

**CITY OF SAN DIEGO – DEPARTMENT OF REAL ESTATE AND AIRPORT MANAGEMENT
1200 Third Avenue, Suite 1700, San Diego, CA 92101-4195**

REQUEST FOR PROPOSALS (RFP)

**LEASE FOR THE OPERATIONS AND MAINTENANCE OF THE CANYONSIDE EQUESTRIAN
CENTER LOCATED AT 12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129**

RFP # 2023090523A



KEY DATES

Solicitation Issued:	October 2, 2023
Site Visit:	October 9, 2023 from 10:00 a.m. to 11:00 a.m.
Submit Questions by:	October 16, 2023 at 4:00 p.m. P.S.T.
Submit Proposals by:	November 3, 2023 at 4:00 p.m. P.S.T.
Interviews:	November 14, 2023
Land Use & Housing Committee:	December 7, 2023* with full City Council to follow
Lease Term:	Five (5) Years with the potential for up to two (2) five (5) year options to extend

ALL INQUIRIES REGARDING THIS RFP SHALL BE DIRECTED TO:

CanyonsideRFP@sandiego.gov

* Targeted Committee docketing date, which is subject to change

REQUEST FOR PROPOSALS (RFP) SIGNATURE PAGE

Duration of Offer: By submitting a proposal, the proposer guarantees that the offer is firm for one hundred and eighty (180) calendar days commencing the day following the RFP closing date. Proposer agrees to accept the resulting contract subject to the terms and conditions stated herein. If an award is not made during that period, proposer's offer shall automatically extend for ninety (90) calendar days unless the proposer indicates otherwise in writing thirty (30) calendar days prior to the end of the one hundred and eighty (180) calendar day period to the City's contact e-mail address listed above.

Proposer: _____
Street Address: _____
City: _____
Telephone No.: _____
E-Mail: _____

PROPOSER'S AUTHORIZED REPRESENTATIVE. Proposer is required to sign this document and include it in their proposal submission.

Proposer agrees to furnish and deliver all goods and/or provide all services set forth or otherwise identified above subject to the terms and conditions specified herein.

An original signature below is required. If the RFP is being submitted by more than one entity/individual, each entity/individual must sign and submit this page separately along with the proposal. By signing below, the signer declares under penalty of perjury that signer is authorized to submit and sign this proposal.

Signature of Proposer's Authorized Representative

Print Name

Title

Signature

Date

I. INTRODUCTION

A. PURPOSE AND SCOPE OF SOLICITATION

The City of San Diego (City) is requesting proposals from well qualified organizations or individuals (hereinafter referred to as Proposer(s)) to enter into a lease for the operation and maintenance of the City-owned equestrian center property, commonly known as Canyonside Equestrian Center, located at 12115 Black Mountain Road, San Diego, CA 92129 in the Los Penasquitos Canyon Preserve (Property). All proposals shall provide at a minimum the following primary services (Primary Uses):

- Horse Boarding
- Riding Lessons
- Riding Training Classes

Other services and uses (Ancillary Uses) such as guided trail tours, picnics, barbecues, educational programs and activities and sale of food and beverage may be considered.

It is the City's desire that the Property will operate with no interruption in service. The operation, management and maintenance of the Property shall be in accordance with the terms and conditions of the draft lease (RFP Exhibit B), subject to approval by the San Diego City Council.

B. BACKGROUND

The Property is located in the Los Penasquitos Canyon Preserve. From the early 1900s through the 1920s, the property was used for agricultural purposes, and by the late 1920s, the property was used as a cattle ranch. In 1972, the property became home to the Horseman's Park, a horse boarding, training and rental facility.

In 1970, the City and County of San Diego (County) were awarded a grant from the U.S. Department of Housing and Urban Development to conduct the Land Acquisition Report for Los Penasquitos Regional Park, which recommended the acquisition of 3,400 acres of Los Penasquitos Canyon for park and open space use. In 1974, the County purchased 193 acres in the canyon as part of this effort and by 1982, the City became the principal landowner.

In 1996, the Property was established as an equestrian center and, since that time, additional horse corrals, tack sheds and equestrian rings were incorporated for the Rancho Penasquitos Equestrian Center. From 2001 through 2012 the equestrian center was operated and managed by Canyonside Stables and by Canyonside Ranch from 2017 to 2023.

The equestrian center is currently operating under a license agreement that expires on February 23, 2024. A portion of the Property is currently sublicensed to Horsebound LLC to allow instruction to the public in equine care and maintenance, equine riding lessons, and boarding of equines.

C. PROPERTY DESCRIPTION

The portion of the Property pertaining to this RFP consists of approximately 15.44 acres (APN 315-031-04-00) as depicted in RFP Exhibits A-1 and A-2. The lease will be negotiated to allow for an equestrian use to be consistent with the present zoning, which is AR-1-1, OC-1-1, the Mira Mesa Community Plan, and Los Penasquitos Canyon Preserve (RFP Exhibit G: #1, #2, #3 and #4 respectively for more information on these zoning and land use designations).

Structures of historic significance, including an adobe residence built in 1910 by Charles Mohnike and a hay barn, both registered on the National Register of Historic Places (Historical Recourses Board #419) and three attached sheds north of the barn are part of the original outbuildings. Although the adobe residence is currently occupied by an on-site caretaker, there is no guarantee of long-term availability. The City is seeking funding to restore the structures and may need to perform major rehabilitation of the adobe residence, barn and original outbuildings.

Existing facilities on the Property include City-owned riding rings, horse corrals, pipe panels, pens and box stalls that currently accommodate the boarding of approximately 100 horses, a perimeter fence, tackle sheds and a public restroom. The existing facilities will remain for the new operator to use and will remain City-owned property.

Public hiking, biking and riding trails pass around the perimeter of the Property as part of the Trans-County Trail System. The Selected Proposer, its boarders and clients, have access to the public trails when they are open to the public; however, the park and/or trails are subject to closure during the winter months. Trail rides are allowed outside the Property and are subject to City and County restrictions.

D. TERMS OF LEASE AGREEMENT

The City will be entering into a lease with the Selected Proposer for a five (5) year initial term, with the potential for two (2) additional five (5) year options to extend with the Selected Proposer. The draft lease to be executed with the Selected Proposer has been included as RFP Exhibit B.

The proposed terms and conditions of the draft lease will be implemented substantially as written and may be subject to modification, addition or deletion as determined by the City in its sole discretion. Proposers shall be prepared to accept the terms and conditions stated in the draft lease or request a modification from any of the identified terms or conditions in their proposal to be considered for an exception.

II. INSTRUCTIONS TO PROPOSERS AND SUBMITTAL REQUIREMENTS

A. RESPONSIBILITIES OF PROPOSER

1. Proposer is responsible for carefully examining this RFP and all documents incorporated into this RFP by reference before submitting a proposal.
2. Proposer is responsible for making all investigations and examinations necessary for formulating proposals and operating the Property. Submission of a proposal will be

considered evidence that Proposer has familiarized themselves with the nature and extent of the requirements and have made such investigations and examinations.

3. The Selected Proposer shall be responsible for obtaining all necessary approvals and permits, as required.

B. PROPOSAL CONTENTS

ALL PROPOSALS MUST INCLUDE, AT A MINIMUM, THE INFORMATION SPECIFIED BELOW.

Failure to include the information specified below may be cause for the City to deem the proposal non-responsive and result in its complete rejection. The inclusion of any additional information that will assist the City in the evaluation is encouraged. The adequacy, depth and clarity of the proposal will influence its evaluation as stated in Section III.

The proposal submitted must be complete and evaluation and selection of proposals shall be strictly based on the material contained in the proposals alone. Proposers are advised to submit thorough, complete proposals, since the City reserves the right to make a selection based solely on the information contained in submitted proposals and presented in the interview.

Each proposal **MUST** include the following items:

1. Response Cover Letter. Proposer shall submit a cover letter that summarizes why Proposer believes they should be selected by the City to enter into a lease for the operation and maintenance of the Property.
2. Request for Proposals (RFP) Signature Page. Proposer must submit with its proposal the signed Request for Proposals (RFP) Signature Page(s) located on Page 1.
3. Summary of Experience.
 - a) A resume or summary of each Proposer's direct experience and qualifications to operate equestrian-type facilities and the operations similar to those presented in the proposal and requested in this RFP.
 - b) The names and contact information from a minimum of three (3) references who can provide a referral of Proposer's experience in equestrian-type operations during the past three (3) years.
 - c) For proposals with multiple Proposers, if a Proposer is not going to be involved in the day-to-day operations of the Property, then that Proposer must include qualifications and verification that all persons to be employed in a management capacity at the Property are sufficiently qualified to satisfy the requirements of this RFP.
 - d) If the Proposer has ever been investigated or cited by the San Diego Humane Society, or any other animal welfare agency, for any reason in the past ten (10) years: the nature and outcome of the investigation or citation, as well as any resulting fines, penalties, suspensions or other any other restitution shall be identified. This includes the Proposer as an individual as well as the Proposer as an entity. Failure to disclose this may be grounds for a Proposer to be disqualified from the selection process.

4. Financial Statements. Each Proposer must include in their proposal:
- a) financial statements for the preceding three (3) years that were audited or prepared by a certified public accountant; **or**,
 - b) tax returns for the preceding three (3) years; **or**,
 - c) substantial justification as to why three (3) years of financial statements or tax returns cannot be provided.

Each Proposer shall submit a full and detailed statement of their true financial condition as of January 1, 2023, or as recent as possible if that date is not available. The statement shall include the Proposer's assets, liabilities and net worth, including the availability of operational capital (equity and debt) and its source. If the Proposer plans to use debt capital, then the amount of debt capital proposed for the improvements and operation of the Property, and its source and terms of repayment, must be included.

5. Operating Plan. Each Proposer must submit their proposed Operating Plan, which shall include a detailed plan highlighting how the Property will be operated if the lease is awarded. The Operating Plan must include the following, at a minimum:
- a) A detailed description of the types of uses, activities and services proposed to be offered at the Property (Proposed Uses) and how the Property will be operated.
 - b) A detailed plan, including a timeline, demonstrating how the Proposer intends to secure the necessary services, goods and contracts to ensure the continuity of operations at the Property, without interruption upon, commencement of the lease.
 - c) Proposer's required qualifications, including qualifications for the on-site personnel in charge of conducting and operating the facilities.
 - d) A detailed description of the Proposer's organizational structure; a list of the leadership/management team, the responsibilities of the leadership/management team, staff and any other personnel/member which are proposed to be involved in the operations under the lease.
 - e) A detailed plan for any proposed renovations of existing structures, repairs and/or maintenance of the Property. The plan must include, but is not limited to: project description, location, impact to operations, cost estimates and timing for construction. All renovations of existing structures, repairs and/or maintenance are subject to City approval and will be negotiated with the Selected Proposer.
 - f) Proposer shall pay fair market rent acceptable to City and as determined by an appraisal to be completed during the lease negotiation process. Rent charged will be the greater of an established minimum rent or a percentage of gross revenue. The Proposer will need to provide a minimum rent and percentage rent figure. For reference, a market rent analysis memorandum has been included as RFP Exhibit C.

If the Proposer intends to request a modification of any of the identified terms or conditions in the draft lease, including the ability to pay market rent, such request must be included in the proposal in order to be considered.

All aspects of the Operating Plan, including proposed uses, fees and improvements, are subject to approval and/or modification by the City.

Proposals shall consider all applicable laws and available industry guidelines as they apply

to liability, public health standards, Americans with Disabilities Act (ADA) access and the highest standards of maintenance of all facilities and equipment. Proposals must address any required off-site improvements, including but not limited to, drainage, gutters, walkways, utilities, landscaping and ADA compliance for the Property.

6. Work Force Report. Each Proposer shall submit a completed Work Force Report (RFP Exhibit D).
7. Lessee Questionnaire. Each Proposer shall submit a completed Lessee Questionnaire (RFP Exhibit E).
8. Certification. By submission of a proposal, the Proposer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local departments or agencies. Proposer shall submit with its proposal a completed Contractor Standards Pledge of Compliance (RFP Exhibit F).
9. Business Tax Certificate. Proposers shall submit with its proposal a copy of their business tax certificate or a copy of their application receipt.

C. PROPOSAL SUBMISSION

1. Due Date. Proposals must be received via e-mail, or delivered to the address listed below, timestamped no later than 4:00 p.m. on Friday, November 3. Proposals that are time stamped after 4:00 p.m. will be deemed non-responsive, so please allow time for your e-mail to upload and download, confirmation of receipt will be provided via e-mail. For flash drive deliveries, please allow time to park, be processed through security and call for a staff member to accept and time stamp your submittal. The City will have no responsibility for proposals that are not time stamped, or are time stamped after 4:00 p.m., no matter what the reason.
2. Electronic Submission of Proposals. All Proposers are required to submit their proposals electronically to:

CanyonsideRFP@sandiego.gov

As an alternative to e-mail, the City will accept proposals on a USB flash drive which can be hand delivered to:

City of San Diego
Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700
Attn: Canyonside RFP

If hand delivering a flash drive, you must receive a time stamped receipt, signed by a staff member in the Department of Real Estate and Airport Management. If you deliver your flash drive to another City department, or do not receive a receipt signed by a staff member in the Department of Real Estate and Airport Management, the City will not be responsible for Proposer's failure to obtain a timestamped receipt as directed.

The City will not accept hard copies of proposals.

3. Questions. Written questions must be e-mailed to CanyonsideRFP@sandiego.gov no later than 4:00 p.m. P.S.T. on October 16, 2023. Questions received after 4:00 p.m. P.S.T. on October 16, 2023, received in a format other than email and/or that are not directly related to the RFP will not be answered. An email confirming receipt of a question, will be provided to Proposers for their records. All responses to questions will be posted on the City's website as an Addendum on October 18th, 2023, no later than 4:00pm at:

<https://www.sandiego.gov/real-estate-and-airport-management/>

No oral communications can be relied upon for this RFP.

D. NONCONFORMING PROPOSALS

Proposers requesting deviations from the provisions of this RFP should specifically identify the requirements being deviated from and address the requested deviation in their proposals. The City is not obligated to accept any proposal, whether conforming or nonconforming.

E. SITE VISIT

To give Proposers an opportunity to view the Property, a pre-proposal Site Visit of the Property has been scheduled for October 9, 2023, from 10:00 a.m. to 11:00 a.m. It is strongly suggested that all Proposers attend the Site Visit, although attendance is not mandatory. It is the sole responsibility of the Proposer to become familiar with the Property and the scope of the City's requirements prior to submitting a proposal.

Please plan to arrive at the site and meet at the entrance of the property adjacent to the parking lot. A member of the Department of Real Estate and Airport Management will guide the visit beginning promptly at 10:00 a.m. Attendees must sign-in and must stay with staff during the site visit. No questions should be asked to the tour guide, boarders or users of the property. Questions should be submitted in accordance with Section IIC3 above. Photos of the property may be taken during this time. When the site walk is complete, Proposers should respectfully return to their vehicles and leave the Property so the current licensee, sublicensee and boarders may enjoy their current use of the Property.

III. EVALUATION AND SELECTION CRITERIA

The City reserves the right to select the proposal and Proposer that best demonstrate the responsibilities sought under the requirements of this RFP. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all proposals at any time, including any proposals that have been scored or been the subject of oral presentations and/or interviews. The City also reserves the right to waive minor irregularities or variations to the specifications stated herein and in the solicitation process provided that such a waiver does not provide an unfair competitive advantage to the Selected Proposer.

The City has the right to accept the proposal that serves the best interest of the City, as

submitted, without discussion or negotiation. Proposers should, therefore, not rely on having a chance to discuss, negotiate and/or adjust their proposals. The City may negotiate the terms of a lease with the Selected Proposer based on the RFP and the Proposer's proposal or award the lease without further negotiation.

The City reserves the right to inspect the Proposer's equipment and facilities (if applicable) to determine if the Proposer is capable of fulfilling the obligations of the lease. Inspection may include, but may not be limited to, survey of Proposer's physical assets and financial capability. Proposer, by signing the RFP and submitting a proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform pursuant to a lease. Should the City conduct this inspection, the City reserves the right to disqualify a Proposer who does not, in the City's judgment, exhibit sufficient physical and financial resources to fulfil its obligations under the lease.

A. EVALUATION CRITERIA

The selection of the proposal to be recommended to City Council for award of the lease will be based on the evaluation criteria listed below:

1. Responsiveness to RFP (Maximum 10 points):

The proposal clearly demonstrates an understanding of the City's needs and requirements as specified in this RFP for the operation and maintenance of the Property. The extent to which the proposal is well organized and presented in a clear, concise and logical manner and includes all the minimum requirements described in the RFP.

2. Operating Plan (Maximum 35 points):

The extent to which the Operating Plan demonstrates the ability to address the City's requirements for the operation and maintenance of the Property, and clearly identifies:

- How the facility will be operated and maintained;
- The types of Primary and Ancillary Uses, activities and services proposed to be offered at the Property;
- How the Proposer will ensure continuity of operations at the Property without interruption upon commencement of the lease;
- The organizational structure and sufficiently defines roles and responsibilities of facility staff; and,
- Srvices that will be accessible to a variety of income and skill levels.

3. Professional Experience and Qualifications (Maximum 30 points):

The extent to which the proposal demonstrates the experience and qualifications of the Proposer, and its proposed staff, in successfully operating and maintaining an equestrian facility, including experience with the types of services specified in this RFP. The Proposer should include: the level of training, licensing and/or certifications, if applicable, to demonstrate that their employees are well qualified to conduct the operations contemplated in this RFP and should demonstrate the Proposer's ability to implement the requested components of the proposal. Unsatisfactory past performance with the City may be considered by the City in its sole and absolute discretion.

4. Financial Capability (Maximum 25 points):

The extent to which a Proposer demonstrates the necessary financial capability to

successfully operate and maintain the Property in accordance with the proposal and the lease, including the possibility of obtaining bonding, ability to adequately staff the proposed operation on the Property, and possession of, or ability to obtain, additional financing to address unexpected or emergency circumstances at the Property.

Maximum Subtotal Points: 100

Proposals shall be evaluated by a Selection Review Panel, generally made up of City staff and, if necessary, other people selected by the City. The Selection Review Panel will review the proposals to score and rank based on the Evaluation Criteria listed above.

After the Proposer's submissions have been reviewed and scored by the Selection Review Panel, a short list of finalists will be established.

- To be selected as a finalist, a Proposer's score will need to be a minimum of seventy-five (75) out of the one hundred (100) points.
- The top three highest scoring Proposers meeting the seventy-five (75) point threshold will then move forward as finalists.
- If no proposal meets the seventy-five (75) point threshold the Selection Review Panel may move forward with the top three highest scoring Proposers as finalists or may move forward with less than three Proposers as finalists based on their scores.
- The Selection Review Panel reserves the right to consider alternatives if all scores are less than seventy-five (75) points.
- If selected as a finalist, the Proposer will then be required to attend an interview presentation as outlined in section 5 below.

5. Interview/Presentation (Maximum 50 points)

The Selection Review Panel will conduct an interview of the selected finalists. Proposers should prepare to spend ninety (90) minutes with the Selection Review Panel. The tentative run of show, which will be confirmed with finalists when interviews are scheduled, is as follows:

- 15-minute Team set up
- 5-minute Selection Review Panel Introduction and Opening Remarks
- 15-minute Proposer presentation
- 45-minute Interview by Selection Review Panel
- 10-minute Proposer questions and Closing Remarks

Interviews will be conducted on November 14, 2023 and shall not exceed 90 minutes. Each Proposer is asked to keep this date open. No other interview dates will be provided.

The Proposer's 15-minute presentation should, at a minimum, include the following:

- An introduction of the team members and organizational structure
- An overview of the Proposer's ability to best implement the Evaluation Criteria listed in III.A:
 - Responsiveness to RFP;
 - Operating Plan;
 - Professional Experience and Qualifications;
 - Financial Capability; and,
- Any other pertinent information that expounds on the Proposer's ability to satisfy

- the requirements of this RFP.
- Presentations shall not exceed 15 minutes. The Selection Review Panel Chair will provide Proposers with a time warning when five (5) minutes and one (1) minute are left.

The Selection Review Panel will be evaluating the Proposers based on the criteria above and allocating up to fifty (50) additional points to the total score.

The names of the members of the Selection Review Panel will not be revealed prior to interviews.

Maximum Total Points: 150

B. ANNOUNCEMENT OF INTENT TO AWARD

The City will inform all proposers of its intent to award a lease, subject to negotiation and approval by City Council, via e-mail.

IV. ADDITIONAL REQUIREMENTS

A. INFORMATION FROM PROPOSERS

The City reserves the right to request supplemental information from Proposers to clarify information pursuant to this RFP.

B. INCURRED COSTS

Each Proposer is solely and fully responsible for all costs associated with submitting a response to this RFP. The City will not be responsible for any costs incurred by Proposers in the preparation and submission of proposals, whether they are ultimately selected or not.

C. PROHIBITION OF CONTACT WITH CITY STAFF

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are **prohibited from communicating with City staff** until final passage of the City Council approval of the lease to the Selected Proposer. If it is determined that a Proposer is communicating with City staff (other than through this process or a public records request) regarding the Property, the current agreement or the RFP, it may be grounds for disqualification of the Proposal and/or disqualification of City staff from the Selection Panel.

D. ADDENDA

If changes to the RFP are required, the City will issue an addendum to this RFP, which will be posted to the City's website at: <https://www.sandiego.gov/real-estate-and-airport-management/> as necessary. All addenda are incorporated into the RFP. The Proposer is responsible for determining whether addenda were issued prior to proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

E. PUBLIC RECORDS

All proposals, and all contents thereof, received shall be considered confidential until the City's Department of Real Estate and Airport Management recommends a proposal to the City Council. By signing this RFP and submitting a proposal, the Proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the Proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the Proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. The Proposer must provide a specific and detailed legal basis, including applicable case law, which clearly establishes the requested information is exempt from the disclosure under the CPRA. If the Proposer does not provide a specific and detailed legal basis for requesting the City to withhold Proposer's confidential or proprietary information at the time of proposal submittal, the City will release the information as required by the CPRA and Proposer will hold the City, its elected officials, officers and employees harmless for release of this information. It will be the Proposer's obligation to defend, at Proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the Proposer's request. Furthermore, the Proposer shall indemnify and hold harmless the City, its elected officials, officers and employees from and against any claim or liability and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at Proposer's request. Nothing in the lease resulting from the proposal creates any obligation on the part of the City to notify the Proposer or obtain the Proposer's approval or consent before releasing information subject to disclosure under the CPRA.

F. CITY'S RIGHT TO REJECT ALL PROPOSALS

The City reserves the right to reject all offers and proposals regarding this RFP and the Property, including those submitted by Proposers who have outstanding debt with the City. The City reserves the right to determine which proposal it deems in the best interest of the City to accept. The City also reserves the right to waive any informality not material to cost or performance in any proposal provided that any such waiver is deemed to be inconsequential and does not provide an unfair competitive advantage to any Proposer.

G. QUALIFICATION OF PROPOSAL

This is not a bid solicitation and the City is not obligated to accept any proposal or to negotiate with any Proposer. The City Council reserves the right to reject any lease presented as a result of a Proposal without cause or liability. All transactions discussed, referenced, or implied herein are subject to final approval by the City Council.

H. NON-DISCRIMINATION NOTICE

It is the policy of the City not to discriminate against the disabled in employment or provision of services. The information contained in this RFP will be made available in alternative formats to disabled persons upon request. It is the policy of the City to

encourage equal opportunity in its contracts and leases. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition, or place of birth.

I. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

Proposer understands that failure to comply with the following requirements and/or submitting false information in response to these requirements may result in rejection of the proposal by the City and debarment of the Proposer from participating in City contracts for a period of not less than one (1) year:

1. Equal Opportunity Contracting. Proposer acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (Sections 22.2701 through 22.2708 of the San Diego Municipal Code, as amended), Equal Employment Opportunity Outreach Program, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Proposer and all its subcontractors are individually responsible to abide by its contents.

Proposer shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Proposer will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Proposer shall insert the foregoing provisions in all contracts and subcontracts for any work covered by the proposal so that such provisions will be binding upon each contractor and subcontractor. Proposer agrees that compliance with Equal Employment Opportunity (EEO) provisions flowing from the authority of both parties will be implemented, monitored and reviewed by the City's Equal Opportunity Contracting Program staff.

Proposer shall submit a current Work Force Report (RFP Exhibit D) or a current EEO Plan, as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Proposer will take to achieve the City's commitment to equal employment opportunities.

2. Equal Benefits. Proposer shall comply with Sections 22.4301- 22.4308 of the San Diego Municipal Code, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the lease.
3. Local Business and Employment. Proposer acknowledges that the City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Proposer shall, to the extent legally possible, solicit applications for employment and bids and proposals for subcontracts, for work associated with the proposal from local residents and firms as opportunities occur. Proposer shall hire qualified local residents and firms whenever feasible.

J. PROTESTS

The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (RFP Exhibit G: #5). These procedures shall apply to this RFP and provide unsuccessful Proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

K. ASBESTOS DISCLOSURE

Portions of certain structures on the Property may contain asbestos. By virtue of its submission of a proposal, Proposer acknowledges having received notice from the City of the presence of such asbestos in accordance with Health and Safety Code Section 25915. Proposer shall indemnify and hold City harmless from any loss or claim which may result from existence of asbestos on the Property.

L. REAL ESTATE BROKER'S COMMISSION

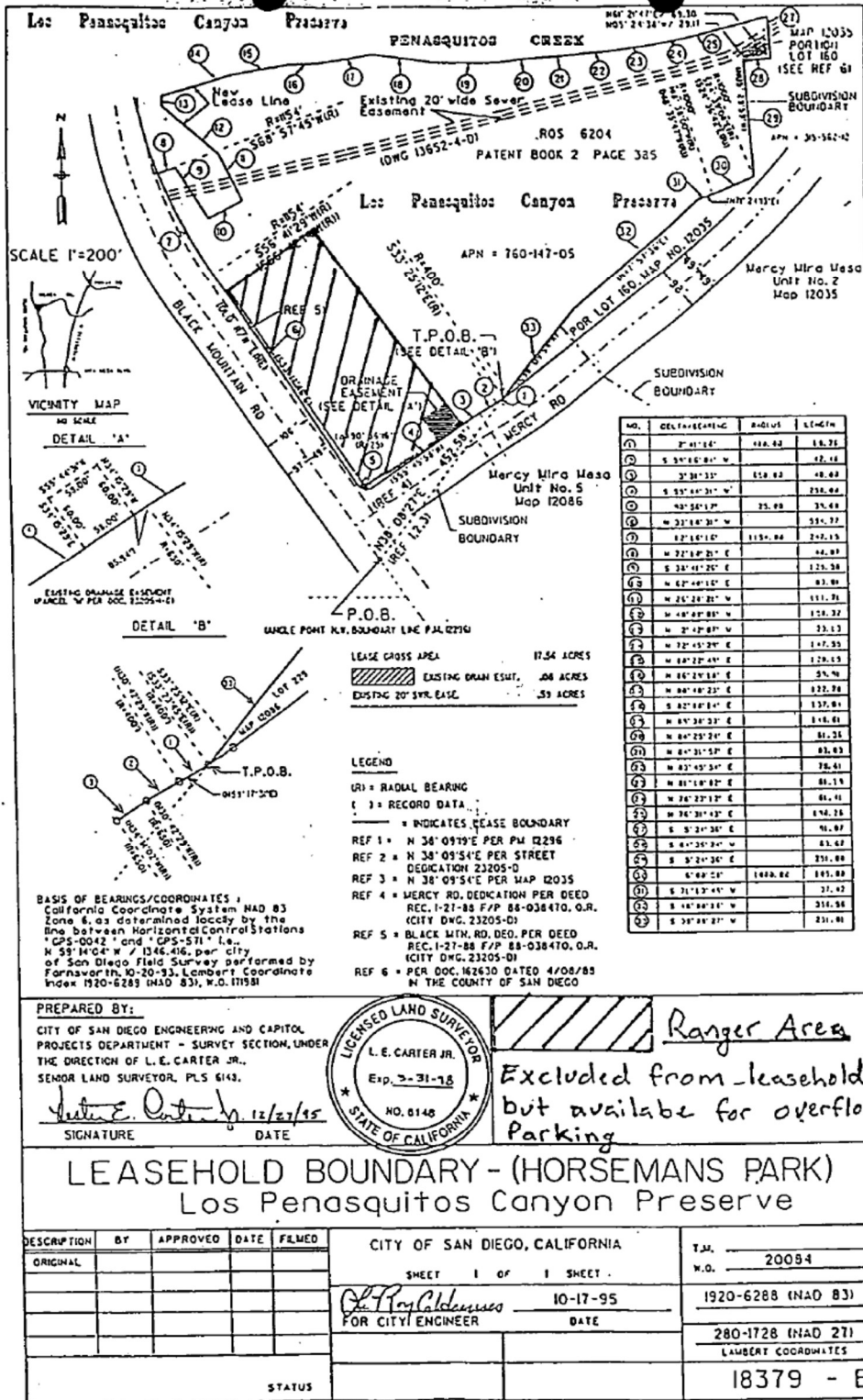
The City will not pay a brokerage commission.

M. SCHEDULE OF RFP EXHIBITS

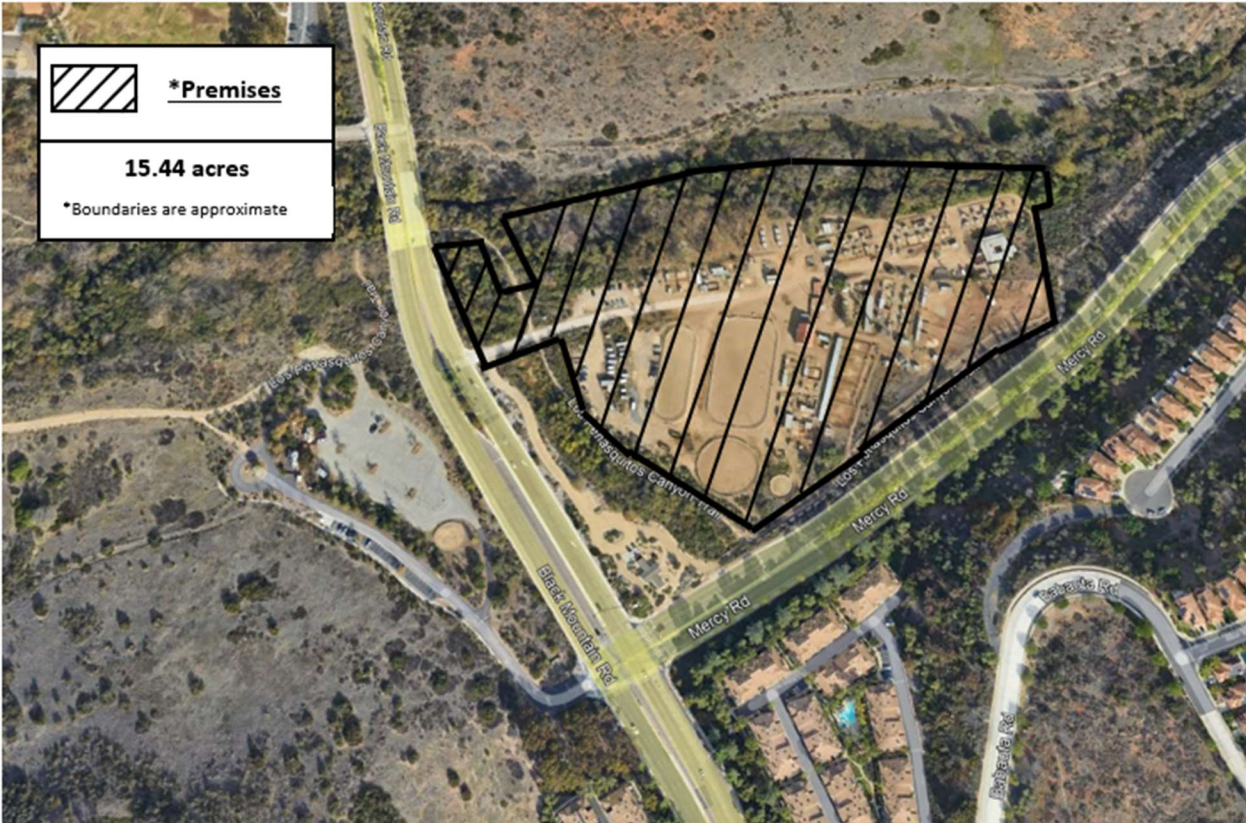
RFP Exhibit A-1:	Site Plan
RFP Exhibit A-2:	Aerial of Premises
RFP Exhibit B:	Draft Lease Template
RFP Exhibit C:	Market Rent Analysis Memo
RFP Exhibit D:	Work Force Report
RFP Exhibit E:	Lessee's Questionnaire
RFP Exhibit F:	Contractor Standards Pledge of Compliance
RFP Exhibit G:	References

The foregoing forms attached to the RFP as RFP Exhibits D, E and F are required to be completed and submitted with the proposal. Failure to submit any of the forms listed as RFP Exhibits D, E and F will result in the City deeming the proposal incomplete and non-responsive.

RFP Exhibit A-1: Site Plan



RFP Exhibit A-2: Aerial of Premises



RFP Exhibit B: Draft Lease Template

**PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

by and between

**THE CITY OF SAN DIEGO,
a California municipal corporation**

and

**[INSERT FULL NAME, ENTITY TYPE, AND STATE OF FORMATION OF TENANT
ENTITY]**

PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)

This PERCENTAGE LEASE (this “**Lease**”) is entered into between THE CITY OF SAN DIEGO, a California municipal corporation (“**Landlord**”), and [INSERT FULL NAME, ENTITY TYPE, AND STATE OF FORMATION OF TENANT ENTITY] (“**Tenant**”).

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, LANDLORD AND TENANT AGREE AS FOLLOWS:

1. **PURPOSES.** At the Commencement Date (defined in **EXHIBIT A**), Landlord owns the Premises (defined in **EXHIBIT A**). [**FACTS PERTINENT TO THE LEASE TRANSACTION WILL BE INSERTED**].
2. **DEFINITIONS.** All defined terms or words indicated by initial capitalization in this Lease and not specifically defined in the main body of this Lease are defined in **EXHIBIT A** attached to this Lease.
3. **LEASING AND HIRING.** Landlord leases the Premises to Tenant and Tenant hires the Premises from Landlord, subject to the Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.
4. **TERM.** The initial term of this Lease (“**Initial Term**”) shall be five (5) years and shall: (a) begin on the Commencement Date; and (b) end on the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease. The duration of this Lease for either the Initial Term or, if extended in accordance with this Section 4, then the Initial Term plus the extended terms, are sometimes referred to in this Lease as the “**Term**.”

4.1 First Term Extension. If Tenant is not in Default at the end of the Initial Term, Tenant may request that the Lease be extended for a period of five (5) years, commencing on the fifth (5th) anniversary of the Commencement Date and ending at 11:59 p.m. on the day before the tenth (10th) anniversary of the Commencement Date (“**First Extended Term**”). Tenant may only request the First Extended Term by Notice to City at least one hundred eighty (180) days, but not more than three hundred sixty-five (365) days, before the end of the Initial Term. City may, in its sole discretion, agree to the First Extended Term, subject to the following conditions: (a) Tenant is not in Default on the last day of the Initial Term; and (b) the Mayor provides prior written consent within 30 days after City’s receipt of Tenant’s Notice requesting the First Extended Term, which may be given or withheld in the Mayor’s sole and absolute discretion.

4.2 Second Term Extension. If Tenant is not in Default at the end of the First Extended Term (if applicable), Tenant may request that the Lease be extended for a period of five (5) years, commencing on the tenth (10th) anniversary of the Commencement Date, and ending on the day before the fifteenth (15th) anniversary of the Commencement Date (“**Second Extended Term**”) Tenant may only request the Second Extended Term by Notice to City at least one hundred eighty (180) days, but not more than three hundred sixty-five (365) days, before the end of the First Extended Term. City may, in its sole discretion, agree to the Second Extended Term, subject to the following conditions: (a) Tenant is not in Default on the last day of the First Extended Term; and (b) the Mayor provides prior written consent within 30 days after City’s receipt of Tenant’s

Notice requesting the Second Extended Term, which may be given or withheld in the Mayor's sole and absolute discretion.

5. **QUIET ENJOYMENT.** During the Term, Landlord covenants that Tenant shall and may peaceably and quietly enjoy the Premises for the Term, without molestation, hindrance, or disturbance by or from Landlord, subject to the terms and conditions of this Lease. The covenant of quiet enjoyment under this Lease is limited to occupancy of the Premises and express rights under this Lease. No implied or inferred rights are intended under this covenant. This covenant also is not intended to limit Landlord's governmental police or regulatory powers.

6. **PREMISES DELIVERY CONDITION.**

6.1 Delivery. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date subject to the Permitted Exceptions.

6.2 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5, ON THE COMMENCEMENT DATE, TENANT ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL CONDITION, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE PREMISES (ACTIVE, INACTIVE OR ABANDONED), THE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES (EXCEPTING ANY HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD) AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE PERMITTED EXCEPTIONS. TENANT ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING: (A) TENANT HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT ON THE PREMISES; (B) TENANT HAS RELIED AND WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (C) TENANT ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (D) TO THE EXTENT TENANT'S OWN EXPERTISE WITH RESPECT TO ANY MATTER RELATING TO THE PREMISES IS INSUFFICIENT TO ENABLE TENANT TO REACH AN INFORMED CONCLUSION ABOUT SUCH MATTER, TENANT ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTERS. TENANT'S SIGNATURE ON THIS LEASE CONSTITUTES TENANT'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION AND WARRANTY TO LANDLORD THAT TENANT RECEIVED ASSURANCES ACCEPTABLE TO TENANT BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO TENANT'S ENTRY INTO THIS LEASE AND THAT TENANT IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. TENANT HAS NOT RELIED AND IS NOT RELYING ON

ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY OR ITS REPRESENTATIVE. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PREMISES ON THE COMMENCEMENT DATE.

6.3 Hazardous Substances. LANDLORD SHALL HAVE NO LIABILITY TO TENANT OR TENANT'S SUCCESSORS, ASSIGNS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH TENANT WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD.

6.4 Waivers and Releases. BY ENTERING INTO THIS LEASE, TENANT WAIVES AND RELEASES LANDLORD AND ITS REPRESENTATIVES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.4, TENANT WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6.5 Specific Exclusions. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, TENANT IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS UNDER THIS LEASE; OR (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.

Initials of Authorized
Tenant Representative(s)

6.6 Asbestos Disclosure. Portions of the Improvements may contain asbestos. Tenant acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915. Tenant shall disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915. Tenant shall Indemnify Landlord against all Claims arising from or relating to the existence of asbestos on the Premises and Tenant's use or occupancy of the Premises.

6.7 Asbestos Remediation. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant shall be responsible for performance of all associated asbestos removal, management, remediation, or containment and all costs associated with such activities. Asbestos removal, management, remediation, or containment shall be conducted only with Landlord's prior written consent and in accordance with all applicable Laws.

7. BASE RENT AND PERCENTAGE RENT

7.1 Base Rent. As part of the consideration to Landlord leasing the Premises to Tenant under this Lease, starting on the Commencement Date, Tenant shall pay a net annual rent to Landlord as shown in the following schedule, in equal monthly installments, in advance, on the first (1st) day of each calendar month, without Notice (“**Base Rent**”):

<u>Lease Year</u>	<u>Base Rent Amount Payable</u>
Lease Years 1-3:	\$(TO BE DETERMINED)
Lease Year 4:	\$(TO BE DETERMINED)
Lease Year 5:	\$(TO BE DETERMINED)

7.2 Percentage Rent. Percentage Rent means and refers to [**TO BE DETERMINED**]. Commencing with [**TO BE DETERMINED**] and continuing throughout the remainder of the Term, Tenant shall pay the greater of the Percentage Rent or Base Rent to Landlord. The Percentage Rent shall be paid monthly, within thirty (30) calendar days following the end of each month, without Notice. For the last month of the last Lease Year of the Term, the Percentage Rent shall be paid within thirty (30) calendar days following the Expiration Date, without Notice.

7.3 Gross Revenue. “**Gross Revenue**” means and refers to [**TO BE DETERMINED**].

7.4 CPI. “**CPI**” means and refers to the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for all Urban Consumers (CPI-U) all items published for the San Diego Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

7.5 Periodic Increases in Base Rent. On the first day of [**TO BE DETERMINED**] (the first adjustment occurring on such date) and on the first day of every Lease Year thereafter, the Base Rent shall be increased to the amount equal to the greater of: (a) eighty percent (80%) of the average annual sum of the Base Rent plus the Percentage Rent paid during the immediately preceding three (3) Lease Years or (b) the Base Rent in effect during the immediately preceding Lease Year increased by the cumulative percentage increase in the CPI since the later of: (i) the first day of [**TO BE DETERMINED**] or (ii) the date of the most recent increase in the Base Rent pursuant to this Section 7.5. Following the effective date of each increase in the Base Rent pursuant to this Section 7.5, Landlord shall Notify Tenant of the increased Base Rent, with reasonable detail regarding the calculation of the increased Base Rent. Each such Notice may be given by Landlord at any time following an increase in the Base Rent pursuant to this Section 7.5. Tenant shall pay to Landlord all increased Base Rent accrued between the effective date of such Base Rent increase pursuant to this Section 7.5 and Landlord’s Notice of such Base Rent increase, within thirty (30) days following Notice of the subject increase. Until Landlord gives Tenant Notice of a Base Rent increase, Tenant shall continue to pay the Base Rent in effect prior to delivery of such Notice, subject to Tenant’s obligation to pay increased Base Rent amounts accrued between the effective date of such increase in the Base Rent pursuant to this Section 7.5 and Landlord’s Notice of such increase in the Base Rent, as provided in this Section 7.5.

7.6 Payment. Tenant shall pay the Base Rent and the Percentage Rent to Landlord in lawful money of the United States of America by good and sufficient check payable to Landlord or by wire transfer to Landlord, at Landlord's election, and at such address as Landlord shall designate from time to time. Checks shall only constitute payment, when collected.

7.7 Financial Reporting. Within one hundred twenty (120) days after the end of each Lease Year, Tenant shall deliver to Landlord a statement of all of Tenant's income from and expenses of operation of the Premises during such previous Lease Year (each, an "**Annual Revenue Statement**"). Each Annual Revenue Statement shall be prepared by a disinterested, reputable firm of certified public accountants that is actively engaged in the practice of the accounting profession. Additionally, each Annual Revenue Statement shall be certified by an executive level officer of Tenant with substantial knowledge regarding all of Tenant's income from and expenses of operation of the Premises. Each Annual Revenue Statement shall set forth in reasonable detail the Gross Revenues (including any deductions or offsets applied in determining Gross Revenues) of Tenant from the Premises during the immediately preceding Lease Year and certify that the accounting practices of Tenant conform to industry standards and the requirements of this Lease. If such certification cannot be made, then the Annual Revenue Statement shall show such adjustments as are necessary to conform Tenant's accounting practices such that the certification can be made. All such Annual Revenue Statements shall be in customary form reasonably satisfactory to Landlord. If any such Annual Revenue Statement, as it may be adjusted pursuant to this Section 7.7, indicates either an overpayment or an underpayment of Percentage Rent for the subject Lease Year, the amount of any such overpayment shall be refunded by Landlord to Tenant or the amount of any such underpayment shall be paid by Tenant to Landlord, within thirty (30) days following Notice of such overpayment or underpayment. Each such Annual Revenue Statement shall be conclusive and binding on Landlord and Tenant, unless Landlord commences an audit of Tenant's financial records pursuant to this Section 7.7, within three (3) years following the end of the subject Lease Year. On ten (10) Business Days' Notice (Notice shall not be required during the continuance of a Default), only during normal business hours, and (so long as no Default shall have occurred) no more often than once each Lease Year, Landlord's auditor may audit Tenant's financial statements for up to three (3) preceding Lease Years. Tenant shall, without charge, assist in such audit, as Landlord's auditor shall reasonably request. Landlord's auditor shall be either: (1) an employee of Landlord; or (2) a certified public accountant. Landlord's auditor shall comply with such reasonable restrictions on time and access as Tenant shall require, provided that such restrictions do not have the purpose or effect of frustrating the audit. Landlord's auditor shall not work under a contract providing a contingency fee for amounts determined to have been underpaid to Landlord by Tenant. If any audit discloses that Tenant's Gross Revenues were under-reported in any Annual Revenue Statement to an extent of four percent (4%) or more on an annual basis for one or more Lease Years, Tenant shall pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in the Percentage Rent payable for any Lease Year, with Default Interest on such Percentage Rent deficiency amount from the date such amount was originally due, until paid in full. If any audit by Landlord discloses an overpayment of the Percentage Rent, such amount will be credited to Tenant against future Percentage Rent payments becoming due to Landlord under this Lease (Landlord shall be under no obligation to make payments of any overpayment amount to Tenant during the Term), unless this Lease has terminated, in which case Landlord shall pay any overpayment amount to Tenant within thirty (30) days after Landlord's receipt of the audit report disclosing such overpayment; provided, however,

that Landlord may first apply any such overpayment to any amounts owed to Landlord by Tenant before making any such payment to Tenant. Landlord shall keep all financial information regarding Tenant's Operations confidential to the extent permitted by Law.

8. **ADDITIONAL PAYMENTS BY TENANT; TAXES.**

8.1 Landlord's Net Return. This Lease shall constitute an absolutely "net" lease. The Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises. Tenant shall pay as Additional Rent and discharge before delinquency each item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Restoration or Construction affecting, the Premises, except: (a) Landlord's administrative expenses; or (b) liability for any Hazardous Substance Discharge by Landlord.

8.2 Real Estate Taxes. Tenant shall pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term before delinquency. Tenant shall also pay all interest and penalties assessed for late payment of Real Estate Taxes this Lease requires Tenant to pay. Tenant shall within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant paid all Real Estate Taxes this Lease requires Tenant to pay. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and Real Estate Taxes include all possessory interest taxes imposed as a result of this Lease.

8.3 Personal Property Taxes. Tenant shall pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to all personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency. Tenant shall also pay all interest and penalties assessed for late payment of any such personal property tax.

8.4 Documentary Transfer Tax. Tenant shall pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code Sections 11911, *et seq.*, with respect to entry into this Lease, each Modification to this Lease, each extension of this Lease, each Transfer, or otherwise imposed regarding this Lease or Tenant.

8.5 Transfer of Leasehold Estate. Without limiting the generality of Tenant's obligations to pay Real Estate Taxes and subject to the limitations on Transfers in this Lease, Tenant agrees that it shall pay all increases in Real Estate Taxes resulting from a change in ownership of the Leasehold Estate.

8.6 Utilities. Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, use, and service relating to all such items for the Premises during the Term. All utilities on the Premises shall be installed underground and shall be used for Tenant's operations only. Landlord shall have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord shall not be liable for any interference with or disruption of any utilities or services for the Premises, unless such interference or disruption results solely from Landlord's gross negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune under applicable law and subject to any defense to such liability available to Landlord.

8.7 Unauthorized Use Charge. Tenant shall pay Landlord one hundred (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the Premises that is not a Permitted Use within thirty (30) days after Tenant receives such revenue. Nothing in this Section 8.7 or Landlord's acceptance of any payment under this Section 8.7 is intended to authorize any

use of the Premises that is not a Permitted Use, waive Tenant's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Agreement.

9. USE.

9.1 Permitted Use. Tenant shall only use the Premises during the Term for the Permitted Use in compliance with Law and this Lease and no other uses. Tenant shall be solely responsible for operation of the Premises. Landlord shall have no responsibility for operation of the Premises.

9.2 Premises Operation. Tenant shall operate the Premises in a manner that will provide decent, safe and sanitary facilities to all users of the Premises and will comply with all the provisions of this Lease and all applicable Law. Tenant shall keep all areas immediately adjacent to the Premises clean and clear of refuse and obstructions. Tenant shall be solely responsible for operation of the Premises. Landlord shall have no responsibility for operation of the Premises. Tenant shall not wholly or permanently exclude the general public from any portion of the Premises, including, but not limited to, the public restroom on the Premises. Tenant may develop reasonable restrictions for use of the Premises, provided they are consistent with this Lease and the rights of the general public and designed to allow Tenant to use the Premises for the Permitted Use.

9.3 Competent Management. Tenant shall provide competent management of the Permitted Use to Landlord's reasonable satisfaction. For the purposes of this Section 9.3 the following terms are defined:

9.3.1 "Competent management" means and refers to management practices generally considered acceptable within Tenant's industry for the management and operation of activities substantially similar to the Permitted Use and in compliance with all applicable Law, and regulations, and in a fiscally responsible manner. Competent management shall also include the presence of a manager on the Premises twenty-four (24) hours per day during the Term, at Tenant's sole cost and expense.

9.3.2 "Fiscally responsible manner" means and refers to in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

9.4 Trash and Refuse. Tenant shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Tenant shall contract to ensure that refuse containers are emptied on a regular basis and shall prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. Tenant shall contract to ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable Law at the time of refuse collection.

9.5 Limitation on Construction. Tenant shall not perform any Construction on or related to the Premises that is not Restoration or maintenance required to be performed by Tenant under this Lease. Landlord reserves the right to perform Construction on the Premises at any time. If Landlord intends to perform Construction on the Premises, Landlord shall give Tenant at least forty-eight (48) hours' notice prior to commencing the Construction (except in the event of an emergency, in which case, no prior notice is required). Tenant shall comply with all safety instructions issued by Landlord to ensure the safety of Landlord personnel or contractors performing Construction on the Premises.

9.6 Continuous Operation. Tenant shall continuously use and operate the entirety of the Premises during the Term for the Permitted Use and no other use. Notwithstanding the immediately preceding sentence, nothing in this Lease shall obligate Tenant to use or operate any affected part of the Premises for any purpose following a Loss (other than an Immaterial Loss), until Tenant has completed Restoration.

9.7 Abandonment. Tenant shall not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term.

9.8 No Discrimination or Segregation. Tenant covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that neither Tenant nor any Person claiming under or through Tenant shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the Premises.

9.9 Noise. Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating San Diego Municipal Code (“SDMC”) Chapter 5, Article 9.5.

9.10 Nuisance. Tenant shall not itself and shall not allow any other Person to use the Premises for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Premises that would result in a nuisance or a violation of Law.

9.11 Exterior Signs. No banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising (each, a “Sign”) may be placed on the Premises without Landlord’s prior written consent, in each instance, which consent may be given or withheld in Landlord’s sole and absolute discretion, except for Signs located inside the Improvements and not visible outside the Improvements or Signs required by Law. All Signs on the Premises will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant’s sole cost and expense. Tenant shall comply with all Laws requiring the posting of Signs on the Premises. If any unauthorized Sign is found on the Premises, Tenant shall remove the Sign at Tenant’s sole cost and expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Tenant does not remove the Sign within such twenty-four (24) hour period, Landlord may enter the Premises and remove the Sign at Tenant’s sole cost and expense. If Landlord removes a Sign from the Premises under this Section 9.11, Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord’s staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of such costs. Any amount of money reimbursable to Landlord by Tenant under this Section 9.11 that is not paid within fifteen (15) days after Notice to Tenant of such amount shall accrue Default Interest from the date incurred until paid.

9.12 No Artist’s Rights. Tenant shall not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

9.13 Availability of Tenant Employees. Tenant agrees to have one or more of its employees who is/are knowledgeable regarding this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord’s staff regarding operation of the Premises attend meetings with Landlord’s staff or meetings of Landlord’s City Council, when requested to do so by reasonable advance Notice to Tenant.

9.14 Compliance with Law. Tenant shall, during the Term, at Tenant’s sole cost and expense, in all material respects: (a) comply with all Laws; (b) procure and comply with all Approvals

required by Law; and (c) comply with all notices issued by Landlord (in its governmental capacity) or any other Government under the authority of current or future Law.

9.15 Accident Reports. Tenant shall immediately, or as soon as practicable and not more than 48 hours after Tenant becomes aware of any accident on or around the Premises causing more than ten thousand dollars (\$10,000) in property damage or injury to any Person, report to Landlord the names and addresses of the Person(s) involved, the circumstances, the date and hour of the accident, the names and addresses of all witnesses, and all other pertinent information.

10. MAINTENANCE.

10.1 Obligation to Maintain. Except to the extent that this Lease otherwise expressly provides or allows, or Tenant is performing Construction in compliance with this Lease, Tenant shall during the Term keep and maintain the Premises in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Lease expressly does not require Tenant to repair or Restore. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises, including the Improvements, may require under applicable Law. Tenant shall remove trash and debris from the Premises and the adjacent areas and maintain them in a reasonably clean condition. Landlord has no obligation to maintain or repair the Premises. To the maximum extent allowed by Law, Tenant expressly waives all Landlord's obligations to maintain or repair the Premises, all right to terminate this Lease under California Civil Code sections 1932 or 1933 or any similar Law, and all right to make repairs at Landlord's expense under California Civil Code sections 1941 through 1942 or any similar Law.

10.2 Maintenance Standard. Tenant's obligation to maintain the Premises under Section 10.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises. Tenant's obligation to maintain the Premises described in the immediately preceding sentence shall include: (a) maintaining the surfaces of the Premises in an evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 10.4; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Premises; and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping, all at the sole cost and expense of Tenant. Tenant's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "**Maintenance Standard**." Tenant may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of Tenant to maintain the Premises; provided, however, that Tenant shall remain responsible and liable for complying with the Maintenance Standard for the Premises during the Term.

10.3 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in contravention of the Maintenance Standard (each such occurrence being a “**Maintenance Deficiency**”), then Landlord may Notify Tenant of the Maintenance Deficiency. If Tenant fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Tenant’s receipt of Notice of the Maintenance Deficiency, Landlord shall have the right (but no obligation) to enter the Premises following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to Landlord to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 shall be reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of the amount. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 that is not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of such amount shall accrue Default Interest until paid in full.

10.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of the Improvements shall be removed by Tenant by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 10.3, if any such graffiti is not removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Tenant discovers or receives Notice of the graffiti, whichever is earlier, if Tenant does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Tenant, Landlord shall have the right (but no obligation) to enter the Premises and remove the graffiti. Any amount of money expended by Landlord for removal of graffiti from the Premises under this Section 10.4 shall be reimbursed to Landlord by Tenant, within thirty (30) days after Notice to Tenant of such amount. Any amount of money expended by Landlord for removal of graffiti under this Section 10.4 not reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of such amount shall accrue Default Interest until paid in full.

11. **PREVAILING WAGE LAWS**. Tenant shall comply with Prevailing Wage Laws in performing all Construction on the Premises.

12. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**. Notwithstanding anything to the contrary in this Lease, all Improvements, Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises shall, during the Term, be owned by, and belong to, Tenant and all benefits and burdens of ownership of such Improvements, Equipment, or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations shall be and remain in Tenant during the Term.

13. **PROHIBITED LIENS**.

13.1 Tenant’s Covenant. Tenant shall Notify Landlord of each Prohibited Lien within twenty (20) days following Tenant’s receipt of notice of such Prohibited Lien. Tenant shall, within thirty (30) days after receiving notice of a Prohibited Lien (but in any case within fifteen (15) days after Tenant receives notice of commencement of foreclosure proceedings regarding any Prohibited Lien), cause such Prohibited Lien to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if Tenant disputes such Prohibited Lien in good faith, Tenant may maintain an appropriate dispute of such Prohibited Lien without payment, if Tenant records a bond complying with the provisions of California Civil Code Section 3143 and causes the release of the

Leasehold Estate from the disputed Prohibited Lien. Tenant shall, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Lien, then Landlord shall Notify Tenant.

13.2 Protection of Landlord. LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT AND AGAINST ALL PROHIBITED LIENS.

13.3 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. LANDLORD SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. TENANT SHALL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ANY CONSTRUCTION OR OTHER WORK ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

14. **INSURANCE.** To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, or the Permitted Use, Tenant shall maintain, at its sole expense, throughout the Term, all the insurance coverage described in **EXHIBIT F** attached to this Lease.

15. **LOSSES AND LOSS PROCEEDS.**

15.1 Notice. If either Party becomes aware of any Loss, such Party shall Notify the other Party of such Loss within a reasonable time.

15.2 Casualty. If any Casualty occurs after the Commencement Date, no Rent shall abate, and Tenant shall Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose); and (b) Tenant shall be solely responsible for: (i)

negotiating and adjusting any Property Insurance Proceeds regarding the Casualty; and (ii) the costs of Restoration.

15.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation, this Lease shall terminate in its entirety, on the Condemnation Effective Date. Neither Landlord nor Tenant shall settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, neither Landlord nor Tenant shall be required to obtain the consent of the other Party to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award shall be paid to Depository under Section 15.6. For a Substantial Condemnation, Landlord and Tenant shall allocate the Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

15.3.1 *Landlord's Costs*. For a Substantial Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

15.3.2 *Tenant's Costs*. To reimburse Tenant for Tenant's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

15.3.3 *Tenant's Claim*. Tenant shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken as of the Condemnation Effective Date.

15.3.4 *Landlord's Claim*. Landlord shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken as of the Condemnation Effective Date.

15.3.5 *Landlord's Residual Claim*. Landlord shall receive the entire remaining Condemnation Award.

15.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Regardless of whether the Condemnation Award is adequate, Tenant shall, at its expense, Restore in compliance with this Lease. After Tenant completes and pays for Restoration, any remaining Condemnation Award shall be distributed to Landlord and Tenant in accordance with Section 15.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

15.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date, then no Rent shall abate under this Lease and this Lease shall not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award from such Temporary Condemnation allocable to a period outside the Term shall belong to Landlord. Otherwise, Tenant shall receive the Condemnation Award (to the extent attributable to periods within the Term).

15.6 Use of Loss Proceeds. Landlord assigns to Tenant the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds shall be paid to Depository, to be disbursed by Depository under the terms of this Lease. If Landlord receives any Loss Proceeds, Landlord shall remit them to Depository. If a Loss is an Immaterial Loss, then Depository shall release all Loss Proceeds to Tenant, to be applied first to Restoration. If a Loss is not an Immaterial Loss, then Depository shall retain the Loss Proceeds and pay them over to Tenant, from time to time,

upon the following terms, for Restoration, unless there is a Substantial Condemnation in which case the Loss Proceeds shall be paid to Landlord and Tenant as provided in Section 15.3. Depository shall first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Tenant, from time to time, in proportion to the percentage of completion of the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Tenant has completed and paid for Restoration, Depository shall release to Tenant, and Tenant may retain all remaining Loss Proceeds. Until Tenant has completed and paid for Restoration, Tenant shall hold all Loss Proceeds in trust for the benefit of Landlord to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Premises, Tenant shall not be entitled to receive any further installment of Loss Proceeds, until Tenant has bonded, satisfied, or otherwise discharged such Prohibited Lien under Section 13.1. If Loss Proceeds are insufficient to Restore and there is no Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Tenant shall nevertheless Restore at Tenant's sole cost and expense. Depository shall not release any Loss Proceeds, unless and until Tenant expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. Landlord shall determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration.

15.7 Continuation of Lease. Except as this Lease expressly provides, this Lease shall not terminate, be forfeited, or be affected in any other manner by any Loss. Tenant waives all right to quit or surrender the Premises because of any Loss or any resulting untenability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease shall exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated in accordance with its terms, Tenant's obligations under this Lease, including the obligation to pay Rent, shall continue unabated.

15.8 No Effect on Landlord Eminent Domain Authority; No Condemnation. Nothing in this Lease is intended to, nor shall be interpreted to, waive, limit, or restrict any Landlord power of eminent domain over the Premises or any other property. No action by Landlord in pursuing its rights or performing its obligations under this Lease shall be considered any type or form of Condemnation.

16. **WASTE**. Subject to the provisions of this Lease concerning Construction, Condemnation and Casualty, Tenant shall not commit or suffer to be committed any waste of the Premises, Improvements, or Equipment. Tenant agrees to keep the Premises, Improvements, and Equipment clean and clear of refuse and obstructions, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, Improvements, Equipment, or FF&E. Tenant shall immediately Notify Landlord of any waste, Casualty, or damage to the Premises. If waste, Casualty, or damage to the Premises arises from the Permitted Use, at Landlord's election, in Landlord's sole and absolute discretion, Tenant shall make, or cause to be made, full repair of the waste, Casualty, or damage and Restore the Premises to its condition existing immediately prior to the waste, Casualty, or damage. Tenant shall commence preliminary steps toward Restoration of the Premises as soon as practicable, but no later than thirty (30) days after the date the waste, Casualty, or damage occurs. Tenant shall complete all required Restoration of the Premises within ninety (90) days after the date the waste,

Casualty, or damage occurs. Tenant must obtain all Approvals required for Restoration of all waste, Casualty, or damage to the Premises.

17. **ENVIRONMENTAL CONDITIONS.** Tenant shall not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant shall Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Tenant becoming aware of such Environmental Condition.

17.1 Remediation. If an Environmental Condition occurs, Tenant shall remediate the Environmental Condition in accordance with Law to allow all uses of the Premises permitted by Law immediately before the Environmental Condition is discovered, at Tenant's sole cost and expense. If Tenant knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Tenant shall take all actions necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

17.2 Removal. If a Tenant Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Tenant shall remove all such Hazardous Substances from the Premises prior to the Termination Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant shall be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Premises by Tenant in accordance with this Section 8.2.

17.3 Reports. Tenant shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

17.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Tenant's sole cost and expense. Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within fifteen (15) days after Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to Landlord by Tenant under this Section 17.4 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest until paid.

18. **ACCESS AND INSPECTION.** Notwithstanding anything to the contrary in this Lease, Landlord and its agents may enter the Premises upon reasonable advance Notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults as permitted by this Lease; (c) perform such tests, borings, or other analyses as Landlord determines are necessary or appropriate relating to possible (non)compliance with Law or possible Hazardous Substance Discharge; provided, however, no invasive testing shall be conducted by Landlord without Tenant's prior written consent, not to be unreasonably withheld. In entering the Premises,

Landlord and its agents shall not unreasonably interfere with Tenant's Permitted Use of the Premises and shall comply with Tenant's reasonable instructions. Landlord's entry onto the Premises under this Section 17 shall not entitle Tenant to any rights or remedies, except as expressly provided in this Section 17, and such entry shall not constitute an actual or constructive eviction of Tenant from the Premises, nor shall it entitle Tenant to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice to Tenant in the event of an emergency. All Landlord representatives or agents who enter the Premises shall identify themselves at the main entrance to the Premises and shall always be accompanied by a Tenant representative while on the Premises. Tenant shall make a Tenant representative available for this purpose during all regular hours of operation for the Premises upon reasonable advance Notice from Landlord. If in Landlord's reasonable judgment it is necessary, Landlord shall have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Tenant with this Lease. Tenant acknowledges and agrees that: (i) all such Landlord inspections are for the sole purpose of protecting Landlord's rights under this Lease; (ii) are made solely for Landlord's benefit; (iii) Landlord's inspections may be superficial and general in nature; (iv) are for the purposes of informing Landlord of the conformity of the Premises with this Lease; and (v) Tenant shall not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Tenant agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

19. INDEMNIFICATION.

19.1 Tenant Indemnity Obligations. In addition to Tenant's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Tenant shall Indemnify the Landlord Parties against all Claims arising from: (a) Tenant's use or occupancy of the Premises or this Lease; (b) personal injury (including death) or property damage (to property of Tenant or any other Person) occurring on the Premises or adjoining real property; (c) personal injury (including death) or property damage resulting from Tenant's use or occupancy of the Premises; (d) wrongful intentional acts or negligence of one or more of the Tenant Parties; (e) strict liability relating to Tenant's use or occupancy of the Premises; (f) all Applications made at Tenant's request; (g) an agreement that Tenant (or anyone claiming by or through Tenant) makes with a Third Person regarding this Lease or the Premises; (h) services, labor, material, or equipment supplied to, for, or on behalf of Tenant; (i) a workers' compensation claim by one or more employees or contractors of one or more of the Tenant Parties; (j) a Prevailing Wage Determination; or (k) an Environmental Condition occurring on or after the Commencement Date. Notwithstanding anything to the contrary in this Lease, Tenant's obligations to Indemnify the Landlord Parties excludes Claims arising solely from the established active negligence or willful misconduct of a Landlord Party.

19.2 Independence of Insurance and Indemnity Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall not be construed or interpreted as in any way restricting, limiting, or Modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations and other obligations under this Lease shall not in any way restrict, limit, or Modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

19.3 Survival of Indemnification Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall survive the expiration or earlier termination of this Lease, until all

actual or prospective Claims subject to Tenant's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

19.4 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

19.4.1 *Notice*. The affected Landlord Parties shall Notify Tenant of the Claim within a reasonable time.

19.4.2 *Selection of Counsel*. Tenant shall select counsel reasonably acceptable to Landlord's City Council. Even though Tenant shall defend the Claim, the affected Landlord Parties may, in their respective sole and absolute discretion, engage separate legal counsel, at Tenant's expense, to advise them regarding the Claim and their defense. The affected Landlord Parties' separate legal counsel(s) may attend all proceedings and meetings. Tenant's legal counsel shall actively consult with the Landlord Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

19.4.3 *Cooperation*. The affected Landlord Parties shall reasonably cooperate with Tenant's defense of the Landlord Parties.

19.4.4 *Settlement*. Tenant may only settle a Claim with the prior written consent of the affected Landlord Parties, in their respective sole and absolute discretion.

19.5 Immediate Duty to Defend. The duty to defend that is within Tenant's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of Tenant or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the Landlord Parties be entitled to obtain summary adjudication or summary judgment regarding Tenant's duty to defend the Landlord Parties at any stage of a Claim within the scope of Tenant's obligations to Indemnify the Landlord Parties under this Lease.

19.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Tenant's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Tenant's obligation to Indemnify the Landlord Parties shall be reduced to the extent required to comply with applicable Law.

20. **LANDLORD'S TRANSFERS**. Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord shall Notify Tenant of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Upon any transfer or conveyance of the Fee Estate in compliance with this Lease, the grantor shall be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities or obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

21. **TENANT TRANSFERS**. Tenant shall not have any right to make or allow any Transfer without the prior written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion. Tenant acknowledges and agrees that Landlord will not approve a Transfer to a Prohibited Transferee. Tenant further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers

are reasonable.

21.1 Transfer Revenue Sharing with Landlord. If Landlord approves a Transfer, Tenant shall pay to Landlord two percent (2%) of the Gross Revenue received by Tenant in consideration of the Transfer on or before the effective date of the Transfer.

22. **SUBLEASING OR LICENSING**. Tenant may not sublease or license use of the Premises without Landlord's prior written consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on subleasing and licensing are reasonable.

22.1 Sublease Revenue Sharing with Landlord. If Landlord approves a sublease or license of the Premises, Tenant shall pay to Landlord fifty percent (50%) of the Gross Revenue received by Tenant in consideration of the sublease or license within ten (10) days after Tenant receives all or any portion of such Gross Revenue, including up-front payments and periodic payments.

23. **LANDLORD'S RESERVATION OF RIGHTS**.

23.1 Government Action. Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any required Approval from Landlord under its police power land use regulatory authority or other police powers or constitute an Approval by Landlord under its police power land use regulatory authority or other police powers. By entering into this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, any Approval required for the Permitted Use, or otherwise. Tenant shall diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord (in its governmental regulatory capacity) and other Governments necessary for the Permitted Use. Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any Landlord police power land use regulatory authority or other police power.

23.2 Natural Resources. Landlord reserves all right, title, and interest in all natural resources relating to the Premises, including subsurface natural gas, oil, minerals, and water, on or within the Premises.

23.3 Access Rights. Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property.

24. **EVENTS OF DEFAULT; REMEDIES**.

24.1 Definition of "Event of Default". An "**Event of Default**" means the occurrence of any one or more of the following:

24.1.1 *Monetary Default*. A Monetary Default that continues for ten (10) days after Notice to Tenant of the Monetary Default.

24.1.2 *Bankruptcy or Insolvency*. Tenant ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any

Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made).

24.1.3 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Section 24.1.2, occurs and Tenant does not cure it within thirty (30) days after Notice to Tenant of the Non-Monetary Default. For a Non-Monetary Default that cannot reasonably be cured within thirty (30) days from the date of such Notice, Tenant will not be in Default if it does all the following: (a) within thirty (30) days from the date of Notice to Tenant of the Non-Monetary Default, advise Landlord of Tenant's intention to take all reasonable steps to cure such Non-Monetary Default; (b) within a reasonable time under the circumstances, Tenant commences such cure and diligently prosecutes such cure to completion.

24.2 *Remedies*. If an Event of Default occurs, then Landlord shall, at Landlord's option, in Landlord's sole and absolute discretion, have all the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law, in equity, or under any other provision of this Lease:

24.2.1 *Termination of Tenant's Rights; Conditional Limitation*. Landlord may serve upon Tenant a 10-day Notice of termination of this Lease. Upon the expiration of such 10-day period, this Lease and the Term shall automatically, and without further action by any Person, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 10-day period were the Expiration Date. The passage of such 10-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant shall then quit and surrender the Premises to Landlord in accordance with Section 25 but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this Section 24.2.1. This Section 24.2.1 is intended to establish a conditional limitation and not a condition subsequent.

24.2.2 *Recovery of Damages Following Termination*. If Tenant's right to possession of the Premises is terminated by Landlord following the occurrence of an Event of Default, this Lease shall also terminate on the date on which Tenant's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

(e) The "worth at the time of award" of the amounts referred to in Sections 24.2.2(a) and 24.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 24.2.2(c) is computed by discounting such amount

at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

24.2.3 Taking Possession. Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 24.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms “enter,” “re-enter,” “entry,” and “re-entry,” as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord’s sole and absolute discretion, relet all or any portion of the Premises. Landlord may, in Landlord’s sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord shall apply all rents from any such reletting in the manner provided in Section 24.6. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 24.2.3 in Landlord’s name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord’s expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 24.2.3 shall constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

24.2.4 Suits Before Expiration Date. Landlord may sue for damages or to recover Rent, from time to time, in Landlord’s sole and absolute discretion.

24.2.5 Receipt of Money. No receipt of money by Landlord from Tenant after termination of this Lease or after giving any Notice of termination of this Lease shall reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive Landlord’s right to enforce payment of any Rent payable or later falling due, or Landlord’s right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after delivery of Notice of termination of this Lease or commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect all money due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit, or judgment, all such money collected being deemed payments on account of use and occupation of the Premises by Tenant or, in Landlord’s sole and absolute discretion, on account of Tenant’s liability to Landlord.

24.2.6 No Waiver. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, shall waive any such Default, Event of Default, or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, shall be Modified, except by a written instrument signed by Landlord. No waiver of any Default or Event of Default shall Modify this Lease. Each covenant, agreement, term, condition, and restriction of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

24.2.7 Damages. Landlord may recover from Tenant all damages Landlord incurs because of Tenant’s Default, including reasonable costs of recovering possession, reletting the Premises,

all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for Tenant's Default but may bring and prosecute a single combined action for all such Rent or damages.

24.3 Continue Lease. Landlord may, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to maintain Tenant's right to possession of the Premises after an Event of Default, this Lease shall continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease or sublease the Premises are reasonable.

24.4 Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages do not constitute an adequate remedy for a Non-Monetary Default.

24.5 Restoration Funds. Upon any termination of this Lease, to the extent Landlord or Depository then holds any Restoration Funds, such funds shall be applied as provided in this Lease, including as a payment toward any sums then payable to Landlord under this Lease.

24.6 Proceeds of Reletting. Landlord shall apply all proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

24.6.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and removing all Persons and property from the Premises, including reasonable and customary brokerage commissions and Legal Costs;

24.6.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably incurred in securing any new tenants or other occupants, including all brokerage commissions, Legal Costs, and all other reasonable costs of preparing the Premises for reletting;

24.6.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

24.6.4 *Residue*. Fourth, to pay to itself the remaining balance of Tenant's liability to Landlord.

24.7 Tenant's Late Payments; Administrative Charges. If Tenant fails to make any payment to Landlord required under this Lease when such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant shall pay five percent (5%) of the unpaid amount to Landlord as the reasonably estimated cost of the payment delay to Landlord. If any amount of such payment remains unpaid fifteen (15) days after such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant shall pay an additional five percent (5%) of the unpaid amount (a total of 10%) to Landlord as the reasonably estimated cost of the payment delay to Landlord.

Notwithstanding anything to the contrary in the two immediately preceding sentences, the amount payable by Tenant to Landlord under either sentence shall be no less than \$25. Nothing in this Section 24.7 is intended to affect or change Landlord's rights or remedies regarding a Default or Event of Default. This Section 24.7 only establishes Landlord's right to recover reasonably estimated costs of late payments, including compensating Landlord for staff time incurred by Landlord to handle the late or missed payment. Amounts payable by Tenant to Landlord under this Section 24.7 are not a penalty or compensation for use of funds and shall not be credited against any other obligation of Tenant under this Lease.

24.8 Landlord's Right to Cure. If Tenant, at any time, fails to make any payment or take any action this Lease requires, then Landlord, after five (5) Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit following such Default, may (but need not) make such payment or take such action. Within ten (10) days after Notice of such payment amount, Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to: (a) all reasonable monetary amounts paid (including Legal Costs) by Landlord in exercising its cure rights under this Section 24.8; plus (b) Default Interest on the monetary amounts described in clause "(a)" of this Section 24.8 from the date paid until the date of reimbursement to Landlord.

24.9 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount of money than the amount of money owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount of money due to Landlord or pursue any other remedy for a Default or Event of Default.

24.10 Survival. No termination of this Lease and no taking possession of or reletting the Premises shall relieve Landlord or Tenant of their respective liabilities and obligations under this Lease that survive such expiration, termination, repossession, or reletting.

24.11 Multiple Suits. Landlord may sue to recover damages, or monetary amount(s) equal to any installment(s) of Rent payable by Tenant, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages after an Event of Default.

24.12 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right or remedy under this Lease or applicable Law because of a Landlord Default or claiming a partial or total eviction (actual or constructive) because of a Landlord Default, Tenant shall give Landlord Notice of the Landlord Default and thirty (30) days following the effective date of such Notice to cure the Landlord Default. If Landlord cannot with due diligence cure a Landlord Default within thirty (30) days following the effective date of Notice of such Landlord Default, the cure period for the Landlord Default shall be extended for such further period as Landlord shall reasonably require to cure the Landlord Default, provided that Landlord shall: (a) within thirty (30) days following the effective date of Notice to Landlord of the Landlord Default, advise Tenant of Landlord's intention to take all reasonable steps to cure such Landlord Default; and (b) within a reasonable time under the circumstances, commence such cure and diligently prosecute such cure to completion. Tenant acknowledges the independence of the

covenants in this Lease and waives all right to terminate this Lease because of any Landlord Default.

25. END OF TERM.

25.1 Surrender. Upon any Expiration Date: (a) all Improvements(s) and Equipment existing at the commencement of this Lease or added to the Premises during the Term shall become Landlord's property; (b) Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any Loss this Lease does not require Tenant to Restore; (c) Tenant shall surrender to Landlord all right, title, or interest in and to the Premises and deliver such written evidence and confirmation of such surrender as Landlord reasonably requires; (d) Tenant shall deliver the Premises free and clear of all liens, except liens that Landlord directly caused; (e) Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable warranties then in effect for the Premises; (f) the Parties shall cooperate to achieve an orderly transition of operation of the Premises from Tenant to Landlord (to the extent reasonably possible), without interruption, including delivery of such books and records (or copies thereof), as Landlord reasonably requires; and (g) the Parties shall adjust for expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment, in the same manner as for a sale of the Premises (but any amount of money otherwise payable to Tenant shall first be applied to cure any Default), provided, however, that Tenant shall be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Tenant for periods after the Expiration Date (if any) and Landlord shall not be required to pay or credit Tenant for any such amount. Notwithstanding anything to the contrary in this Section 25.1, Tenant may remove from the Premises any FF&E owned by Tenant, but Tenant must do so, if at all, prior to the Expiration Date. Tenant shall immediately repair all damage to the Premises from removal of FF&E. Tenant's FF&E not removed before the Expiration Date shall be deemed abandoned.

25.2 Quitclaim of Tenant's Interests. Following any Expiration Date, Tenant shall sign, acknowledge, and deliver to Landlord a quitclaim deed acceptable to Landlord conveying all of Tenant's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such quitclaim deed (which Notice may be given thirty (30) days before any Expiration Date or later). If Tenant fails or refuses to sign, deliver, and record such quitclaim deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a quitclaim deed, which appointment is irrevocable and coupled with an interest.

26. **NOTICES**. All Notices submitted by a Party to the other Party under or as required by this Lease shall be sent by either messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated in **EXHIBIT E** attached to this Lease. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 26. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 26. Any attorney representing a Party

may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Commencement Date, are set forth in **EXHIBIT E**.

27. **REPLACEMENT OF STATUTORY NOTICE REQUIREMENTS.** When this Lease requires service of a Notice, that Notice shall replace, rather than supplement, any equivalent or similar Notice required by Law, including any Notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a Notice in a particular manner, service of that Notice (or a similar Notice required by this Lease) in the manner required by Section 26 shall replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

28. **NO BROKER.** Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 28.

29. **ESTOPPEL CERTIFICATES.** Each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**") to sign and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party shall sign and deliver such Estoppel Certificate, within reasonable time after request, even if the Requesting Party is in Default or Landlord Default. A Requesting Party shall pay all the expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate.

30. **HOLDOVER.** If Tenant continues to occupy the Premises after the Expiration Date, such occupancy shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise, nor give Tenant any right in or to the Premises after the Expiration Date. Tenant may not occupy the Premises after the Expiration Date without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant's occupancy of the Premises after the Expiration Date with Landlord's consent shall be a month-to-month tenancy and all other terms and conditions of this Lease shall continue in full force and effect, except that Landlord may then demand and receive Base Rent from Tenant equal to the then fair market Base Rent for the Premises' highest and best use, all as determined by Landlord. Landlord's acceptance of any Base Rent from Tenant after the Expiration Date shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise.

31. **MISCELLANEOUS.**

31.1 Prior Agreement Termination. As of the Commencement Date, all leases, right-of-entry permits, or other agreements between Landlord and Tenant concerning Tenant's entry upon, use, occupancy, or operation of the Premises, other than this Lease, are terminated, except as to any payments, rights, or remedies accrued to either Party under those agreements prior to the Commencement Date.

31.2 Compliance with Landlord Standard Contract Provisions. Tenant shall comply with all Landlord standard contract provisions set forth in **EXHIBIT G** attached to this Lease.

31.3 Third-Party Beneficiaries. There are no third-party beneficiaries of this Lease. Nothing in this Lease is intended nor shall be deemed to confer upon any Person, other than Landlord and Tenant, any right to enforce this Lease.

31.4 Modification. Each Modification of this Lease must be in a writing signed by both Parties.

31.5 Successors and Assigns. This Lease shall bind and benefit Landlord and Tenant and their respective permitted successors and assigns, but this Section 31.5 shall not limit, supersede, or Modify any Transfer restrictions in this Lease.

31.6 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the Parties, or claim made by either Party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease following a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other Party to this Lease, the prevailing Party shall be entitled to reimbursement of its Legal Costs, with Default Interest, and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other Party's Default or Landlord Default.

31.7 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party shall not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default, Event of Default, or Landlord Default shall waive such Default, Event of Default, or Landlord Default at any other time or any other Default, Event of Default, or Landlord Default.

31.8 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the Party against which such obligation is asserted shall have the right to perform the obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to recover any amount of money paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Default Rate.

31.9 Survival. All rights and obligations that by their nature are to be performed after any Expiration Date shall survive any such Expiration Date.

31.10 Accessibility Assessment. Landlord discloses to Tenant that the Premises have not been inspected by a Certified Access Specialist (CASp). Landlord further states:

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making

any repairs necessary to correct violations of construction-related accessibility standards within the premises.

31.11 Unavoidable Delay.

31.11.1 *Notice.* Performance by either Party under this Lease shall not be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice is timely given under this Section 31.11.1, shall commence on the date the condition causing the Unavoidable Delay commences. If Notice is not timely given under this Section 31.11.1, then the extension of time for the Unavoidable Delay shall commence on the effective date of the Notice of the Unavoidable Delay under this Section 31.11.1 and shall continue until the end of the condition causing the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

31.11.2 *Assumption of Economic Risks.* EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, AND REQUIREMENTS OF THIS LEASE. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

INITIALS OF AUTHORIZED
LANDLORD REPRESENTATIVE(S)

INITIALS OF AUTHORIZED
TENANT REPRESENTATIVE(S)

31.12 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

31.13 Counterparts. This Lease may be signed in multiple counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

31.14 Warranty Against Payment of Consideration for Lease. Tenant represents and warrants that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of its agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms or conditions for this Lease. Breach of the representations or warranties of this Section 31.14 shall entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Tenant. Upon any such termination of this Lease, Tenant shall immediately refund all payments made to or on behalf of Tenant by Landlord under this Lease or otherwise related to the Premises, prior to the date of any such termination.

31.15 Relationship of Parties. The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

31.16 Survival of Lease. All the provisions of this Lease shall be applicable to any dispute between the Parties arising from this Lease, whether prior to or following any Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Lease relating to dispute resolution or remedies shall survive any Expiration Date.

31.17 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) shall be personally liable to Tenant, or any successor in interest of Tenant, in the event of any Landlord Default or breach by Landlord under this Lease or for any amount of money that may be or become due to Tenant or any successor in interest of Tenant, on any obligations under the terms or conditions of this Lease.

31.18 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

31.19 Tax Consequences. Tenant acknowledges and agrees that it shall bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Tenant related to this Lease.

31.20 Time of the Essence. As to the performance of each obligation under this Lease of which time is a component, performance of such obligation within the time specified is of the essence.

31.21 Time Period Calculation. Unless otherwise specified, all references to time periods in this Lease measured in days shall be to consecutive calendar days, all references to time periods in this Lease measured in months shall be to consecutive calendar months and all references to time periods in this Lease measured in Lease Years shall be to consecutive Lease Years. All references to time periods in this Lease measured in Business Days shall be to consecutive Business Days.

31.22 Entire Agreement. This Lease (including the exhibits attached to this Lease) and the documents referenced in this Lease contain all the terms, covenants, and conditions between the Parties regarding the Premises. The Parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

31.23 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to conflict of laws statutes or principles.

31.24 Partial Invalidity. If any term or provision of this Lease or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

31.25 Interpretation Principles. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Lease. The Parties both participated substantially in negotiation, drafting, and revision of this Lease, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Each collective noun used in this Lease shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord’s option, any Modification violating this Lease), and includes all exhibits, schedules, and riders to such document. The word “or” includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each as amended, modified, renumbered, superseded, or succeeded, from time to time.

31.26 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any consent or approval by Landlord or Landlord reasonably imposes any conditions to any Landlord consent or approval under this Lease, or where this Lease allows Tenant to take any action without Landlord’s prior consent or approval, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Tenant shall cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Tenant without Landlord’s consent or approval, for the duration of the matter or activity that is subject to such conditions.

31.27 Reasonableness. Wherever this Lease states that a Party shall not unreasonably withhold any consent or approval or a matter is reasonably acceptable to a Party or some other similar phrase, then: (a) such consent or approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of consent or approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and (if reasonably possible) indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent or approval (or fails to object) to any matter, this shall not waive its right to require such consent or approval for any further or similar matter.

31.28 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

31.29 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference and described as follows:

EXHIBIT A	Definitions.
EXHIBIT B	Premises Legal Description.
EXHIBIT C	Premises Site Plan.
EXHIBIT D	Premises Aerial Plan.
EXHIBIT E	Notice Addresses.
EXHIBIT F	Insurance Requirements.
EXHIBIT G	Landlord Standard Contract Provisions.
EXHIBIT H	Prevailing Wage Requirements.
EXHIBIT I	Rules And Regulations.

[Remainder of page intentionally blank. Signatures appear on the immediately following page.]

**SIGNATURE PAGE
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

Landlord and Tenant sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Penny Maus, Director
Department of Real Estate and Airport
Management

Approved as to form on
_____.

MARA W. ELLIOTT,
City Attorney

By: _____
[INSERT NAME]
Deputy City Attorney

TENANT:

[INSERT FULL NAME, ENTITY TYPE,
AND STATE OF FORMATION OF
TENANT ENTITY]

By: _____

**EXHIBIT A
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

DEFINITIONS

1. Additional Rent. All sums this Lease requires Tenant to pay Landlord or any other Person, whether or not expressly called Additional Rent, except Base Rent.
2. Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. Affiliated shall have the correlative meaning.
3. Application. Each application, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Tenant to pursue or obtain an Approval for Construction this Lease allows or an Approval to use or operate the Premises in accordance with this Lease.
4. Approval. All licenses, permits (including building, grading, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the use, occupancy, maintenance, or operation of the Premises in accordance with this Lease.
5. Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor state or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.
6. Base Rent. [**TO BE DETERMINED**] per calendar month, as adjusted under Section 7.5.
7. Business Day. Monday through Friday, except City holidays when City offices are closed.
8. Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting the Premises, whether or not insured or insurable.
9. Certifying Party. Defined in Section 29.
10. City Attorney. City Attorney of the City of San Diego, California.
11. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine, or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature), or any judgment.
12. Commencement Date. The date on which this Lease is approved as to form by the City Attorney, as shown on the signature page to this Lease.

13. Condemnation. All the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) Government action not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Premises, but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.
14. Condemnation Award. All award(s) paid or payable (whether or not in a separate award) to a Party after the Commencement Date, because of or as compensation for a Condemnation, including: (a) an award made for improvements that are the subject of the Condemnation; (b) the full amount of money paid or payable or other value deliverable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation proceeding; (c) all interest on such award; and (d) all other monetary amounts payable on account of such Condemnation.
15. Condemnation Effective Date. For any Condemnation, the earlier of: (a) the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation; or (b) the commencement of Government action creating a physical right to compensation, but not resulting in an actual transfer of an interest in or right to use or occupy the Premises.
16. Construction. Any alteration, construction, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including new construction.
17. Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person or bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.
18. Controlling and Controlled. Exercising or having Control.
19. County. The County of San Diego, California.
20. Default. Any Monetary Default or Non-Monetary Default.
21. Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest, if any, that Law allows under the circumstances.
22. Depository. Bank of America, N.A., a Federal chartered bank.
23. Director. The then current director of Landlord's Department of Real Estate and Airport Management or such Person's successor in function.
24. Environmental Condition. Any of the following events relating to the Premises: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.
25. Environmental Law. Each Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation,

control, disposal, generation, storage, release, discharge, transportation, use of, or liability, or standards of conduct concerning, Hazardous Substances.

26. Equipment. All fixtures incorporated in the Premises by either Landlord or Tenant, and used, useful, or necessary to operate the Premises.

27. Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

28. Estoppel Certificate. A written certification of each of the following: (a) the nature of the Certifying Party's interest in the Premises and all Transfers of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) this Lease is unmodified and in full force and effect, or, if there have been modifications, that this Lease is in full force and effect, as modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of Landlord, or the Tenant Official, in the case of Tenant, each without any duty of inquiry or investigation), there are no uncured breaches, Defaults or failures to perform under this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, Defaults or failures claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

29. Event of Default. Defined in Section 24.1.

30. Expiration Date. The date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies after an Event of Default, or otherwise.

31. Reserved.

32. Federal. Relating or under the authority of the federal government of the United States of America.

33. Fee Estate. Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

34. FF&E. All movable furniture, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Equipment) used in operating the Premises for the Permitted Use that may be removed, without material damage to the Premises, and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as furniture, telephone, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems, and peripherals. FF&E does not include riding rings, horse corrals, pipe panels, pens, box stalls, perimeter fencing, or tackle sheds.

35. Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the Federal government of the United States of America, the State and County governments and their subdivisions and municipalities, including Landlord (in Landlord's governmental capacity), any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Premises or any activities on or at the Premises.

36. Gross Revenue. The sum of all the following: (a) the gross amount of cash paid, or to be paid; (b) the fair market value of other property transferred or to be transferred; (c) the outstanding amount of Tenant liabilities assumed, or to be assumed; (d) the value of any liability forgiveness provided to Tenant; or (e) in the case of a Transfer, sublease, or license without any of the previously described forms of consideration, the fair market value of the estate or interest in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer, sublease, or license.

37. Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any "hazardous" or "toxic" material, substance or waste defined by those or similar terms or regulated as such under any Law, any matter, waste or substance subject to any Law regulating, relating to or imposing obligations, liability, or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or form of energy from whatever source; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance of the Premises in compliance with Law.

38. Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into or from the Premises, or relating to transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Premises or any activities conducted at, on, under or in the Premises whether or not caused by a Party or occurring before or after the Commencement Date.

39. Immaterial Loss. A Casualty or Condemnation resulting in a Loss of ten thousand dollars (\$10,000) or less.

40. Improvements. All improvements located on the Premises from time to time.

41. Indemnify. Where this Lease states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise), including all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) the Indemnitee suffers or incurs: (a) from,

as a result of, or on account of the Claim; or (b) in enforcing the Indemnitor's indemnity obligation regarding the Claim. "Indemnified," "Indemnification," or similar terms shall have the correlative meanings.

42. Indemnatee. A Person entitled to be Indemnified under this Lease.
43. Indemnitor. A Person agreeing to Indemnify any other Person under this Lease.
44. Term. Defined in Section 4.
45. Insubstantial Condemnation. Any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.
46. Landlord. Initially, means the Landlord named in the initial paragraph of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the entire Fee Estate occurs (in all cases in compliance with this Lease), the transferor shall be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.
47. Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 24.12: (a) any material failure by Landlord to perform its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.
48. Landlord Parties. Collectively, Landlord, its City Council, elected officials, officers, employees, and agents.
49. Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.
50. Law. All laws, ordinances, requirements, orders, proclamations, directives, rules, or regulations of any Government affecting the Premises, this Lease, or the Permitted Use, in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental condition affecting, the Premises, or the Permitted Use, or relating to any taxes, or otherwise relating to this Lease, the Premises, the Permitted Use, or any Party's rights, obligations, or remedies under this Lease, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.
51. Lease Year. Each of: (a) the period from the Commencement Date through the day before the first anniversary of the Commencement Date; and (b) every subsequent period of twelve (12) calendar months beginning on an anniversary of the Commencement Date and ending on the day before the immediately following anniversary of the Commencement Date during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," etc. and if the Extended Term is entered into, "Lease Year 6."

52. Leasehold Estate. Tenant's leasehold estate in the Premises, and all Tenant's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease.
53. Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Lease or the other Party; or (e) review or approval that the other Party requests of such Person. All references to Legal Costs of Landlord shall include the salaries, benefits and costs of the City Attorney in representing Landlord and the lawyers employed in the City Attorney's office who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate based on their respective salary and multiplied by the time spent on such matter rounded to increments of 1/10th of an hour, in addition to Legal Costs of outside counsel retained by Landlord for any matter.
54. Loss. Any Casualty, Condemnation, or other damage or injury to the Premises.
55. Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.
56. Maintenance Deficiency. Defined in Section 10.3.
57. Maintenance Standard. Defined in Section 10.2.
58. Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any improvements) as of such date, considered: (a) as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens of this Lease, the remaining Term, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Landlord's reversion). The Market Value shall be determined as if the Term were to continue until the Scheduled Expiration Date.
59. Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Tenant.
60. Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of a specified agreement, document, or terms.
61. Modify. Agree to, cause, make, or permit any Modification.

62. Monetary Default. Any failure by Tenant to: (a) pay, when and as this Lease requires, any Rent, including Additional Rent, whether to Landlord or to a Third Person; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose; (c) comply with all obligations regarding Prohibited Liens set forth in Section 13; or (d) obtain, replace, maintain, or pay premiums for (or give Landlord written evidence of) any insurance coverage when and as this Lease requires.

63. Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any breach by Tenant of its obligations under this Lease; (b) Tenant's failure to comply with any restriction or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease by Tenant.

64. Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices shall be delivered, and shall become effective, only in accordance with Section 26.

65. Notify. Give a Notice.

66. Parties. Collectively, Landlord and Tenant.

67. Party. Individually, Landlord or Tenant, as applicable.

68. Permitted Exceptions. Each of the following matters: (a) taxes not on rolls; (b) the lien of Real Estate Taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease; (c) all adverse claims based upon the assertion that some portion of said land is tide or submerged lands or has been created by artificial means or has accreted to such portion so created; (d) zoning, environmental, municipal, building, and all other Laws imposed by any Federal, State, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises; (e) all Applications made at Tenant's request or all Approvals issued because of such Applications; (f) matters consented to or otherwise caused by Tenant; and (g) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Premises, whether or not of record.

69. Permitted Use. Sole and exclusive use of the Premises for the purpose of operating and maintaining an equestrian center, as more specifically described below in this Section 69, and other incidental uses as Landlord may allow by written consent.

69.1 The primary services to be offered on the Premises shall be horse boarding, riding lessons, riding training classes, and guided trail rides. Incidental uses may include picnics, barbecues, hay rides, educational programs and activities, machine vending of beverages and snacks, and show ring activities. All uses are to serve Tenant's patrons and the general public. Other related or incidental purposes as may be first approved in writing by Landlord may be conducted on the Premises and for no other purposes whatsoever.

69.2 The consumption of alcohol is expressly forbidden on the Premises at all times during the term of this Lease.

69.3 Smoking is forbidden on the Premises at all times during the term of this Lease.

69.4 Operate, on a nonexclusive basis, riding trails commencing on the Premises and through the Los Penasquitos Canyon Preserve, as described in Exhibit I, during regular business hours, as approved in writing by the Landlord, except when the Los Penasquitos Canyon Preserve is closed or during inclement weather. Tenant shall comply with the Rules and Regulations for Trail Rides set forth in Exhibit I. The Rules and Regulations for Trail Rides may be amended by Landlord, in its sole discretion, or by Tenant, upon the written consent of Landlord, as necessary to ensure the continued safe operation of trail rides. Tenant shall be responsible for weekly horse manure removal and proper manure disposal to Landlord's satisfaction as more particularly described in the Exhibit I. Tenant is not required to clear the riding trails of debris and other materials caused by acts of God, including but not limited to floods or fires. Tenant's right to operate the riding trails may be immediately limited or suspended, temporarily or indefinitely, by Landlord, in its sole discretion. Landlord may, upon ten (10) days written notice to Tenant, suspend Tenant's use of the riding trails when, in the opinion of Landlord, such use and operation would cause environmental damage, safety concerns or unduly interfere with the use of the Park for a major public event. What constitutes a "major public event" is in the sole discretion of Landlord. Such suspensions shall be for such periods of time as are deemed necessary by Landlord, in its sole discretion, and shall be without liability of Landlord to Tenant for damages of any kind suffered by Tenant or its sublessees as result thereof. The use of the Premises for any unauthorized purpose, use or operation shall constitute a substantial default and subject this Lease to termination at the sole option of the Landlord. Tenant covenants and agrees to use the Premises throughout the term of this Lease for the above-specified purposes and to diligently pursue the purposes throughout the term of this Lease. Failure to continuously use the Premises for said purposes and approved uses, or the use thereof for purposes not expressly authorized herein, shall be ground for termination of the Lease by Landlord.

70. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

71. Premises. The real property specifically described in **EXHIBIT B** attached to this Lease, including all improvements located on such real property on or after the Commencement Date. The Premises are generally depicted and shown, as of the Commencement Date, in **EXHIBIT C** and **EXHIBIT D**, respectively. **EXHIBIT B** is controlling as to the real property constituting the Premises.

72. Prevailing Wage Law. Defined in **EXHIBIT H**, Section 1.

73. Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action

or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.

74. Prohibited Lien. Any deed of trust, mortgage, or other security instrument securing repayment of money encumbering the Leasehold Estate, or any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien against the Leasehold Estate arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to or on behalf of Tenant (or anyone claiming through Tenant).

75. Prohibited Transferee. Any Person: (a) with whom Landlord is in litigation at the time the Transfer to such Person is made or is to be made by Tenant, exclusive of defendants in eminent domain litigation commenced by Landlord where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States or any Person identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is entitled to claim diplomatic immunity; (d) that is a domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

76. Property Insurance. Defined in **EXHIBIT F**.

77. Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Tenant, or Depository, excluding proceeds of Tenant's business interruption insurance exceeding Rent.

78. Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district, assessments, municipal water and sewer rents, rates or charges, excises, levies, license and permit fees, fines, penalties and other Governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or any vault, passageway or space in, over or under any street constituting a portion of the Premises, or any FF&E, Equipment or other facility used in the operation of the Premises, or the rent or income received from the Premises, or any use or occupancy of the Premises. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest. Any possessory interest tax imposed shall be solely a tax liability of Tenant and shall be paid before delinquency by Tenant. If at any time during the Term, the method of taxation prevailing at the Commencement Date shall be altered so that any new tax,

assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term “Real Estate Taxes,” to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

79. Rent. Collectively, Base Rent, Percentage Rent (as defined in Section 7.2 of the agreement) and all Additional Rent.

80. Requesting Party. Defined in Section 29.

81. Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially equivalent to their condition before the Loss, subject to any changes in Law limiting the foregoing.

82. Restoration Funds. Any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

83. Restore. Accomplish a Restoration.

84. Scheduled Expiration Date. 11:59 p.m. on the day preceding the fifth anniversary of the Commencement Date; provided, however, if the First Extended Term and/or Second Extended Term is entered into, then the Scheduled Expiration Date will be 11:59 p.m. on the day preceding the fifth anniversary of the Commencement Date of either the First Extended Term or Second Extended Term.

85. SDMC. Defined in Section 9.9.

86. Sign. Defined in Section 9.11.

87. State. The State of California.

88. Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Tenant’s reasonable determination renders the remainder of the Premises Uneconomic.

89. Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

90. Tenant. **[TO BE DETERMINED]**, and its permitted successors or assigns under this Lease.

91. Tenant Improvements. Items that are or are to be installed on the Premises by or for the benefit of Tenant, such as floor coverings, wall coverings, walls and doors that are not load bearing, window treatments, and other similar items.

92. Tenant Official. A Person holding a senior level management position with Tenant who has intimate knowledge regarding operation of the Premises, as designated by Notice from Tenant to Landlord, from time to time. On the Commencement Date, the Tenant Official is Audra London, Director – Real Estate.
93. Tenant Parties. Collectively, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Tenant.
94. Tenant Party. Individually, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, or owners of Equity Interests in Tenant.
95. Term. Defined in Section 4.
96. Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest, employee, or agent of a Party.
97. Transfer. Any of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of Tenant’s legal, beneficial, or equitable interest in this Lease; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Tenant by the owner(s) of such Equity Interest(s); (c) any transaction described in clause “(b)” affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” through “(d),” shall be deemed a Transfer by Tenant even though Tenant is not technically the transferor. A “Transfer” shall not, however, include any of the foregoing (provided that the other Party to this Lease has received Notice of such event) relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (ii) to any Person that, as of the Commencement Date, holds an Equity Interest in the Person whose Equity Interest is being transferred.
98. Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, Casualty, war, acts of terrorism, riots, Government action or inaction, regional natural disasters, or inability to obtain materials, except for the payment of money, unless the delay in the payment of money is due to one of the causes described above that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions. Unavoidable Delay shall not include delay caused by a Party’s financial condition, illiquidity, or insolvency.
99. Uneconomic. The Premises: (a) are materially diminished in value or utility; (b) cannot be used for the intended purpose; (c) are subject to material impairment of access to, required parking facilities, or any material service(s) necessary or appropriate for economic operation; (d) require Restoration at a total cost that Tenant reasonably estimates in writing would exceed 1.5 times the

then-current Market Value of the Premises; (e) do not comply with the operating requirements under a necessary Approval held by Tenant; or (f) cannot reasonably be operated as the Premises, whether in a manner substantially equivalent to past practice or on a scale that is smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent as adjusted after any Condemnation) and reasonably feasible.

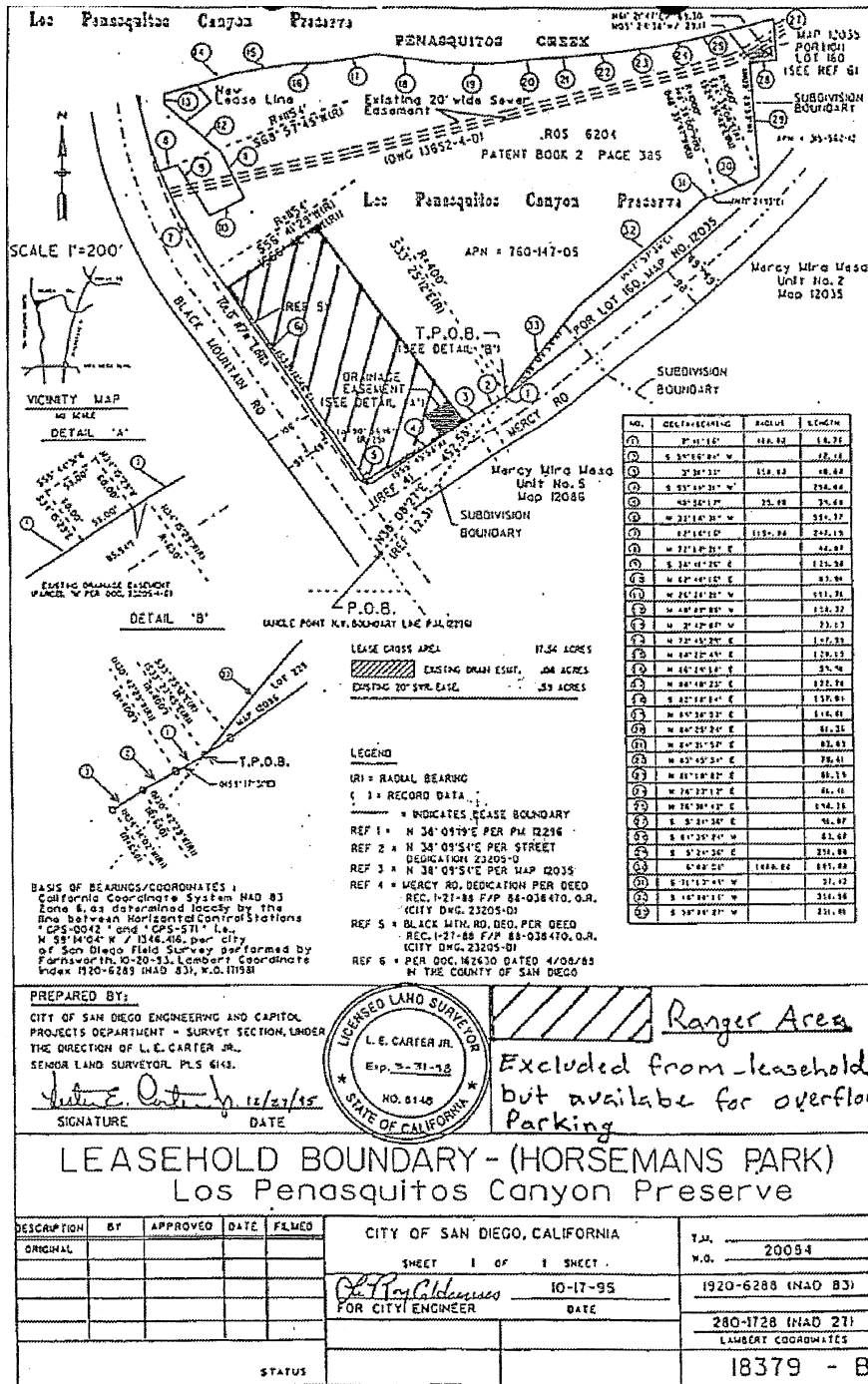
**EXHIBIT B
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

PREMISES LEGAL DESCRIPTION

The Premises is that portion of Assessor Parcel No. 314-031-04, consisting of approximately 15.44 acres of land located at 12115 Black Mountain Road, San Diego, California 92129, including the Mohnike Adobe House and a hay barn, both registered on the National Register of Historic Places (Historical Recourses Board #419), a perimeter fence, and miscellaneous other storage structures, including an on-site manager office. The area located in the southwest corner of the Premises and designated as the Ranger Area is not included in the Premises and shall not be used by Tenant for overflow parking or any other use during the Term. It is further agreed that the Premises has not been surveyed; however, City and Tenant agree to the approximate acreage and boundaries, and generally identified in Exhibit C.

**EXHIBIT C
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

PREMISES SITE PLAN



**EXHIBIT D
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

PREMISES AERIAL PLAN



**EXHIBIT E
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

NOTICE ADDRESSES

Tenant:

[INSERT TENANT'S NOTICE ADDRESS(ES)]

Landlord:

The City of San Diego
Attention: Director, Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

**EXHIBIT F
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

INSURANCE REQUIREMENTS

1. Required Insurance Coverage.

- 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Tenant, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Landlord, which pre-approval shall not be unreasonably withheld.
- 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Premises.
- 1.3. *Property Insurance.* Insurance providing coverage for the Premises and all improvements on or to the Premises against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Premises, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.
- 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One

Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Tenant.

2. **Nature of Insurance.** The contents of this **EXHIBIT F** are sometimes referred to as the “**Insurance Requirements.**” All Liability Insurance, Automobile Liability Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance policies shall name the Landlord Parties as “additional insured.” The coverage afforded to the Landlord Parties shall be at least as broad as that afforded to Tenant regarding the Premises and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.
 - 3.2. *Primary Coverage.* Any insurance or self-insurance maintained by the Landlord Parties shall be excess of all insurance required to be maintained by Tenant under these Insurance Requirements and shall not contribute with any insurance required to be maintained by Tenant under these Insurance Requirements.
 - 3.3. *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for Tenant’s Indemnity obligations under this Lease. Tenant’s obtaining or failing to obtain such contractual liability coverage shall not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.
 - 3.4. *Deliveries to Landlord.* Evidence of Tenant’s maintenance of all insurance policies required by these Insurance Requirements shall be delivered to Landlord before the Commencement Date. No later than thirty (30) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant shall deliver to Landlord evidence of Tenant’s maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage

or in limits, except after sixty (60) days' advance Notice of such action to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties under these Insurance Requirements.

- 3.5. *Waiver of Certain Claims.* Tenant shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Tenant in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Tenant and the Landlord Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by Landlord. Tenant shall pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts of money paid by Landlord toward self-insured retentions regarding insurance policies covering the Landlord Parties under these Insurance Requirements shall be reimbursed to Landlord by Tenant in the same manner that insurance costs are

reimbursable to Landlord from Tenant under Section 5 of these Insurance Requirements.

- 3.11. *No Separate Insurance.* Tenant shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the Landlord Parties are made additional insured under such insurance coverage.
4. **Insurance Independent of Indemnification.** These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.
5. **Landlord Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Tenant to carry any insurance coverage required by these Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord shall be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Each amount of money becoming due and payable to Landlord under this Section 5 that is not paid within fifteen (15) days after Notice from Landlord with an explanation of the amount owed, will accrue Default Interest from the date incurred until paid. Election by Landlord to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Tenant shall not relieve Tenant of any Default or Event of Default or Tenant's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

**EXHIBIT G
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance.** By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following requirements in performance of this Lease:

1.1 Tenant Certification for Americans with Disabilities Act (“ADA”) and State Access Laws and Regulations. Tenant shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Tenant shall comply with the most restrictive requirement (i.e., that which provides the most access). Tenant also shall comply with the Landlord’s ADA Compliance/Landlord Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Lease by reference. Tenant warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that all subcontracts relating to this Lease or the Premises will contain the subcontractor’s agreement to abide by the provisions of Council Policy 100-04 and all applicable Federal and State access laws and regulations.

1.2 Compliance with Landlord’s Equal Opportunity Contracting Program (“EOCP”). Tenant shall comply with all EOCP requirements. Tenant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant shall provide equal opportunity in all employment practices. Tenant shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.2 shall be interpreted to hold Tenant liable for any discriminatory practice of its subcontractors. Prior to commencing the Permitted Use on the Premises, Tenant shall contact the EOCP staff to determine compliance with all applicable rules and regulations.

1.3 Equal Benefits Ordinance Certification. Unless an exception applies, Tenant shall comply with the Equal Benefits Ordinance codified in SDMC section 22.4308.

1.4 Equal Pay Ordinance. Unless an exception applies, Tenant shall comply with the “Equal Pay Ordinance” codified in SDMC sections 22.4801 through 22.4809. Tenant shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Tenant to the same extent as it would apply to Tenant. Tenant shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.5 Product Endorsement. Tenant shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to Landlord as a user of a good or service must have the prior written approval of the Mayor.

1.6 Business Tax Certificate. Unless Landlord’s City Treasurer determines in writing that Tenant is exempt from the payment of business tax, Tenant is required to obtain a Landlord

business tax certificate and provide a copy of such certificate to Landlord before commencing the Permitted Use.

**EXHIBIT H
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Lease cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Lease cumulatively exceeding \$15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Tenant and Tenant's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **EXHIBIT H** (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). If both Prevailing Wage Law and the LWO are applicable to particular work, Tenant and Tenant's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Tenant and Tenant's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with Landlord and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Tenant and Tenant's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Tenant and Tenant's contractors and subcontractors shall all deliver evidence of the required job site posting to Landlord, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Lease in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur

during the Term, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

1.2 Penalties for Violations. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with State Labor Code section 1775 shall be in addition to all other applicable penalties allowed under State Labor Code sections 1720-1861.

1.3 Payroll Records. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Tenant and Tenant's contractors and subcontractors shall all furnish the records specified in State Labor Code section 1776 directly to the State Labor Commissioner in the manner required in State Labor Code section 1771.4. Tenant is responsible for ensuring that Tenant's contractors and subcontractors submit certified payroll records to Landlord, the State Labor Commissioner, and DIR.

1.4 Apprentices. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Tenant shall be held responsible for its compliance and the compliance of Tenant's contractors and subcontractors with State Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of State Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Tenant shall include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: State Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Tenant and Tenant's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Lease or any contract or subcontract, respectively, Tenant and Tenant's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the State Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before

commencing the performance of the work of this contract.” Tenant shall include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of State Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under State Labor Code section 1725.5. In accordance with State Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the State Business and Professions Code or by section 10164 or 2103.5 of the State Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded.”

1.8.1 A contractor’s inadvertent error in listing a subcontractor who is not registered under State Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in State Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under State Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of State Labor Code section 1771.1(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 State Labor Code section 1725.5.

1.8.3 By entering into this Lease, Tenant is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with State Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to Landlord.

1.9 Filing of Form PWC-100. Tenant shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to Landlord.

1.10 Filing of Notice of Completion. Tenant shall record a notice of completion in accordance with State Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to Landlord.

**EXHIBIT I
TO
PERCENTAGE LEASE
(12115 BLACK MOUNTAIN ROAD, SAN DIEGO, CA 92129)**

RULES AND REGULATIONS

TRAIL RIDERS PROTECTIVE HEADGEAR REQUIREMENTS

1. **Minor Age Riders.** Tenant must require all minor age (17 years or age or younger) able-bodied riders to wear ASTM/SEI F1163 certified equine helmet protective headgear. If the parents or legal guardian of any minor age able-bodied riders choose not to have their child wear protective headgear, the parents or legal guardian must sign a helmet refusal form, which must be approved by City in writing in advance, stating that ASTM/SEI protective headgear was offered to their child and that not wearing protective headgear increases the risk of serious injury and/or death to their child during horseback riding activities.
2. **Disabled Riders.** It may not be appropriate or safe for some disabled riders to wear protective headgear. Tenant must follow the directions of its disabled and therapeutic riding certification organization and the directions of the medical professional who oversees the health care of the disabled rider.
3. **Obviously Intoxicated People.** Tenant may not allow obviously intoxicated people to ride or come near horses under any circumstances.
4. **Riding Double.** Tenant shall not allow two riders on one mount under any circumstances.

PERSONNEL MANAGEMENT

5. **Worker's Compensation and Labor Laws.** If Tenant employs part-time or full-time employees, contract labor workers, exchange labor, or volunteers working on its behalf, Tenant shall comply with the current Workers' Compensation and Labor laws of California.
6. **Employee Background Check.** Tenant shall employ the most reputable counselors, instructors, and personnel. Tenant shall carefully screen in advance all employment applications, employee health records, references, and training certification papers prior to hiring any counselors, instructors, and personnel.
7. **Employee Records.** Tenant shall maintain all employee records shall for at least five years beyond the Term of the Lease, including, but not limited to, next-of-kin names, addresses, phone numbers, and forwarding addresses. Employment applications should be completed by each employee and references provided to employer. Tenant shall fully check all references prior to hiring.

POSTING SIGNS

8. **Emergency Phone Numbers.** Emergency phone numbers must be posted for police, veterinarians, fire department and hospital beside all phones.
9. **Tenant Rules.** Tenant rules must be prominently posted around the Premises.
10. **“Child Supervision” Signs.** Signs stating “Child Supervision Required” must be prominently posted.
11. **Ride at Your Own Risk” Signs.** Signs stating “Ride at Your Own Risk” must be prominently posted in public high traffic areas of the Premises.
12. **Signs Required by State and Federal Law.** All signs required by local, state and federal laws, rules and regulations must be prominently posted.

OTHER RULES AND REGULATIONS

13. Because the Premises is historic in nature, no non-operational, non-registered or non-related vehicles are to be stored on the Premises.
14. Tenant, as part of regular property maintenance, shall water roads and paths on the Premises to prevent dusty conditions.
15. No one person shall board more than four (4) horses on the Premises at one time. This provision shall not apply to rental horses and riding instructors.
16. Tenant shall not board more than one hundred (100) horses on the Premises at any one time.
17. Tenant shall properly store hay on the Premises, including, but not limited to, storing all hay within a raised storage facility.
18. Tenant shall provide all horses boarded on the Premises with a consistent feeding schedule and shall adhere to each horse’s diet requirements.

RFP Exhibit C: Market Rent Analysis



MEMO

Canyonside Ranch Market Rent (Informational Purposes)

TO DREAM – Lease Administration
FROM DREAM – Valuations
PROPERTY Canyonside Ranch (Ground Leased Property)
12115 Black Mountain Road, San Diego, CA 92129

The Canyonside Ranch consists of 15.44-acres and has been most recently used as an equestrian facility. A three-year lease was executed in February 2017. In this lease, the base rent was \$2,500 with a percentage rent on their gross income, summarized as follows:

- 1) 10% - gross income for boarding
- 2) 10% - per person, from trail rides
- 3) 10% - per student from lessons instruction and training
- 4) 25% - commissions, vending machines, etc.
- 5) 10% - gross income from all other authorized activities

According to the rental history, the actual rent paid (base rent vs percentage rent) ranged from \$3,000/month to \$3,900/month.

The DREAM Valuations Team gathered information on comparable leases, shown in the following table:

	I-1	I-2	I-3	I-4	I-5
Address	13315 Willow Rd Lakeside, CA 92040	El Monte Valley Lakeside, CA 92040	12310 Campo Rd Spring Valley, CA 91978	2974 Equitation Ln Bonita, CA 91902	3023 Equitation Ln, et al Bonita, CA 91902
APN	Portion of 392-050-43, 392-062-09	Portion of 392-050-47	506-021-31	Portion of 570-110-10	Portion of 570-110-41
APN (Possessory Interest)	Unknown	Unknown	760-128-49	760-235-24	760-106-60
Property Type	Equestrian	Equestrian	Equestrian	Equestrian	Equestrian
Sign Date	1/21/22	10/1/17	4/1/17	Pending	Pending

The comparables above had lease rates ranging from \$608/month to \$6,376/month.

The information provided in this memo is for information purposes only to serve as a reference point for proposers. Actual base rent/percentage rents will be based on an appraisal conducted by an independent appraiser approved by the City of San Diego. It is possible that the base lease rate (\$608/mo. to \$6,376/mo.) will fall within or out of the range of the above market data. Additionally, percentage rents are subject to change after the market is analyzed by the approved appraiser.

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue, Suite 200 • San Diego, CA 92101
Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION**

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: _____ Fax Number: _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: _____ Fax Number: _____ Email: _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: _____ Email: _____

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force *
- Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of _____

(Firm Name)

_____, _____ hereby certify that information provided
(County) (State)

herein is true and correct. This document was executed on this _____ day of _____, 20. _____

(Authorized Signature)

(Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black or African-American
- (2) Hispanic or Latino
- (3) Asian
- (4) American Indian or Alaska Native
- (5) Native Hawaiian or Pacific Islander
- (6) White
- (7) Other race/ethnicity; not falling into other groups

Definitions of the race and ethnicity categories can be found on Page 4

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

*Construction laborers and other field employees are not to be included on this page

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black or African-American
- (2) Hispanic or Latino
- (3) Asian
- (4) American Indian or Alaska Native
- (5) Native Hawaiian or Pacific Islander
- (6) White
- (7) Other race/ethnicity; not falling into other groups

Definitions of the race and ethnicity categories can be found on Page 4

TRADE OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Work Force Report

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (American Indian or Alaska Native, Asian, Black or African-American, Native Hawaiian or Pacific Islander, White, and Other) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report¹. By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county². If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report^{1,3}. In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one ¹, two ² & three ³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

RACE/ETHNICITY CATEGORIES

American Indian or Alaska Native – A person having origins in any of the peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Asian – A person having origins in any of the peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American – A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Pacific Islander – A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White – A person having origins in any of the peoples of Europe, the Middle East, or North Africa.

Hispanic or Latino – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.

Exhibit A: Work Force Report Job Categories – Administration

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers

Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics,

Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material
Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning
and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry
Workers

Exhibit B: Work Force Report Job Categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard
Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of
Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and
Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and
Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration
Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair
Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment
Operators
Pile-Driver Operators
Operating Engineers and Other Construction
Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons**Roofers****Security Guards & Surveillance Officers****Sheet Metal Workers****Structural Iron and Steel Workers****Welding, Soldering and Brazing Workers**

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine
Setter, Operators and Tenders

Workers, Extractive Crafts, Miners

CITY OF SAN DIEGO

**LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE FOR
ALL LEASES, ASSIGNMENTS AND SUBLEASES**

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interests," before the City will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub) Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete):

Exact name of proposed Lessee (complete only if applicable):

Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Date this Questionnaire completed: _____, _____.

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: _____

Title: _____

Thank you for taking the time to complete the Questionnaire. Lessees may contact the Department of Real Estate and Airport Management if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

DEPARTMENT OF REAL ESTATE AND AIRPORT MANAGEMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub)Lessee exactly as it will appear on the actual tenancy document:

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

Telephone No.: _____ Fax. No.: _____
E-mail Address: _____

3. Billing Address (***only if different from Mailing Address***);

Telephone No.: _____ Fax. No.: _____

4. Proposed (Sub)Lessee intends to operate as a:
Sole Proprietorship (); Partnership (); Corporation ();
Limited Liability Company (); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): _____

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following:

1. Date of Organization: _____

2. General Partnership ()
 Limited Partnership ()
 Other () Explain _____

3. Statement of Partnership recorded: Yes () No ()

Date	Book	Page	County
------	------	------	--------

4. Has the partnership conducted business in San Diego County?
 Yes () No () If so, when? _____
 If so, where? _____

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S ()
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? _____
5. The corporation is held:
 - a. Publicly () Privately ()
 - b. If publicly held, how and where is the stock traded?

6. Please list the following:	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:			_____
d. Value per share of Common Stock:		Par	\$ _____
		Book	\$ _____
		Market	\$ _____

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

8. Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment there to, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: _____
2. Where Organized: _____
3. Is the Company authorized to do business in California?
 - a. Yes () No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes () No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No ()
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.

2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No ()
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.

3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each action.

4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 3

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name _____
Date of Birth _____
Place of Birth _____
Social Security Number _____
Driver' s License Number/State _____
Home Address _____

Previous Address _____

Home Telephone No. _____
Employer _____
Occupation _____
Business Address _____
Business Telephone No. _____
Business Fax No. _____

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date _____ Signed _____

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased.
Discuss any optional services and uses which you propose to provide.

**PROPOSED METHOD OF FINANCING
DEVELOPMENT OR LEASEHOLD PURCHASE**

Describe the method of financing for the Leasehold purchase or any new or additional development on the Leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operation	Uses (Identify Each Use)				
	1	\$	\$	\$	\$
2					
3					
4					
5					

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease assignment.)

Please summarize the terms and conditions of the purchase, sale, or transfer of Leasehold interest(s) which requires City consent, as specified in the Assignment- Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

Exhibit F: Contractor Standards Pledge of Compliance

**City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a contractor (bidder or proposer) has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Contractors must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render a bid or proposal non-responsive. In the case of an informal solicitation or cooperative procurement, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

By signing and submitting this form, the contractor is certifying, to the best of their knowledge, that the contractor and any of its Principals have not within a five (5) year period – preceding this offer, been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) contract or subcontract.

“Principal” means an officer, director, owner, partner or a person having primary management or supervisory responsibilities within the firm. The Contractor shall provide immediate written notice to the Procurement Contracting Officer handling the solicitation, at any time prior to award should they learn that this Representations and Certifications was inaccurate or incomplete.

This form contains 10 pages, additional information may be submitted as part of *Attachment A*.

A. BID/PROPOSAL/SOLICITATION TITLE:

B. BIDDER/PROPOSER INFORMATION:

Legal Name	DBA		
Street Address	City	State	Zip
Contact Person, Title	Phone	Fax	

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103). Use additional pages if necessary.

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?
Yes **No**

If **Yes**, use Attachment A to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. Is your firm a non-profit?
Yes **No**

If **Yes**, attach proof of status to this submission.

3. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?
Yes **No**

If **Yes**, use Attachment A to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment A if more space is required.

Corporation Date incorporated: _____ State of incorporation: _____

List corporation's current officers: President: _____
Vice Pres: _____
Secretary: _____
Treasurer: _____

Type of corporation: C Subchapter S

Is the corporation authorized to do business in California: **Yes** **No**

If **Yes**, after what date: _____

Is your firm a publicly traded corporation? **Yes** **No**

If **Yes**, how and where is the stock traded? _____

If **Yes**, list the name, title and address of those who own ten percent (10 %) or more of the corporation's stocks:

Do the President, Vice President, Secretary and/or Treasurer of your corporation have a third party interest or other financial interests in a business/enterprise that performs similar work, services or provides similar goods? **Yes** **No**

If **Yes**, please use Attachment A to disclose.

Please list the following: **Authorized** **Issued** **Outstanding**

- a. Number of voting shares: _____
- b. Number of nonvoting shares: _____
- c. Number of shareholders: _____
- d. Value per share of common stock:

Par	\$	_____
Book	\$	_____
Market	\$	_____

Limited Liability Company Date formed: _____ State of formation: _____

List the name, title and address of members who own ten percent (10%) or more of the company:

Partnership Date formed: _____ State of formation: _____

List names of all firm partners:

Sole Proprietorship Date started: _____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

Joint Venture Date formed: _____

List each firm in the joint venture and its percentage of ownership:

Note: To be responsive, each member of a Joint Venture or Partnership must complete a separate *Contractor Standards form*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

Yes No

If **Yes**, use Attachment A to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?

Yes No

If **Yes**, use Attachment A to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes No

If **Yes**, use Attachment A to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If **Yes**, use Attachment A to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

Yes No

If **Yes**, use Attachment A to explain specific circumstances.

6. Are there any claims, liens or judgements that are outstanding against your firm?

Yes No

If **Yes**, please use Attachment A to provide detailed information on the action.

7. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: _____

Point of Contact: _____

Address: _____

Phone Number: _____

8. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City

a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

9. In order to do business in the City of San Diego, a current Business Tax Certificate is required. Business Tax Certificates are issued by the City Treasurer's Office. If you do not have one at the time of submission, one must be obtained prior to award.

Business Tax Certificate No.: _____ Year Issued: _____

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

Yes No

If **Yes**, use Attachment A to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

Yes No

If **Yes**, use Attachment A to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

Yes No

If **Yes**, use Attachment A to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

Yes No

If **Yes**, use Attachment A to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

Yes No

If **Yes**, use *Attachment A* to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

Yes No

If **Yes**, use Attachment A to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Please note that any references required as part of your bid/proposal submittal are in addition to those references required as part of this form.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?
Yes No

If **Yes**, use Attachment A to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?
Yes No

If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

Yes **No**

If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes **No**

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

Yes **No**

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

4. Do any of the Principals of your firm have relatives that are either currently employed by the City or were employed by the City in the past five (5) years?

Yes **No**

If **Yes**, please disclose the names of those relatives in Attachment A.

I. BUSINESS REPRESENTATION:

1. Are you a local business with a physical address within the County of San Diego?

Yes **No**

2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?

Yes **No**

Certification # _____

3. Are you certified as any of the following:

- a. Disabled Veteran Business Enterprise Certification # _____
- b. Woman or Minority Owned Business Enterprise Certification # _____
- c. Disadvantaged Business Enterprise Certification # _____

J. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local **prevailing, minimum, or living wage laws**? **Yes** **No** If **Yes**, use Attachment A to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

By signing this Pledge of Compliance, your firm is certifying to the City that you will comply with the requirements of the Equal Pay Ordinance set forth in SDMC sections 22.4801 through 22.4809.

K. STATEMENT OF SUBCONTRACTORS & SUPPLIERS:

Please provide the names and information for all subcontractors and suppliers used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment A if additional pages are necessary. If no subcontractors or suppliers will be used, please write "Not Applicable."

Company Name: _____

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$_____ (per year) \$_____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

Company Name: _____

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$_____ (per year) \$_____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

L. STATEMENT OF AVAILABLE EQUIPMENT:

A full inventoried list of all necessary equipment to complete the work specified may be a requirement of the bid/proposal submission.

By signing and submitting this form, the Contractor certifies that all required equipment included in this bid or proposal will be made available one week (7 days) before work shall commence. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San

Diego reserves the right to reject any response, in its opinion, if the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective matter for the duration of the contract period.

M. TYPE OF SUBMISSION: This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*

Initial submission of *Contractor Standards Pledge of Compliance* as part of a Cooperative agreement

Initial submission of *Contractor Standards Pledge of Compliance* as part of a Sole Source agreement

Update of prior *Contractor Standards Pledge of Compliance* dated _____.

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.

Name and Title

Signature

Date

City of San Diego
CONTRACTOR STANDARDS
Attachment "A"

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed.
Print in ink or type responses and indicate question being answered.

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Print Name, Title

Signature

Date

Exhibit G: References

1. Agricultural Base Zones
<http://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division03.pdf>
2. Open Spaces Zones
<http://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division02.pdf>
3. Mira Mesa Community Plan
<https://www.sandiego.gov/planning/community-plans/mira-mesa>
4. Los Penasquitos Canyon Preserve
<https://www.sandiego.gov/park-and-recreation/parks/osp/lospenasquitos>
5. Chap 02 Art 02 Div 30, Contract Definitions and Procedures
<http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art02Division30.pdf>
6. Department of Real Estate and Airport Management Website
<https://www.sandiego.gov/real-estate-and-airport-management>