



**Contract Number**

08-104 A-3

**SAP Number**

**Real Estate Services Department**

<b>Department Contract Representative</b>	Terry W. Thompson, Director
<b>Telephone Number</b>	(909) 387-5252
<b>Contractor</b>	Fairway Business Centre on Milliken, LLC, a California limited liability company
<b>Contractor Representative</b>	Kyle Desmet, Asset Manager
<b>Telephone Number</b>	949-644-1860
<b>Contract Term</b>	6/1/2008-11/30/2026
<b>Original Contract Amount</b>	\$ 6,159,120.00
<b>Amendment Amount</b>	\$ 3,995,584.56
<b>Total Contract Amount</b>	\$ 10,154,704.56
<b>Cost Center</b>	
<b>GRC/PROJ/JOB No.</b>	57002384

**IT IS HEREBY AGREED AS FOLLOWS:**

WHEREAS, Fairway Business Centre On Milliken ("Original Landlord"), as landlord, and San Bernardino County ("COUNTY"), as tenant, were the original parties to Lease Agreement, Contract No. 08-104 dated March 4, 2008("Initial Lease") wherein the Original Landlord leased certain Premises, are more specifically defined in the Lease, located at 9445 Fairway View Place, Rancho Cucamonga, CA 91730 to COUNTY for a term that expired on May 31, 2014; and,

WHEREAS, the Original Landlord and the COUNTY entered into the First Amendment dated June 17, 2014 ("First Amendment") wherein the parties extended the term of the Initial Lease through May 31, 2018 and amended certain other terms of the Initial Lease, as set forth therein; and

WHEREAS, in the Second Amendment dated November 17, 2015 ("Second Amendment"), the landlord entity changed from the Original Landlord to its affiliate, Fairway Business Centre ("Successor Landlord"), and the lease was amended to extend the term through May 31, 2020 and to modify certain other terms, as set forth therein; and

WHEREAS, the Successor Landlord represents and warrants to the COUNTY that the landlord entity in the lease should be corrected to the Original Landlord given that the Original Landlord is the fee owner of the real property on which the Premises is situated, and;

WHEREAS, the Original Landlord, hereinafter "LANDLORD" and COUNTY now desire to amend the Lease (which collectively means the Initial Lease, the First Amendment and the Second Amendment) to correct

the name of the landlord entity, reflect a -18-month holdover period from June 1, 2020 through November 30, 2021, with LANDLORD's consent, extend the term of the Lease for five (5) years from December 1, 2021 through November 30, 2026, due to the COUNTY's exercise of an existing five-year extension option, correct the square footage of the premises from approximately 24,438 square feet to 24,772 square feet, increasing the premises by approximately 334 square feet, provide for certain turnkey tenant improvements to be performed by LANDLORD with the costs to be reimbursed by the COUNTY in one lump sum, adjust the rent schedule, and amend other terms as more specifically set forth in this amendment ("Third Amendment"), and;

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference and made a part hereof, and the mutual covenants and conditions contained in this Third Amendment, the parties hereto agree the Lease is amended as follows:

1. Pursuant to **Paragraph 8, HOLDING OVER**, COUNTY shall, with LANDLORD's express consent granted herein, occupy the Premises on a holdover tenancy for a period from June 1, 2020 to November 30, 2021 at a rental amount of \$50,098.00 per month.

2. Effective as of December 1, 2021, DELETE in its entirety the existing Paragraph 1., PARTIES, and SUBSTITUTE therefore the following as a new Paragraph 1., PARTIES, which shall read as follows:

1. **PARTIES:** The Lease is made between Fairway Business Centre on Milliken, LLC ("LANDLORD"), as landlord, and the County of San Bernardino ("COUNTY"), as tenant, who agree on the terms and conditions of the Lease. LANDLORD hereby represents and warrants to COUNTY that LANDLORD is the legal owner with sole fee title to the Premises (as defined in Paragraph 2 of the Lease) and the real property on which it is situated, and LANDLORD 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 and LANDLORD shall indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its employees, contractors, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of said breach. LANDLORD's indemnity shall survive the expiration or earlier termination of the Lease. LANDLORD hereby acknowledges and agrees that there are no outstanding amounts due to or claims held by LANDLORD under this Lease as of the date this Third Amendment is mutually executed."

3. Effective as of December 1, 2021, to correct the square footage of the Premises from 24,438 square feet to 24,772 square feet solely due to re-measurement of the existing Premises, DELETE in its entirety the existing **Paragraph 2, PREMISES LEASED**, and the existing Exhibit "A-3" and SUBSTITUTE therefore the following as a new **Paragraph 2, PREMISES LEASED** and a new Exhibit "A-3":

2. **PREMISES LEASED:** LANDLORD leases to COUNTY and COUNTY leases from LANDLORD approximately 24,772 square feet of building, real property, and other improvements with 98 unreserved parking spaces, including four (4) handicapped parking, located at 9445 Fairway View Place, Rancho Cucamonga, CA ("Premises"), as described in Exhibit "A-3" attached hereto and incorporated herein by reference. The Parties acknowledge and agree that the Premises shall not be re-measured during the term of the Lease nor during any extensions thereof.

4. Effective as of December 1, 2021, pursuant to COUNTY's exercise of the first of two existing five-year option to extend the term of the Lease in **Paragraph 6, OPTION TO EXTEND TERM**, DELETE in its entirety the existing **Paragraph 3, TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 3, TERM**:

3. **TERM:** The term of the Lease shall be extended for five (5) years, commencing on December 1, 2021 and expiring on November 30, 2026 (the "Third Extended Term").

5. Effective as of December 1, 2021, DELETE in its entirety the existing **Paragraph 4, RENT**, and SUBSTITUTE therefore the following as a new **Paragraph 4, RENT**:

4. **RENT:**

A. COUNTY shall pay to LANDLORD the Rent per month, as more specifically set forth below, in arrears on or before the last day of each calendar month, and continuing during the remainder of the Third Extended Term, but subject to any deductions, offsets, and adjustments that are permitted under the Lease. The Rent for the Premises during any partial calendar month during the term of the Lease shall be pro-rated based on the actual number of days the Premises is occupied by COUNTY in said month. LANDLORD agrees to accept all payments of the Rent for the Premises and other payments due from COUNTY to LANDLORD under the Lease via electronic payments directly deposited to LANDLORD's designed bank account. LANDLORD has completed any and all COUNTY standard forms and provided all information required by COUNTY to process such electronic payments.

Lease Year	Monthly Rent
December 1, 2021 through November 30, 2022	\$50,097.90
December 1, 2022 through November 30, 2023	\$51,075.42
December 1, 2023 through November 30, 2024	\$51,075.42
December 1, 2024 through November 30, 2025	\$52,297.32
December 1, 2025 through November 30, 2026	\$52,297.32

B. The parties hereby acknowledge and agree that, notwithstanding the correction of the square footage of the Premises as set forth in this Third Amendment, the rent for the Premises during the Third Extended Term shall be calculated based on the original 24,438 square feet and not the corrected 24,772 square feet without any effect on the remainder of the Lease. During any extensions of the term of the Lease, rents will be calculated based on the corrected 24,772 square feet.

C. Rent 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.

6. Effective as of December 1, 2021, DELETE in its entirety **Paragraph 8. HOLDOVER** and SUBSTITUTE therefore the following as a new **Paragraph 8. HOLDOVER**, which shall read as follows:

8. **HOLDOVER**: 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, provided that no amortized improvement payments, if any were due at the time of expiration of the Lease, shall be payable to LANDLORD during any holdover. 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.

7. Effective as of December 1, 2021, DELETE in its entirety **Paragraph 25. NOTICES** and SUBSTITUTE therefore the following as a new **Paragraph 25. NOTICES**, which shall read as follows:

25. **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 United States, postage prepaid, first-class mail,

certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed delivered and effective upon the earlier of: (i) the date of actual receipt if such notice is served personally, provided if such date is not a business day, said notice shall be effective as of the immediately following business day; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is delivered by reputable overnight courier service or sent by postage pre-paid, United States first-class mail, certified or registered, return receipt requested provided that in all of the foregoing instances, any notices received after 5 pm local time on a business day shall be deemed delivered on the immediately following business day.

LANDLORD: Fairway Business Centre on Milliken, LLC, a California  
limited liability company  
3857 Birch Street, #905  
Newport Beach, CA 92660

COUNTY: San Bernardino County  
Real Estate Services Department  
385 N. Arrowhead Avenue  
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 shall provide COUNTY with evidence of completion of transfer, including but not limited to a grant deed and an assignment of this Lease; in which case, the new property owner and COUNTY shall reflect by written amendment the new property owner as the successor landlord. In addition, the new property owner, as the successor landlord, shall, within five (5) days of acquiring the subject real property and becoming the successor landlord, provide COUNTY with evidence that it has obtained insurance in compliance with **Paragraph 17, HOLD HARMLESS** 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 any successor landlord solely for the purposes of reflecting the successor landlord as the LANDLORD under the Lease and to update the LANDLORD's notice address. The successor landlord's execution of such COUNTY standard amendment and submission of a valid W-9 are pre-requisites for Rents under this Lease to be paid to the successor landlord

8. Effective as of December 1, 2021, DELETE in its entirety **Paragraph 41. LANDLORD'S IMPROVEMENTS** and SUBSTITUTE therefore the following as a new **Paragraph 41. LANDLORD'S IMPROVEMENTS**, which shall read as follows, and ADD a new Exhibit "A-4," Exhibit "A-5", and Exhibit "F", which are each attached hereto and incorporated herein by reference:

41. LANDLORD shall complete certain turnkey improvements at the Premises in accordance with the Exhibit "A-4", Improvement Work Letter. Exhibit "A-5" Improvement Specifications, and Exhibit "F", Prevailing Wage Requirements, each of which are attached hereto and incorporated herein by reference. Following completion of the improvements, LANDLORD shall, at its sole cost, maintain the Improvements in accordance with Paragraph 13, MAINTENANCE, and COUNTY shall have no obligation to remove the Improvements upon surrender of the Premises at the end of the Term.

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9. All other provision and terms of the Lease shall remain the same and are hereby incorporated by reference. In the event of any conflict between the Lease and this Third Amendment, the terms and conditions of this Third Amendment shall control.

**END OF THIRD AMENDMENT**

**COUNTY: SAN BERNARDINO COUNTY**

**FAIRWAY BUSINESS CENTRE ON MILLIKEN, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY**

►  
Curt Hagman, Chairman, Board of Supervisors

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

Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

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

By ► \_\_\_\_\_

Name \_\_\_\_\_  
(Print or type name of person signing contract)

Title Manager  
(Print or Type)

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

Address 3857 Birch Street, #905  
Newport Beach, CA 92660

**FOR COUNTY USE ONLY**

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

The floor plan shows a complex layout of a building. Key features include:

- Room Numbers and Dimensions:** Numerous rooms are labeled with numbers and dimensions, such as 101 (10.00 x 10.00), 102 (10.00 x 10.00), 103 (10.00 x 10.00), 104 (10.00 x 10.00), 105 (10.00 x 10.00), 106 (10.00 x 10.00), 107 (10.00 x 10.00), 108 (10.00 x 10.00), 109 (10.00 x 10.00), 110 (10.00 x 10.00), 111 (10.00 x 10.00), 112 (10.00 x 10.00), 113 (10.00 x 10.00), 114 (10.00 x 10.00), 115 (10.00 x 10.00), 116 (10.00 x 10.00), 117 (10.00 x 10.00), 118 (10.00 x 10.00), 119 (10.00 x 10.00), 120 (10.00 x 10.00), 121 (10.00 x 10.00), 122 (10.00 x 10.00), 123 (10.00 x 10.00), 124 (10.00 x 10.00), 125 (10.00 x 10.00), 126 (10.00 x 10.00), 127 (10.00 x 10.00), 128 (10.00 x 10.00), 129 (10.00 x 10.00), 130 (10.00 x 10.00), 131 (10.00 x 10.00), 132 (10.00 x 10.00), 133 (10.00 x 10.00), 134 (10.00 x 10.00), 135 (10.00 x 10.00), 136 (10.00 x 10.00), 137 (10.00 x 10.00), 138 (10.00 x 10.00), 139 (10.00 x 10.00), 140 (10.00 x 10.00), 141 (10.00 x 10.00), 142 (10.00 x 10.00), 143 (10.00 x 10.00), 144 (10.00 x 10.00), 145 (10.00 x 10.00), 146 (10.00 x 10.00), 147 (10.00 x 10.00), 148 (10.00 x 10.00), 149 (10.00 x 10.00), 150 (10.00 x 10.00), 151 (10.00 x 10.00), 152 (10.00 x 10.00), 153 (10.00 x 10.00), 154 (10.00 x 10.00), 155 (10.00 x 10.00), 156 (10.00 x 10.00), 157 (10.00 x 10.00), 158 (10.00 x 10.00), 159 (10.00 x 10.00), 160 (10.00 x 10.00), 161 (10.00 x 10.00), 162 (10.00 x 10.00), 163 (10.00 x 10.00), 164 (10.00 x 10.00), 165 (10.00 x 10.00), 166 (10.00 x 10.00), 167 (10.00 x 10.00), 168 (10.00 x 10.00), 169 (10.00 x 10.00), 170 (10.00 x 10.00), 171 (10.00 x 10.00), 172 (10.00 x 10.00), 173 (10.00 x 10.00), 174 (10.00 x 10.00), 175 (10.00 x 10.00), 176 (10.00 x 10.00), 177 (10.00 x 10.00), 178 (10.00 x 10.00), 179 (10.00 x 10.00), 180 (10.00 x 10.00), 181 (10.00 x 10.00), 182 (10.00 x 10.00), 183 (10.00 x 10.00), 184 (10.00 x 10.00), 185 (10.00 x 10.00), 186 (10.00 x 10.00), 187 (10.00 x 10.00), 188 (10.00 x 10.00), 189 (10.00 x 10.00), 190 (10.00 x 10.00), 191 (10.00 x 10.00), 192 (10.00 x 10.00), 193 (10.00 x 10.00), 194 (10.00 x 10.00), 195 (10.00 x 10.00), 196 (10.00 x 10.00), 197 (10.00 x 10.00), 198 (10.00 x 10.00), 199 (10.00 x 10.00), 200 (10.00 x 10.00), 201 (10.00 x 10.00), 202 (10.00 x 10.00), 203 (10.00 x 10.00), 204 (10.00 x 10.00), 205 (10.00 x 10.00), 206 (10.00 x 10.00), 207 (10.00 x 10.00), 208 (10.00 x 10.00), 209 (10.00 x 10.00), 210 (10.00 x 10.00), 211 (10.00 x 10.00), 212 (10.00 x 10.00), 213 (10.00 x 10.00), 214 (10.00 x 10.00), 215 (10.00 x 10.00), 216 (10.00 x 10.00), 217 (10.00 x 10.00), 218 (10.00 x 10.00), 219 (10.00 x 10.00), 220 (10.00 x 10.00), 221 (10.00 x 10.00), 222 (10.00 x 10.00), 223 (10.00 x 10.00), 224 (10.00 x 10.00), 225 (10.00 x 10.00), 226 (10.00 x 10.00), 227 (10.00 x 10.00), 228 (10.00 x 10.00), 229 (10.00 x 10.00), 230 (10.00 x 10.00), 231 (10.00 x 10.00), 232 (10.00 x 10.00), 233 (10.00 x 10.00), 234 (10.00 x 10.00), 235 (10.00 x 10.00), 236 (10.00 x 10.00), 237 (10.00 x 10.00), 238 (10.00 x 10.00), 239 (10.00 x 10.00), 240 (10.00 x 10.00), 241 (10.00 x 10.00), 242 (10.00 x 10.00), 243 (10.00 x 10.00), 244 (10.00 x 10.00), 245 (10.00 x 10.00), 246 (10.00 x 10.00), 247 (10.00 x 10.00), 248 (10.00 x 10.00), 249 (10.00 x 10.00), 250 (10.00 x 10.00), 251 (10.00 x 10.00), 252 (10.00 x 10.00), 253 (10.00 x 10.00), 254 (10.00 x 10.00), 255 (10.00 x 10.00), 256 (10.00 x 10.00), 257 (10.00 x 10.00), 258 (10.00 x 10.00), 259 (10.00 x 10.00), 260 (10.00 x 10.00), 261 (10.00 x 10.00), 262 (10.00 x 10.00), 263 (10.00 x 10.00), 264 (10.00 x 10.00), 265 (10.00 x 10.00), 266 (10.00 x 10.00), 267 (10.00 x 10.00), 268 (10.00 x 10.00), 269 (10.00 x 10.00), 270 (10.00 x 10.00), 271 (10.00 x 10.00), 272 (10.00 x 10.00), 273 (10.00 x 10.00), 274 (10.00 x 10.00), 275 (10.00 x 10.00), 276 (10.00 x 10.00), 277 (10.00 x 10.00), 278 (10.00 x 10.00), 279 (10.00 x 10.00), 280 (10.00 x 10.00), 281 (10.00 x 10.00), 282 (10.00 x 10.00), 283 (10.00 x 10.00), 284 (10.00 x 10.00), 285 (10.00 x 10.00), 286 (10.00 x 10.00), 287 (10.00 x 10.00), 288 (10.00 x 10.00), 289 (10.00 x 10.00), 290 (10.00 x 10.00), 291 (10.00 x 10.00), 292 (10.00 x 10.00), 293 (10.00 x 10.00), 294 (10.00 x 10.00), 295 (10.00 x 10.00), 296 (10.00 x 10.00), 297 (10.00 x 10.00), 298 (10.00 x 10.00), 299 (10.00 x 10.00), 300 (10.00 x 10.00), 301 (10.00 x 10.00), 302 (10.00 x 10.00), 303 (10.00 x 10.00), 304 (10.00 x 10.00), 305 (10.00 x 10.00), 306 (10.00 x 10.00), 307 (10.00 x 10.00), 308 (10.00 x 10.00), 309 (10.00 x 10.00), 310 (10.00 x 10.00), 311 (10.00 x 10.00), 312 (10.00 x 10.00), 313 (10.00 x 10.00), 314 (10.00 x 10.00), 315 (10.00 x 10.00), 316 (10.00 x 10.00), 317 (10.00 x 10.00), 318 (10.00 x 10.00), 319 (10.00 x 10.00), 320 (10.00 x 10.00), 321

**EXHIBIT "A-4"**  
**IMPROVEMENT WORK LETTER**

All terms not defined herein have the same meaning as set forth in the Lease.

1. LANDLORD shall, at its sole cost and expense, but subject to reimbursement as provided in Paragraph \_\_\_\_, construct certain improvements ("Improvements") at the Premises and, if applicable, at the building and the property on which the Premises is situated in accordance with the plans and specifications set forth on Exhibit A-5, attached hereto and incorporated herein by reference (the "Improvement Specifications"), Exhibit "F", Prevailing Wage Requirements, attached hereto and incorporated herein by reference, this Improvement Work Letter, and the Lease, including but not limited to Paragraph 11, HEALTH, SAFETY & FIRE CODE REQUIREMENTS.

2. LANDLORD shall, at its sole cost and expense, furnish all of the design, material, labor and equipment required to construct the improvements and shall apply for and obtain, all permits, licenses, certificates, and approvals necessary for the construction of the Improvements. LANDLORD shall provide all site plans for the Premises, the building, and the property on which the premises is situated, including building elevations and exterior finishes, space design plans, construction plans, and a complete set of the bid drawings and specifications, as applicable, for the Improvements. The bid drawings shall be provided to COUNTY on reproducible transparent vellum with the architect's/engineer's professional stamp and signature and on a compact disc-recordable (CD-R) in an Adobe Acrobat file format (.pdf file extension) and on AutoCAD software (.dwg file extension). The plans and specifications for the Improvements shall be submitted as a reproducible hardcopy and copied on a CD-R with formats compatible with Microsoft Word.

3. LANDLORD shall not modify the Improvements without obtaining the prior written consent of the COUNTY's RESD representative, as the authorized COUNTY agent for the Improvements. In the event LANDLORD makes any modifications to the Improvements without COUNTY's prior written consent, COUNTY shall have no liability for any costs incurred and LANDLORD shall be solely responsible for said costs and for any costs incurred to return the affected portion of the Improvements to its original specifications. During construction of the Improvements, if COUNTY's authorized COUNTY RESD representative proposes any modifications to or additional work that are not set forth in Exhibit "A-5", Improvement Specifications, LANDLORD shall, prior to commencing any proposed work, promptly provide pricing and schedule impacts to COUNTY for the proposed work. If the parties mutually agree to proceed with the proposed modification or additional work to the Improvements ("COUNTY Change Order Work"), the authorized representatives of the Parties shall execute a change order document ("COUNTY Change Order") setting forth the agreed specifications, costs, and schedule impact, if any, for the COUNTY Change Order Work and LANDLORD shall promptly complete said COUNTY Change Order Work. In addition to the cost of the COUNTY Change Order Work, COUNTY shall pay LANDLORD an administrative fee calculated at ten percent (10%) of the cost of the COUNTY Change Order Work. Upon LANDLORD's Substantial Completion of the COUNTY Change Order Work and acceptance of the Improvements for COUNTY's intended use, subject to latent defects and the representations, warranties, and provisions of the Lease. COUNTY shall pay LANDLORD for the COUNTY Change Order Work by separate purchase order (and not by any amortization over the then remaining term of the Lease) within ninety (90) days after COUNTY's receipt of an itemized invoice, proof of payment, lien releases, and any other documents requested by COUNTY for the COUNTY Change Order Work, provided that such payment shall in no event be due prior to the completion of the Improvements in accordance with this Improvement Work Letter. The authorized COUNTY RESD representative may process one or more COUNTY Change Orders in accordance with this Paragraph 3, provided that, notwithstanding anything to the contrary in the Lease or this Improvement Work Letter, the cumulative total of all agreed COUNTY Change Orders shall not exceed \$10,000. Any proposed COUNTY Change Order(s) that cause the cumulative total of all agreed COUNTY Change Orders to exceed \$10,000 shall be processed by a mutually agreed amendment to the Lease that is executed by the parties.

4. In the event LANDLORD contracts for the construction of the Improvements or any portion thereof, LANDLORD shall comply with the provisions of 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, including, but not limited to, those requirements set forth on Exhibit "F", attached hereto and incorporated

herein by reference. LANDLORD shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents, and contractors from any and all claims, actions, losses, damages and/or liability arising out of or related to the obligations set forth in this paragraph. LANDLORD's indemnity obligations shall survive the expiration or earlier termination of the Lease and such obligations shall not be limited by the existence or availability of insurance.

5. Following the mutual execution of the Third Amendment, Landlord shall promptly and diligently proceed with the construction of the Improvements and use reasonable speed, diligence and good faith efforts to Substantially Complete the Improvements on or prior to May 23, 2022 ("Projected Improvement Completion Date"). The Improvements shall be deemed "Substantially Complete" upon the occurrence of all of the following: (i) LANDLORD has substantially completed the Improvements in accordance with this Work Improvement Letter, including but not limited to the Improvement Specifications, subject only to minor punch list items as mutually agreed by the Parties; (ii) COUNTY's receipt of a notice of completion from LANDLORD for the Improvements, and if applicable, the building and the property on which the Premises is situated, issued by all relevant governmental authorities; and (iii) written acceptance by an authorized agent of COUNTY for the Improvement for COUNTY's intended use, subject to latent defects and the representations, warranties, and provisions of the Lease.

6. All punch list items shall be completed by LANDLORD within thirty (30) days after the Improvements are Substantially Completed. In the event that LANDLORD fails to complete said punch list items within said thirty (30) days and the Commencement Date has occurred, for the period of time from the Commencement Date through the time that the punch list items are all completed, COUNTY shall only pay eighty percent (80%) of the Monthly Rent and other sums due under the Lease with the remaining twenty percent (20%) of the Monthly Rent and other sums due to accrue but shall not be paid to LANDLORD until all such punch list items have been completed and agreed by COUNTY. If COUNTY withholds Monthly Rent or other sums due under this paragraph, COUNTY shall not be in default of the Lease and no interest or service charges shall be added to the amounts due LANDLORD upon completion of the punch list items.

7. In order to meet the Projected Improvement Completion Date, the Parties agree on the following schedule for each of the construction milestones.

<u>Milestones</u>	<u>Projected Milestone Completion Date</u>	<u>Critical Milestone Completion Date</u>
Preparation and submittal of Building and site plans to the City of Rancho Cucamonga ("City")	January 21, 2022	February 4, 2022
Approval and permit Issuance of Building and site plans by City agencies	February 28, 2022	March 11, 2022
Improvement plan preparation and submittal to City	March 14, 2022	March 18, 2022
Permit Issuance for Improvements	April 1, 2022	April 15, 2022
Site work and Building Improvements	April 18, 2022	April 22, 2022
Substantial Completion of Improvements	May 23, 2022	May 27, 2022

8. LANDLORD shall provide COUNTY with a written progress report every six (6) days during the construction of the Improvements. The report shall contain the most current information regarding progress, completions, and delays for each milestone of the construction schedule. LANDLORD shall further provide COUNTY with written notice upon LANDLORD's completion of each milestone of the above construction

schedule. COUNTY and its representatives shall be given reasonable notice of and may attend all project meetings, including all design review meetings and construction meetings. At COUNTY's option, Landlord shall meet with COUNTY monthly (or more frequently if reasonably required by COUNTY) to provide detailed progress reports.

9. LANDLORD acknowledges and agrees that its failure to meet any of the above Projected Milestone Completion Date(s) will mean that LANDLORD will not be able to deliver the Improvements Substantially Completed by the Projected Improvement Completion Date. LANDLORD further acknowledges and agrees that late delivery to COUNTY of the Premises with all Improvements Substantially Completed will cause COUNTY to incur costs not contemplated by the Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if LANDLORD fails to meet any of the above Projected Milestone Completion Date(s) or fails to deliver the Premises with all Improvements Substantially Completed by the Projected Improvement Completion Date, LANDLORD agrees to pay COUNTY liquidated damages in the amount of Two Hundred Fifty Dollars and 00/100 Cents (\$250.00) for each day of delay, commencing on the day immediately following the missed Projected Milestone Completion Date and/or the Projected Improvement Completion Date until the day the Projected Improvement Completion Date occurs. The parties agree that this amount for liquidated damages represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late delivery. Acceptance of any amount of liquidated damages shall not constitute a waiver of LANDLORD's default or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY at law or in equity.

10. In the event that LANDLORD fails to meet any of the above Critical Milestone Completion Date(s) or the does not deliver the Premises with all Improvement Substantially completed by May 27, 2022 ("Critical Improvement Completion Date"), in addition to the liquidated damages pursuant to Paragraph 9 above, COUNTY shall have the right, at its sole option, to elect to cancel the Improvements upon written notice to LANDLORD; in which event, neither Party shall have any further obligations to the other with respect to the Improvements and all Improvement Costs incurred by LANDLORD for the Improvements shall be at LANDLORD's sole expense without any reimbursement from COUNTY, provided that LANDLORD shall, at tis sole expense, restore the Premises to the condition it existed immediately prior to LANDLORD's commencement of any work for the Improvements; or (b) complete the Improvements; in which case, COUNTY shall deduct the costs incurred to complete the Improvements from all amounts owed to LANDLORD under this Lease until the COUNTY is fully reimbursed. In the event that COUNTY elects to exercise its rights in this Paragraph 10, COUNTY's election shall be in writing and shall be given after the subject Critical Milestone Completion Date, or Critical Improvement Completion Date has been missed but prior to LANDLORD's completion of the subject milestone by the critical completion dates, and LANDLORD's notification of the same to COUNTY.

11. Notwithstanding Paragraphs 6, 7, and 8 of this Improvement Work Letter, in the event LANDLORD, after exercising all due diligence, is unable to meet any of the above mentioned Projected or Critical Completion Dates or the Projected Milestone Completion Date(s), Critical Milestone Completion Date(s), the Projected Improvement Completion Date, or the Critical Improvement Completion Date due to reasons not solely and directly caused by COUNTY, then the subject Projected Milestone Completion Date(s), the Critical Milestone Completion Dates(s), the Projected Improvement Completion Date, or Critical Improvement Completion Date shall be extended for a period equivalent to the period of such delay, provided that as soon as LANDLORD becomes aware or should in the exercise of due diligence have become aware of any facts or circumstances that COUNTY may or will cause such a delay, LANDLORD shall immediately provide written notice to COUNTY of any such delay or anticipated delay. In the event LANDLORD fails to timely notify COUNTY in writing of any such delay or anticipated delay, the provisions of this Paragraph 11 shall not apply to such delay or anticipated delay and the subject Projected Milestone Completion Date(s), the Critical Milestone Completion Date(s), the Projected Improvement Completion Date, or the Critical Improvement Completion Date shall remain unmodified.

12. Until the Improvements are Substantially Completed and all minor punch list items have been completed, LANDLORD understands and agrees that LANDLORD shall not sell the Property, assign the Lease, or transfer a controlling interest in LANDLORD person or entity or the Premises to a third party ("Transfer") without COUNTY's prior review and written approval. In the event LANDLORD desires to make a Transfer, LANDLORD shall submit a written request to COUNTY along with all relevant documents regarding the proposed Transfer to COUNTY for its review and consent. COUNTY's consent shall be deemed denied in the event COUNTY does

not respond to LANDLORD's Transfer request. In the event COUNTY consents to LANDLORD's Transfer request, the Parties shall execute an amendment to the Lease to confirm the Transfer.

13. LANDLORD and COUNTY hereby acknowledge and agree that the cost for LANDLORD to complete the Improvements in accordance with the Improvement Work Letter shall not exceed Eleven Thousand Seven Hundred Dollars and 00/100 Cents (\$11,700.00). Except due to approved COUNTY Change Orders in accordance with this Improvement Work Letter, any costs incurred by LANDLORD in excess of said amount shall be at the LANDLORD's sole cost and expense without any reimbursement by COUNTY. Following the completion of the Improvements, including the punch list items, COUNTY shall pay LANDLORD for the Improvements by separate purchase order (and not by any amortization over the remainder of the term of the Lease) within ninety (90) days after COUNTY's receipt of an itemized invoice for the cost of the Improvements, proof of payment, lien releases, and any other documents requested by COUNTY.

14. For a period of two (2) years from Improvement Completion Date, the Improvements shall be warranted by Landlord against defects in design, materials and workmanship. Without limiting Landlord's repair obligations to the extent expressly set forth in the Lease, Landlord shall, at Landlord's expense, promptly repair or replace any such defective Improvement evidenced by written notice from County to Landlord within such two (2) year period

15. During the Lease Term, Landlord warrants the Improvements against all latent defects and the failure of the Improvements to be completed in accordance with the plans and specifications. The warranties set forth in Paragraph 14 and Paragraph 15 herein cover all design, labor, materials and equipment required to perform any required repairs or other remediation resulting from the breach of any such warranty. Upon and following Improvement Completion Date, Landlord shall enforce for the benefit of County all such warranties and guarantees relating to the Improvements and all equipment and building systems comprising a portion of the Improvements. Landlord's failure to honor any such warranty made by Landlord shall be a default by Landlord under the Lease.

## **Exhibit "A-5"** **Improvement Specifications**

### **Paint**

All areas within the Reception Match existing paint

### **Flooring**

#### **Carpet -**

Replace existing Carpet tiles with:  
Shaw Wander (style#5T039) Color: Lustrous (37170)  
Install style – Quarter turn with carpet dots or stripes (No Glue) Lift system style of installation - carpet placed beneath workstations Move boxed items to clear areas during installation

#### **Tile -**

Replace Lobby tile, within construction area Existing Lobby tile to remain in place, cleaned  
Existing Break Room tile, to remain in place, cleaned

### **Construction Areas**

Expand existing Reception pony wall to approx. 17' with removal of current existing reception to lobby door  
Replace Reception glass, extend to approx. 17' Reception pony wall to meet ADA height requirement  
Remove existing counter top inside and outside of Reception wall Remove existing mil-work/cabinets in reception area

### **Project Management**

Coordinate, monitor and provide access to various trades





Remove Surfaces

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

**A. All or a portion of the Improvements in the Contract 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.**

**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 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 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 Improvements, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**

Each worker of the Contractor, or any subcontractor, engaged in the Improvements, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to 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 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 Improvements.

**5. Payroll Records:**

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Improvements. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any 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 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 Improvements or upon any part of the Improvements, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Improvements by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
  - i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).

- ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
- iii. This project is subject to compliance monitoring and enforcement by the DIR.
- iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
- v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
  - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
  - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
  - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
- vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:

“A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided

that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

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

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

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

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

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

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

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

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

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

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

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

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

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Labor Code section 1771.4 states the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Improvements shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Improvements. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

### **2. Compliance with [California Labor Code section 1777.5](#) requires all public works contractors to:**

- a. Submit Contract Award Information (DAS-140):
  - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
  - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*

- iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
  - iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
  - v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
  - i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
  - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
  - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
  - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
  - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
  - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
  - i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
  - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

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

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
  - i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.

- ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
- iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
- iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
- v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

**4. Exemption from Apprenticeship Ratios:**

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

**5. Contractor's Compliance:**

- 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.