



Contract Number

SAP Number

## Real Estate Services Department

Department Contract Representative  
Telephone Number

Terry W. Thompson, Director  
(909) 387-5252

Contractor  
Contractor Representative  
Telephone Number  
Contract Term  
Original Contract Amount  
Amendment Amount  
Total Contract Amount  
Cost Center  
GRC/PROJ/JOB No.  
Internal Order No.

Town of Apple Valley  
Doug Robertson, Town Manager  
(760) 240-7000  
1/5/2021 to 1/4/2025  
\$228,012.00  
\$0.00  
\$228,012.00  
7810001000  
82004119

### Briefly describe the general nature of the contract:

This Lease Contract will commence on January 5, 2021 and will continue for a term of four (4) years through January 4, 2025. Either party may terminate this Lease at any time and for any reason by written notice given to the other at least ninety (90) days prior to the effective termination date. The Premises consists of approximately 2,088 square feet of space, situated within a certain portion of the first floor of the Town of Apple Valley Town Hall located at 14955 Dale Evans Parkway, Apple Valley, CA 92307. COUNTY shall have the use of the Premises for the purposes of COUNTY business. The rent payment is \$3,341.00 per month, full service gross for the first year of the term.

LANDLORD shall provide all interior and exterior maintenance to include but is not limited to grounds, parking lot maintenance and exterior lighting. LANDLORD shall furnish to the Premises and shall pay for electricity, gas, water, sewer, and trash. The COUNTY shall pay for its own telephone service including internet and data. All utility expenses for the common areas of the Property, including but not limited to the parking area, shall be at LANDLORD's sole expense and without reimbursement by COUNTY. LANDLORD shall provide regular janitorial services to the Premises.

Approved as to Legal Form

► SEE SIGNATURE PAGE

Agnes Cheng, Deputy County Counsel

Date

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Jim Miller, Real Property Manager, RESD

Date

**LEASE AGREEMENT**

**BETWEEN**

**TOWN OF APPLE VALLEY**

**AS LANDLORD**

**AND**

**COUNTY OF SAN BERNARDINO**

**AS TENANT**

**for certain premises at**

**14955 Dale Evans Parkway, Apple Valley, CA 92307**

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EXHIBIT "A" Premises

THERE IS NO Exhibit "B"

EXHIBIT "C" List of Former County Officials

EXHIBIT "D" Estoppel Certificate

EXHIBIT "E" Subordination, Nondisturbance and Attornment Agreement

EXHIBIT "F" Prevailing Wage Requirements

## LEASE AGREEMENT

1. **PARTIES:** This lease ("Lease") is made between the Town of Apple Valley ("LANDLORD"), as landlord, and the County of San Bernardino ("COUNTY"), as tenant, who agree on the terms and conditions contained in this Lease. LANDLORD hereby represents and warrants to COUNTY that LANDLORD is the legal owner with sole title to the Property (as defined below), including the Premises (as defined below), and has the right to enter into this Lease without consent or approval from any other parties. In the event of a breach of the foregoing representation and warranty, COUNTY shall have the right to terminate this Lease with immediate effect upon written notice to LANDLORD and LANDLORD shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, contractors, agents, and volunteers from any and all claims, actions, losses, damages and/or liability arising out of or related to said breach. LANDLORD's indemnity shall survive the expiration or earlier termination of this Lease.

2. **PREMISES LEASED:**

A. LANDLORD leases to COUNTY and COUNTY leases from LANDLORD certain premises comprising a total of approximately 2,088 square feet of space, consisting of a furnished office and a storage/supply room of approximately 1,938 square feet and a conference room of approximately 150 square feet (collectively, the "Premises"), situated on a certain portion of the leasable area on the first floor of the building commonly known as the Town of Apple Valley Town Hall ("Building") located on real property ("Property") with an address of 14955 Dale Evans Parkway, Apple Valley, CA 92307. The Premises shall be for the COUNTY's exclusive use and is more particularly depicted in Exhibit "A", Premises, attached hereto and incorporated herein by reference. The parties hereby agree that the Premises shall not be re-measured at any time during the term of the Lease, including any extensions thereof.

B. Along with its lease of the Premises, LANDLORD grants to COUNTY, at no additional cost for the duration of term of the Lease, including any extensions thereof:

(i) Shared Areas at Building: the right to shared, non-exclusive use of: (a) the break room on the first floor of the Building (with direct access to and from the Premises); (b) the server room in the Building along with available rack space sufficient for COUNTY's internet and telephone needs; (c) weight room in the Building along with lockers for COUNTY and its employees; (d) space at the public counter of the Building sufficient for COUNTY to conduct its business; and (f) ingress and egress to the Premises and the shared areas of the Building through the common areas of the Building, including but not limited to the public lobby

(ii) Parking at Property: the right to: (a) two (2) reserved parking spaces in the parking lot of Property for dedicated use by COUNTY's visitors; (b) shared, non-exclusive use of additional parking spaces at the parking lot on the Property for COUNTY's employees, agents, contractors, and visitors; and (c) ingress and egress to the parking spaces through the parking lot and drive lanes of the Property.

(iii) Additional Rights: subject to availability, (a) the right to use the Council Chambers and Conference Center at the Building for COUNTY events; and (b) the right to use the grounds of the Civic Center Park and the Amphitheater at the adjacent LANDLORD-owned real property located at 14999 Dale Evans Parkway, Apple Valley, CA 92307 for COUNTY events. Each use of the foregoing areas in this Paragraph 2.B.(iii) shall be a license for the subject use area for the duration of each use on the same terms and conditions as this Lease except that no rent or other fees shall be charged for each use and the term "Premises" shall mean the subject use area.

3. **TERM:** The Lease's initial term ("Initial Term") shall commence on January 5, 2021, and shall expire on January 4, 2025 ("Ending Date"), unless earlier terminated in accordance with this Lease.

4. **RENT:**

A. Commencing on the Commencement Date, COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears not later than the last day of each month, and continuing during the Initial Term, based on approximately 2,088 square feet of leased space, as more specifically reflected and included in the amounts set forth below:

January 5, 2021 to January 4, 2022 – monthly rental amount of	\$3,341.00
January 5, 2022 to January 4, 2023 – monthly rental amount of	\$4,176.00
January 5, 2023 to January 4, 2024 – monthly rental amount of	\$5,220.00



January 5, 2024 to January 4, 2025 – monthly rental amount of \$6,264.00

The parties agree that all parking spaces provided under this Lease are at no additional cost to the COUNTY during the Initial Term and any extended term.

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

5. **OPTION TO EXTEND LEASE TERM:** LANDLORD gives COUNTY the option to extend the term of the Lease on the same provisions and conditions, except for the monthly rent, for one (1) four-year option period ("extended term") following the expiration of the Initial Term, by COUNTY giving written notice of its intention to exercise the option to LANDLORD prior to the expiration of the preceding term or at any time during any holding over pursuant to **Paragraph 7, HOLDING OVER**. The monthly rent for the first year of the extended term shall be adjusted by good faith negotiation of the parties to the fair market monthly rental rate then prevailing based on the monthly rental rate of comparable leased premises in the County of San Bernardino, provided that such monthly rental rent for said first year shall not be less than the monthly rent as existed and prevailed at the time of the expiration of the term of this Lease. Thereafter, the monthly rent shall increase by two percent (2%) on each anniversary of the commencement date of the extended term for the remainder of the extended term.

6. **RETURN OF PREMISES:** The COUNTY agrees that it will, upon the termination of this Lease, return the Premises in a good condition and repair as the Premises now is or shall hereafter be put; reasonable wear and tear excepted.

7. **HOLDING OVER:** In the event the COUNTY shall hold over and continue to occupy the Premises with the consent of the LANDLORD, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent, as existed and prevailed at the time of the expiration of the term of this Lease. Notwithstanding **Paragraph 38, COUNTY'S RIGHT TO TERMINATE LEASE**, 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.

8. **TAXES:** LANDLORD shall, at its sole cost and expense, pay, prior to delinquency, all real property taxes, and general and special assessments levied and assessed against the Premises, the Building, and the Property.

9. **PERMITTED USE:** COUNTY shall occupy and use the Premises during the term hereof for the purposes of COUNTY business, and shall have the right to access the Premises, the Building, and the Property 24 hours a day and seven days a week.

10. **HEALTH, SAFETY AND FIRE CODE REQUIREMENTS:**

A. LANDLORD, at its sole expense will ensure the Premises, the Building, and the Property meet the applicable requirements of all Health, Safety, Fire and Building Codes, statutes, regulations and ordinances for public and governmental buildings, including any requirements for a notice of completion, certificate of occupancy, California Title 24 requirements and the American's with Disabilities Act ("ADA"). Specifically, LANDLORD must ensure there is an accessible path of travel from public transportation to the Premises pursuant to Title 24. Additionally, LANDLORD warrants that any improvements on or in the Premises which have been constructed or installed by LANDLORD or with LANDLORD's consent or at LANDLORD's direction shall comply with all applicable covenants or restrictions of record and applicable Codes, statutes, regulations and ordinances in effect on the Commencement Date. LANDLORD also warrants to COUNTY that LANDLORD has no knowledge of any claim having been made by any governmental agency that a violation or violations of applicable Codes, statutes, regulations, or ordinances exist with regard to the Premises, Building or Property as of the Commencement Date. Should the continued occupancy of the Premises be in any way prejudiced or prevented due to changes in the ADA or the Health, Safety, Fire and Building Codes, statutes, regulations or ordinances for public and governmental buildings, the LANDLORD shall correct, update and comply with said changes at LANDLORD's cost.

B. No inspection of the Premises, Building, or Property has been performed by a Certified Access Specialist in conjunction with this Lease. For avoidance of doubt, notwithstanding that an inspection of the Premises, Building, or

Property has not been performed by a Certified Access Specialist, LANDLORD's obligations under Paragraph 10.A shall remain unchanged.

11. **SIGNS:** COUNTY will display from the windows and/or marquee of the Premises only such sign or signs as are not prohibited by law. At the end of the Lease term, COUNTY at its cost shall be responsible for the removal and disposal of all COUNTY's signage.

12. **MAINTENANCE:**

A. LANDLORD at its cost shall perform such inspections, maintenance and repairs as are necessary to ensure that all portions of the Premises, the Building, and the Property including but not limited to the following, are at all times in good repair and safe condition:

(1) The structural parts of the Building and other improvements that are a part of the Premises, which structural parts include the foundations, slab, bearing and exterior walls (including glass and doors), subflooring, and roof; and,

(2) The electrical, plumbing, and sewage systems, including, without limitation, those portions of the systems owned or controlled by LANDLORD lying outside the Premises; and,

(3) Window frames, gutters, and downspouts on the building and other improvements that are a part of the Premises; and,

(4) Heating, ventilation and air conditioning (HVAC) systems servicing the Premises (additionally, air-conditioning and heating filters are to be changed quarterly. Upon commencement of this lease agreement and every three (3) years thereafter, LANDLORD is to provide an air balance certificate and maintenance of HVAC servicing); and,

(5) The grounds, including all parking areas, outside lighting, exterior refuse, grass, trees, shrubbery and other flora (which grass, trees, shrubbery, and other flora shall be maintained according to California drought resistant laws and regulations; and,

(6) The servicing of any fire suppression equipment attached to the Premises, including the fire extinguishers; and,

(7) Interior maintenance, regular janitorial services, and pest control/extermination. All interior maintenance, regular janitorial services, and pest control/extermination shall be provided by LANDLORD and performed in a workman-like manner by licensed and qualified independent contractors. LANDLORD shall perform interior maintenance and regular janitorial services at a time and in manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY.

B. Without in any way affecting LANDLORD's duty to inspect, maintain and repair the Premises, Building, and Property and regardless of whether any specific notice of need for maintenance or repair is provided to LANDLORD by the COUNTY, the COUNTY may request specific maintenance or repairs. Notwithstanding **Paragraph 24, NOTICES**, any such request may be made orally, by telephone or otherwise. Notice of need for maintenance or repair must also be made in writing if not resolved within 24 hours of oral notice, provided that the timeframe for LANDLORD's compliance pursuant to this **Paragraph 12.B** shall commence on the date of the oral request. The following persons are authorized to make such request on behalf of the COUNTY: any agent from the COUNTY's Real Estate Services Department and/or any representative from the Assessor/Recorder/County Clerk (ARC). However, if, (a) COUNTY gives notice to LANDLORD of a condition requiring maintenance or repairs, and LANDLORD does not commence the performance of its maintenance or repair obligations within ten (10) days of receiving such notice, or does not diligently prosecute its obligations to completion thereafter, or (b) in the case of an emergency, whether or not COUNTY has given notice to LANDLORD, LANDLORD does not immediately perform its obligations, COUNTY can perform the obligations and have the right to be reimbursed for the sum COUNTY actually and reasonably expends (including charges for COUNTY employees and equipment) in the performance of LANDLORD's obligations. The sum expended by COUNTY shall be due from LANDLORD to COUNTY within thirty (30) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent and other payments due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in



any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld.

13. **ALTERATIONS:** COUNTY shall not make any structural or exterior improvements or alterations to the Premises without LANDLORD's consent. Any such alterations shall remain on and be surrendered with the Premises on expiration or termination of the Lease unless otherwise agreed in writing by the parties at the time LANDLORD's consent for such alteration is obtained.

14. **FIXTURES:** COUNTY shall have the right during the term(s) of this Lease to install shelving, modular furniture, and fixtures, and make interior, non-structural improvements or alterations in the Premises. Such shelving, modular furniture, fixtures, improvements, and alterations shall remain the property of the COUNTY and may be removed by the COUNTY during the term(s) of this Lease or within a reasonable time thereafter, and COUNTY shall repair any damage to the Premises caused by such removal.

15. **UTILITIES:** LANDLORD shall furnish to the Premises and pay all service charges and related taxes for electricity, gas, water, sewer, trash, fire alarm service and all other utilities. COUNTY shall pay for its own telephone service including internet and data at the Premises. All utility expenses for the common areas of the Property, including but not limited to the parking area, shall be at LANDLORD's sole expense and without reimbursement by COUNTY.

16. **INDEMNIFICATION:**

A. The LANDLORD agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Lease from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The LANDLORD'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. The LANDLORD's indemnity obligations shall survive the expiration or earlier termination of this Lease.

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

17. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

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

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

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



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

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

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

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

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

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) 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 LANDLORD performs any construction of the Premises on behalf of the COUNTY, LANDLORD 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 LANDLORD agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Lease to provide insurance covering the contracted operation with the requirements in this Paragraph 17, (including waiver of subrogation rights) and naming the COUNTY as an additional insured. The LANDLORD 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, 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 LANDLORD shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the LANDLORD and LANDLORD's employees or agents from waiving the right of subrogation prior to a loss or claim. The LANDLORD 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 LANDLORD agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the LANDLORD and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

H. Proof of Coverage – The LANDLORD shall furnish Certificates of Insurance to the COUNTY's Real Estate Services Department (RES D) administering the lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RES D, and LANDLORD shall maintain such insurance from the time the Lease is executed until the expiration or earlier termination of this Lease. Within fifteen (15) days of the commencement of this Lease, the LANDLORD shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

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

J. 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. LANDLORD agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RES D 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 RES D or the COUNTY.

K. 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.

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



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

N. The LANDLORD agrees to require all parties or subcontractors, or others it hires or contracts with related to LANDLORD's performance of its obligations in this Lease to provide insurance covering such performance with the basic requirements and naming the COUNTY as additional insured. LANDLORD agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

**18. DESTRUCTION OF PREMISES:**

A. During the term of this Lease, if any casualty renders all or any portion of the Premises, Building, and/or Property, including but not limited to parking unusable for the purpose intended or inaccessible, then LANDLORD shall, at LANDLORD's expense, restore the Premises, Building, and/or Property and repair any damages caused by such casualty as soon as reasonably possible and this Lease shall continue in full force and effect. If LANDLORD does not commence the restoration of the Premises, Building, and/or Property in a substantial and meaningful way within thirty (30) days following the LANDLORD's receipt of written notice of the casualty, or should LANDLORD fail to diligently pursue completion of the restoration of the Premises, Building, and/or Property or if the time required to restore the Premises, Building, and/or Property is estimated to exceed one hundred eighty (180) days, COUNTY may, at its option, terminate this Lease immediately upon written notice to the LANDLORD. If COUNTY elects to terminate this Lease pursuant to this provision, COUNTY shall be discharged of all future obligations under this Lease. Alternatively, if LANDLORD fails to commence the restoration of the Premises, Building, and/or Property or fails to diligently pursue the completion of the restoration as aforesaid, COUNTY may, at its option and in its sole discretion, after notice to LANDLORD, perform LANDLORD's obligations and restore the Premises, Building, and/or Property. If COUNTY elects to restore the Premises, Building, and/or Property, COUNTY shall have the right to be reimbursed for all sums it actually and reasonably expends (including charges for COUNTY employees and equipment) in the performance of LANDLORD's obligations. The sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent and other payments due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld. For the purposes of this paragraph, the phrase "commence . . . in a substantial and meaningful way" shall mean either the unconditional authorization of the preparation of the required plans, the issuance of any required Building Permits or the beginning of the actual work on the Premises, Building, and/or Property.

B. In the event there is a destruction of all or any portion of the Premises, Building, and/or Property as set out in **subparagraph A above**, there shall be an abatement or reduction of the rent and any other payments due between the date of destruction and the date of completion of restoration or the date of termination of this Lease, whichever comes first. The abatement or reduction of the rent and any other payments due shall be in proportion to the degree to which COUNTY's use of or access to the Premises and any parking is impaired.

C. In the event there is a destruction of a portion of the Premises, Building, and/or Property as set out in **subparagraph A, above**, and the Lease is not terminated because of such destruction, LANDLORD agrees to use any and all insurance proceeds received for said destruction in the restoration of the Premises, Building or Property.

D. In the event LANDLORD is required to restore the Premises, Building, and/or Property as provided in this paragraph, LANDLORD shall restore, at LANDLORD's expense, any structural or exterior improvements or alterations to the Premises, Building and/or Property made by COUNTY pursuant to **Paragraph 13, ALTERATIONS**, of this Lease, but shall not be responsible for restoring any shelving, fixtures, or interior nonstructural improvements or alteration made by the COUNTY pursuant to **Paragraph 14, FIXTURES**, of this Lease.

19. **LANDLORD'S DEFAULT:** Except where another time limit is specifically provided, LANDLORD shall be in default of this Lease if LANDLORD fails or refuses to perform any material provisions of this Lease and such failure or refusal to perform is not cured within thirty (30) days following LANDLORD's receipt of written notice of default from COUNTY. If the default cannot reasonably be cured within thirty (30) days, LANDLORD shall not be in default of this Lease if LANDLORD



commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

20. **COUNTY'S REMEDIES ON LANDLORD'S DEFAULT:** COUNTY, at any time after LANDLORD is in default, can terminate this Lease immediately upon written notice to LANDLORD or can cure the default at LANDLORD's cost. If COUNTY at any time, by reason of LANDLORD's default, pays any sum or does any act that requires the payment of any sum (including charges for COUNTY's employees and equipment), the sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent and other payments due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease.

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

A. The vacating for more than thirty (30) consecutive days or abandonment of the Premises by COUNTY while rent is concurrently in arrears.

B. The failure by COUNTY to perform any material provisions of this Lease to be performed by COUNTY, including the payment of rent, where such failure shall continue for a period of thirty (30) days after notice by LANDLORD to COUNTY; provided, however, that if the nature of COUNTY's default is such that more than thirty (30) days are reasonably required for its cure, then COUNTY shall not be deemed to be in default if COUNTY commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. The purpose of this notice requirement is to extend the notice requirements of the unlawful detainer statutes of California.

22. **LANDLORD'S REMEDIES ON COUNTY'S DEFAULT:** Whenever any Event of Default referred to in Paragraph 21 hereof shall have happened and be continuing, it shall be lawful for the LANDLORD to exercise any and all remedies available pursuant to law or granted pursuant to this Lease; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Rent or otherwise declare any Rent not then in Default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the COUNTY is expressly made a condition and upon the breach thereof the LANDLORD may exercise any and all rights of entry and re-entry upon the Premises, and also, at its option, with or without such entry, may terminate this Lease. In the event of such Event of Default and notwithstanding any re-entry by the LANDLORD, the COUNTY shall continue to remain liable for the payment of the Rent and/or damages for breach of this Lease and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to the LANDLORD only at the same time and in the same manner as provided for the payment of Rent.

23. **LANDLORD'S ACCESS TO PREMISES:** LANDLORD and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

A. To determine whether the Premises are in the condition required by this Lease; and,

B. To do any necessary maintenance and to make any restoration to the Premises that LANDLORD has the right or obligation to perform; and

C. To serve, post, or keep posted any notices required by law; and,

D. To post "for sale" signs at any time during the term, to post "for rent" or "for Lease" signs during the last three (3) months of the term; and,

E. To show the Premises to prospective brokers, agents, buyers, tenants, lenders or persons interested in an exchange, at any time during the term.

LANDLORD shall conduct its activities on the Premises as allowed in this paragraph in a manner that will cause minimal inconvenience, annoyance, or disturbance to COUNTY.

24. **NOTICES:**

A. 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, delivered by a reputable overnight courier service, 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 addresses set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt if such notice is personally delivered; (ii) the date of delivery if such notice is delivered by a reputable overnight courier service; or (iii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested. Any notices received after 5 pm local time on a business shall be deemed delivered on the following business day.

LANDLORD's address: TOWN OF APPLE VALLEY  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

COUNTY's address: COUNTY OF SAN BERNARDINO  
Real Estate Services Department  
385 North Arrowhead Avenue, Third Floor  
San Bernardino, CA 92415-0180

B. If LANDLORD intends to transfer its ownership interest (whether controlling or non-controlling) in the Premises to a third party, LANDLORD shall notify COUNTY of such transfer at least fifteen (15) COUNTY working days prior to completion of such transfer. In the event of a transfer of controlling interest in the Premises, LANDLORD and the new owner of the Premises shall provide COUNTY with documentation evidencing the of completion of said transfer; in which case, the new owner, as the successor landlord, and COUNTY shall enter into a written amendment to reflect the new owner as the successor landlord under this Lease. In addition, the new owner, as the successor landlord, shall, within five (5) days of acquiring the Premises, provide COUNTY with documentation evidencing that it has obtained insurance in compliance with Paragraph 17, INDEMNIFICATION and Paragraph 18, INSURANCE REQUIREMENTS AND SPECIFICATIONS. The COUNTY's RESD Director shall have the authority on behalf of COUNTY to execute a COUNTY standard amendment to this Lease with each new owner solely for the purposes of reflecting the new owner as the successor landlord and updating its notice address under this Lease. The new owner, as the successor landlord, acknowledges and agrees its execution of such COUNTY standard amendment is a pre-requisite for Rents under this Lease to be paid to the new owner as the successor landlord

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

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

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

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

29. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this Lease or any other portion thereof.

30. **TIME OF ESSENCE:** Time is of the essence of each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specific time for performance, performance may be made within a reasonable time.



31. **QUIET ENJOYMENT:** Subject to the provisions of this Lease and conditioned upon performance of all the provisions to be performed by COUNTY hereunder, LANDLORD shall secure to COUNTY during the Lease term the quiet and peaceful possession of the Premises and all right and privilege appertaining thereto.
32. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.
33. **CONSENT:** Whenever consent or approval of either party is required that party shall not unreasonably withhold, condition or delay such consent or approval.
34. **EXHIBITS:** All exhibits referred to are attached to this Lease and incorporated by reference.
35. **LAW:** This Lease shall be construed and interpreted in accordance with the laws of the State of California.
36. **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.
37. **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 16, INDEMNIFICATION, Paragraph 46, HAZARDOUS SUBSTANCES, and Paragraph 47, PUBLIC RECORDS DISCLOSURE; CONFIDENTIALITY.
38. **COUNTY'S RIGHT TO TERMINATE LEASE:** Either party shall have the right to terminate this Lease at any time and for any reason whenever in its sole discretion, determines it would be in the Parties best interests to terminate this Lease. The Director of the Real Estate Services Department (RESA) shall give LANDLORD notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. In the event COUNTY terminates this Lease pursuant to this Paragraph 38, no termination fees, or other costs shall be due or payable to LANDLORD for exercising COUNTY's termination right, except that LANDLORD shall have the right to receive from COUNTY the rent which will have been earned under the Lease through the effective termination date.
39. **LANDLORD'S IMPROVEMENTS:** There are no improvements being constructed by LANDLORD as of the Commencement Date of this Lease. In the event that COUNTY desires to make improvements in the Premises subsequent to the execution of this Lease and the parties agree that the LANDLORD shall contract for the construction of any portion of any future improvement, LANDLORD shall comply with the 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 "F", Prevailing Wage Requirements, attached hereto and incorporated herein by reference. LANDLORD 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. The LANDLORD's indemnity obligations shall survive the COUNTY's tenancy and shall not be limited by the existence or availability of insurance.
40. **CAPTIONS, TABLE OF CONTENTS AND COVER PAGE:** The paragraph captions, table of contents and the cover page of this Lease shall have no effect on its interpretations.
41. **SURVIVAL:** The obligations of the parties that, by their nature, continue beyond the term of this Lease, will survive the termination of this Lease.
42. **FORMER COUNTY OFFICIALS:** LANDLORD agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent LANDLORD. 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 "C", List of Former County Officials** attached hereto and incorporated herein by reference)

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

44. **ESTOPPEL CERTIFICATES:** Each party within thirty (30) days after notice from the other party, shall execute and deliver to other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of minimum monthly rent, the dates to which the rent has been paid in advance, the amount of any security deposit or prepaid rent, and that there are no uncured defaults or specifying in reasonable detail the nature of any uncured default claimed. Failure to deliver the certificate within thirty (30) days shall be conclusive upon the party requesting the certificate and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate, and that there are no uncured defaults on the part of the party requesting the certificate. The estoppel certificate shall be in the form as shown in **Exhibit "D", Estoppel Certificate** attached hereto and incorporated herein by reference.

45. **SUBORDINATION AND ATTORNMENT:**

A. As a condition precedent to the COUNTY's obligations under this Lease, LANDLORD shall obtain from each holder of a lien or encumbrance on the Premises which is senior to this Lease either an executed recordable subordination agreement which subordinates such lien or encumbrance to this Lease, or a non-disturbance agreement which contains terms at least as favorable to the COUNTY as those set forth in paragraph 2 ("Nondisturbance") of **Exhibit "E", Subordination, Nondisturbance and Attornment Agreement**, attached hereto and incorporated herein by reference.

B. If, after execution of this Lease, a subsequent lienor requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance if, and only if, LANDLORD first obtains from the subsequent lienor an executed subordination, nondisturbance and attornment agreement, the terms of which are at least as favorable to the County as those set forth in **Exhibit "E", Subordination, Nondisturbance and Attornment Agreement** hereto. If the COUNTY's County Counsel approves the form of a subordination, nondisturbance and attornment agreement pursuant to this subparagraph, and if such agreement is executed by the subsequent lienor, then the Director of the COUNTY's Real Estate Services Department is authorized on behalf of the COUNTY to, and shall, execute such agreement, and shall further execute any other documents required by the lender to accomplish the purposes of this paragraph, provided such other documents are consistent with the terms of the subordination, nondisturbance and attornment agreement and this Lease.

46. **HAZARDOUS SUBSTANCES:**

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

B. LANDLORD shall indemnify, protect, defend and hold COUNTY, its agents and employees and the Premises, Building, and Property harmless from and against any and all losses and/or damages, liabilities, judgments, costs, claims, expenses, penalties, including attorneys' and consultant's fees, arising out of or involving the existence of any Hazardous Substances located in, about or under the Premises, Building, and Property prior to the Commencement Date of this Lease and not directly and solely caused by COUNTY during the term of the Lease or any extensions thereof. Additionally, the issuance of an order by any governmental authority directing the LANDLORD or any of LANDLORD's other tenants or licensees at the Building or the Property to cease and desist any illegal action in connection with a

Hazardous Substance, or to remediate a contaminated condition caused by the LANDLORD or any person acting under LANDLORD's direct control and authority is a breach of this Lease, and LANDLORD shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by COUNTY in connection with or in response to such order. LANDLORD's obligations under this paragraph shall include, but shall not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by COUNTY, and the cost of investigation, removal, remediation, restoration and/or abatement thereof. LANDLORD's obligations under this provision shall survive the expiration or early termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and LANDLORD shall release LANDLORD from its obligations under this Lease with regard to Hazardous Substances unless specifically agreed to by COUNTY in writing.

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

(1) "Hazardous Substance," as used in this Lease, shall mean any product, substance or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, Building, and Property is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, Building, and Property; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of LANDLORD or COUNTY under any applicable statute or common law theory.

(2) "Reportable use" shall mean (i) the installation or use of any above- or below-ground storage tank; (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority and/or (iii) the presence at the Premises, Building, and Property of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises, Building, and Property or neighboring properties.

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

47. **PUBLIC RECORDS DISCLOSURE; CONFIDENTIALITY:**

A. All information received by the COUNTY from the LANDLORD 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"). LANDLORD 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 LANDLORD has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the LANDLORD of the request and shall thereafter disclose the requested information unless the LANDLORD, 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. LANDLORD waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify LANDLORD of any such disclosure request and/or releases any information concerning this Lease received from the LANDLORD or any other source.

B. Confidentiality. LANDLORD acknowledges that the premises will be used by COUNTY for the processing and storage of confidential information protected from unlawful access and disclosure by federal, state and local laws. COUNTY and its officers, agents, volunteers and employees, agree to comply with relevant federal, state and local laws pertaining to the security and protection of such confidential information while on the premises. LANDLORD agrees that it will prevent any unlawful access to or disclosure of the confidential information by LANDLORD, its officers, agents, volunteers, employees and contractors. LANDLORD agrees that all entities with which LANDLORD contracts to provide services on the premises will prevent any unlawful access or disclosure of the confidential information, and that said entities will agree to the same in writing. LANDLORD acknowledges that any unlawful access to or disclosure of confidential information may result in the imposition of civil and criminal sanctions.

48. **CONDITION OF PREMISES:** LANDLORD shall deliver the Premises, Building, and Property to COUNTY clean and free of debris on the Commencement Date and warrants to COUNTY that the plumbing, electrical systems, fire sprinkler system, lighting, air conditioning and heating systems and loading doors, if any, in the Premises, Building, and Property shall be in good operating condition on the Commencement Date.



49. **CONDEMNATION:**

A. If the Premises, Building, and Property or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the COUNTY's parking area or the common areas of the Building and the Property, is taken by condemnation, COUNTY may, at COUNTY's option, to be exercised in writing within thirty (30) days after LANDLORD shall have given COUNTY written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If COUNTY does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises and COUNTY's parking area remaining, except that the rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises and shall be further equitably reduced for the remaining parking area. No reduction of rent shall occur if the condemnation does not apply to any portion of the Premises or affects twenty five percent or less of the County's parking area. COUNTY shall be entitled to receive the following amounts of any award for the taking of all or any part of the Premises and COUNTY's parking area under the power of eminent domain or any payment made under threat of the exercise of such power: (a) one hundred percent (100%) of any amount attributable to any excess of the market value of the Premises and COUNTY's parking area for the remainder of the Lease Term over the present value as of the Termination Date of the rent payable for the remainder of the Lease Term (commonly referred to as the "bonus value" of the Lease); and (b) COUNTY shall have the right to make a separate claim in the Condemnation proceeding for: (i) The taking of the amortized or undepreciated value of any trade fixtures or leasehold improvements owned by COUNTY that COUNTY has the right to remove at the end of the Lease term and that COUNTY elects not to remove; (ii) Reasonable removal and relocation costs for any trade fixtures or leasehold improvements that COUNTY has the right to remove and elects to remove (if Condemnor approves of the removal); (iii) Loss of goodwill; (iv) Relocation costs under Government Code section 7262, the claim for which COUNTY may pursue by separate action independent of this Lease; and (v) Any other amount in addition to the foregoing that the COUNTY is allowed under condemnation law.

B. COUNTY shall have the right to negotiate directly with Condemnor for the recovery of the portion of the Award that COUNTY is entitled to under **subparagraph (A)** of this paragraph. In the event that this Lease is not terminated by reason of such condemnation, LANDLORD shall repair any damage to the Premises, Building, and Property caused by such condemnation authority pursuant to **Paragraph 12, MAINTENANCE**, and **Paragraph 18, DESTRUCTION OF PREMISES**.

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

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

52. **COUNTERPARTS:** This Lease 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. For purposes of this Lease only, the parties shall be entitled to sign and transmit an electronic signature of this Lease (whether by facsimile, PDF or other email transmissions), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to execute and deliver to the other party an original signed Lease upon request. Unless expressly otherwise set forth in an amendment, any subsequent amendments to the Lease shall be executed by original signatures only.

**REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**



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

**END OF LEASE TERMS.**

**COUNTY OF SAN BERNARDINO**

\_\_\_\_\_  
Curt Hagman, Chairman, Board of Supervisors

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

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

LYNNA MONELL, Clerk of the Board of  
Supervisors

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

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

Approved as to Legal Form:

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

By: \_\_\_\_\_  
Agnes Cheng, Deputy County Counsel

Date: 12/16/2020  
110568.13

**TOWN OF APPLE VALLEY**

By: \_\_\_\_\_  
Doug Robertson

Title: Town Manager

Date: 12/17/2020

**EXHIBIT "A" - PREMISES**



## EXHIBIT "C" LIST OF FORMER COUNTY OFFICIALS

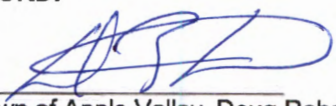
**INSTRUCTIONS:** List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the LANDLORD, the date the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

**OFFICIAL'S NAME:**

**REQUIRED INFORMATION**

LANDLORD hereby certifies that the information it has provided in this Exhibit "C" is true, complete and accurate.

**LANDLORD:**

By:   
Town of Apple Valley, Doug Robertson, Town Manager

Date: 12/17/2020



## EXHIBIT "D" - ESTOPPEL CERTIFICATE

Date:

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_, \_\_\_\_\_  
(address) (city)

The undersigned, on behalf of the County of San Bernardino ("County"), hereby certifies, to the best of his or her knowledge as of the date of this Estoppel Certificate ("Certificate"), to Lender the following:

1. County, as tenant, leases certain Premises, comprising \_\_\_\_\_ square feet at \_\_\_\_\_ from Landlord, as landlord pursuant to Lease Agreement, Contract No. \_\_\_\_\_ dated \_\_\_\_\_ ("Lease"). The Lease has been amended as follows: \_\_\_\_\_.

2. The Lease Term commenced on \_\_\_\_\_, 20\_\_\_\_, and is scheduled to expire \_\_\_\_\_, 20\_\_\_\_. County has no options to extend the Lease Term, except as follows: \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_-year options.

3. The current Monthly Rent for the Premises is \$\_\_\_\_\_.\_\_\_\_\_, payable monthly in arrears, and has been paid through \_\_\_\_\_.

4. County has not provided a security deposit to Landlord.

5. County is current not in default beyond any applicable notice and cure period under the terms of the Lease.

By: \_\_\_\_\_  
Director  
Real Estate Services Department

**EXHIBIT "E"**

RECORDED AT REQUEST OF  
AND TO BE RETURNED TO:

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Attn: \_\_\_\_\_

## **SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is entered into by and between the County of San Bernardino ("Tenant"), \_\_\_\_\_ ("Landlord") and,

(Name and type of entity)

## Recitals

A. Landlord, as landlord, and Tenant, as tenant, have entered into a certain Lease Agreement, County Contract No. \_\_\_\_-\_\_\_\_ dated on \_\_\_\_\_, 20\_\_ ("Lease") for the lease of certain premises, comprising approximately \_\_\_\_\_ square feet ("Premises") located at the building with an address of \_\_\_\_\_, \_\_\_\_\_, California \_\_\_\_\_ (zip code), which is situated on certain real property located in the County of San Bernardino, State of California, commonly known as APN \_\_\_\_\_ ("Property").

B. Landlord represents to County that it has executed and delivered or is about to execute and deliver to Lender a certain promissory note dated substantially contemporaneously herewith ("Note"), in the original principal sum of \$\_\_\_\_\_. The obligations evidenced by the Note shall be referred to as the "Loan". Landlord further represents to COUNTY that the Note is executed pursuant to the terms of a certain Construction Loan Agreement dated substantially contemporaneously herewith (the "Loan Agreement") between Lender and Landlord.

C. Landlord represents to County that has executed and delivered or is about to execute and deliver to Lender a certain Deed of Trust and Assignment of Rents dated substantially contemporaneously herewith ("Deed of Trust"), encumbering the Property to secure the Loan.

D. Landlord represents that it is a condition precedent to the Loan that the Deed of Trust shall remain at all times a lien upon the Property, prior and superior to the Lease.

E. Landlord represents that it is a condition precedent to the Loan that County will subordinate and subject the Lease, together with all rights and privileges of County thereunder, to the lien of the Deed of Trust.

## Covenants

In consideration of the recitals set forth above, which are incorporated herein, and the covenants and agreements contained herein, the parties agree as follows:

1. Subordination: Tenant hereby subordinates all of Tenant's right, title, interest in the leasehold estate of the Premises to the Deed of Trust, subject to the terms of this Agreement.

2. Nondisturbance: Tenant's peaceful and quiet possession of the Premises shall not be disturbed and Tenant's rights and privileges under the Lease, including but not limited to the provisions of the Lease set forth under the headings "TERM," "OPTION TO EXPAND," "OPTION TO EXTEND TERM," "INSURANCE REQUIREMENTS AND SPECIFICATIONS," "DESTRUCTION OF PREMISES," "COUNTY'S EARLY TERMINATION RIGHT," and "CONDEMNATION," shall not be altered or diminished by Lender's foreclosure, acceptance of a deed in lieu of foreclosure, or any other exercise of Lender's rights or remedies under the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans. In the event of any conflict among the Lease and the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans, the Lease shall prevail. Tenant shall not be named or joined in any foreclosure, trustee's sale, or other proceeding or action to enforce the Deed of Trust, the Note, the Loan Agreement, or any other loan document, unless such joinder shall be legally required to perfect such foreclosure, trustee's sale, or other proceeding or action.

3. Attornment: If the Deed of Trust is foreclosed for any reason, or Landlord deeds the Property to Lender in lieu of foreclosure, the Lease shall not be extinguished and Tenant shall be bound to Lender under all the terms, covenants, and conditions of the Lease for the balance of the Lease Term, including any options to extend thereunder, with the same force and effect as if Lender was the landlord under the Lease. Tenant shall attorn to Lender as Tenant's landlord, and agrees to recognize Lender as the new landlord and promises to pay the Monthly Rent to Lender as landlord. Lender shall assume the interest of Landlord and fulfill all of Landlord's obligations thereunder. This attornment shall be effective and self-operative, without the execution of any other instruments on the part of any of the parties to this Agreement, immediately upon Lender succeeding to the interest of Landlord under the Lease.

4. Disbursements: Lender is under no obligation or duty to monitor the application of the proceeds of the Loan. Any application of such proceeds for purposes other than those provided for in the Loan Agreement or any of the other Loan Documents shall not defeat the effect of this Agreement in whole or in part.

5. Acknowledgment of Assignment: Tenant acknowledges the assignment of Landlord's rights to collect Monthly Rent due under the Lease to Lender pursuant to a certain Assignment of Leases (the "Assignment"). Tenant shall, without duty of inquiry or investigation, pay Monthly Rent to Lender upon receipt of written notice from Lender that Lender has revoked the waiver of Landlord's right to collect the Monthly Rent from the Premises pursuant to the Assignment, notwithstanding the fact that Lender has not foreclosed the Deed of Trust, nor succeeded to the interest of Landlord under the Lease. Landlord hereby releases Tenant and Tenant shall not be liable to Landlord for any payments made to Lender hereunder.

6. Assignment or Sublease: Tenant may assign the Lease or sublease the Premises or any portion thereof in accordance with the Lease, but no such assignment, transfer, or subletting shall relieve Tenant of any of its obligations under the Lease.

7. 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, delivered by a reputable overnight courier service, 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 addresses set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt if such notice is personally delivered; (ii) the date of delivery if such notice is delivered by a reputable overnight courier service; or (iii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested. Any notices received after 5 pm local time on a business shall be deemed delivered on the following business day.



to Tenant: County of San Bernardino  
Real Estate Services Department  
Attn: Director, Real Estate Services Department  
385 North Arrowhead Avenue, Third Floor  
San Bernardino, California 92415-0180

to Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

to Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Notwithstanding the foregoing, any notice under or pertaining to this Agreement, given and effective in accordance with applicable law, shall be effective for purposes hereof. Any party may change the address at which it is to receive notices hereunder to another business address within the United States (but not a post office box or similar mail receptacle) by giving notice of such change of address in accordance herewith.

8. Landlord's Default: Tenant hereby agrees that Tenant will notify Lender in writing, in accordance with Paragraph 7, Notices, above, of any default by Landlord under the terms of the Lease, provided that Lender shall have the same time period as Landlord is given under the Lease to remedy a remedy.

9. Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors, assigns, heirs, executors, and administrators.

10 Attorneys' Fees and Costs: If any legal action is instituted to enforce or declare a party's rights hereunder, each party, including the prevailing party, must bear its own attorneys' fees and costs. This paragraph shall not apply to those attorneys' fees and costs directly arising from any third party legal action against COUNTY, including such attorneys' fees and costs payable under Paragraph 19, INDEMNIFICATION, Paragraph 13, HAZARDOUS SUBSTANCES, Paragraph 31 PUBLIC RECORDS DISCLOSURE, and Paragraph 32, CONFIDENTIALITY of the Lease.

11. Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Venue: The parties acknowledge and agree that the Agreement was entered into and intended to be performed in the County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to the 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 the 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.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

**Tenant:**

COUNTY OF SAN BERNARDINO:

\_\_\_\_\_  
Board of Supervisors

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

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

\_\_\_\_\_, Clerk of the  
Board of Supervisors

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

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

Approved as to Legal Form:  
MICHELLE D. BLAKEMORE, County Counsel  
County of San Bernardino, California

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

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

**Lender:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Name)

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

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

**Landlord:**

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

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

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

**EXHIBIT "F"**  
**PREVAILING WAGE REQUIREMENTS**

- A. All or a portion of the Landlord 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 Landlord and Landlord's contractors and/or subcontractors and the term "Landlord Improvements" shall include the improvements made by Landlord pursuant to the Lease**

**1. Determination of Prevailing Rates:**

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Landlord Improvements is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Landlord Improvements, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the Landlord 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 Landlord 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 Landlord 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 Landlord 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 Landlord Improvements. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California



Labor Code sections 1771, 1811, and 1815 for any Landlord Improvements performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
  - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to 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 Landlord 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 Landlord Improvements or upon any part of the Landlord 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 Landlord 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 the address on file with either 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 a un unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid all 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 Landlord 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 Landlord Improvements. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.
- 2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**
- a. Submit Contract Award Information (DAS-140):
    - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
    - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—it is not a request for the dispatch of an apprentice.
    - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
    - iv. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
    - v. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
  - b. Employ Registered Apprentices
    - i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
    - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
    - iii. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.

- iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
  - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
  - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
  - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

### **3. Exemptions to Apprenticeship Requirements:**

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
- i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
  - ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
  - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
  - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
  - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

### **4. Exemption from Apprenticeship Ratios:**

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
- i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or

- iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
  - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.
- 5. Contractor's Compliance:**
- 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.