
- (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:
- (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
- (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.
- (C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency,

including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

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

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

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

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

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

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

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

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the

performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

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

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

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

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

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

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

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

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

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

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

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

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

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

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

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

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

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

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

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

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

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

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

d. Labor Code section 1771.4 states the following:

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

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

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

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

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

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

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

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

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

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

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

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

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

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Tenant 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 Tenant 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 Rations:

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

5. Contractor's Compliance:

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

EXHIBIT "D" - LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY or County of San Bernardino Administrative Official, the title/description of the Official's last position with the COUNTY or County of San Bernardino, the date the Official terminated COUNTY or County of San Bernardino 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