



**LEASE AGREEMENT**

THIS IS A LEASE AGREEMENT (hereinafter referred to as “**Lease**”) made \_\_\_\_\_, 2022, (“**Effective Date**”) by and between COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as “**County**” or “**Lessor**”) and CITY OF NEWPORT BEACH, a California municipal corporation and charter city (hereinafter referred to as “**Tenant**”). The County and Tenant may individually be referred to herein as a “**Party**” or collectively as the “**Parties**.”

**1. DEFINITIONS (1.0 SR)**

The following words in this Lease shall have the significance attached to them in this Clause (DEFINITIONS), unless otherwise apparent from context:

“**Auditor Controller**” means the Auditor Controller, County of Orange, or designee, or upon written notice to Tenant, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

“**Board of Supervisors**” means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.

“**CEO/Office of Risk Management**” means the Risk Manager, County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, County of Orange, or upon written notice to Tenant, such other entity as shall be designated by the County Executive Officer.

“**County Executive Officer**” means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the Board of Supervisors.

“**Director of OC Parks**” or “**Director**” means the Director, Orange County Parks, OC Community Resources, County of Orange, or designee, or upon written notice to Tenant, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

“**Treasurer-Tax Collector**” means the Treasurer-Tax Collector, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the Board of Supervisors.

**2. PREMISES (1.1 SR)**

County leases to Tenant that certain property herein located at \_\_\_\_\_ E. Coast Highway, Newport Beach (“**Premises**”) and described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. The Premises are accepted

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“as is” and “where is” by Tenant subject to any and all existing easements and encumbrances. Address of Premises to be determined and written into the space above.

### **3. USE (1.2 SR)**

Tenant's use of the Premises shall be limited to the operation, maintenance, and repair of City Docks which will consist of seven (7) side ties within the Premises, with the City Docks for public use only. Tenant agrees not to use the Premises for any other purpose, nor to engage in or authorize any other activity within or from the Premises, without the County approval. Tenant shall not use the Premises or any portion thereof for any illegal or unlawful purpose and will not cause or permit a nuisance or waste to be created or maintained therein.

- i. a. The City Docks will consist of only side ties with no other amenities.

NO ALCOHOL, TOBACCO, OR MARIJUANA PRODUCTS SHALL BE SOLD FROM THE PREMISES. DRINKING ALCOHOLIC BEVERAGES AND SMOKING OF ANY KIND IS PROHIBITED INSIDE ANY BUILDING WITHIN THE PREMISES.

### **4. COUNTY'S USE RESERVATIONS AND RIGHT OF ENTRY (1.3 SR)**

County reserves the right from time to time, without unreasonable interference, to access the Premises for County to confirm that Tenant is using the Premises consistent with those uses articulated in Clause 3 (USE). Tenant shall cooperate with County during County's access of the Premises. County shall make best efforts to notify Tenant prior to accessing the Premises.

### **5. PARKING (1.4 SR) - *Intentionally Omitted***

### **6. TERMINATION OF PRIOR AGREEMENTS (1.5 SR) - *Intentionally Omitted***

### **7. TERM (1.6 SR)**

The term of this Lease shall be forty-five (45) years (“**Term**”), commencing the first day of the first full calendar month following the Effective Date (“**Commencement Date**”). Parties agree that the Commencement Date of this Lease will be confirmed in writing by either Party upon demand by the other.

### **8. OPTION TO EXTEND TERM (1.7 SR) – *Intentionally Omitted***

### **9. RENT (1.8 SR)**

The Parties agree that Tenant's administration of the services (further explained in Clause 3 (USE)) serves a public benefit and the social needs of the community for recreation and marine-related services in furtherance of the Tenant's mission and goals. The Parties further agree that administration of the defined uses serves a valuable public purpose and is consistent and compatible with the mission of the County. The Parties also agree that the value of the defined uses being provided pursuant to this Lease are comparable to the value of the County Property being provided by the County, and to the extent that Tenant continues to offer the services as stated herein, there will be no rent for this Lease.

### **10. RENT ADJUSTMENT (1.9 SR) - *Intentionally Omitted***

**11. RENT PAYMENT PROCEDURE (2.0 SR) - Intentionally Omitted**

**12. CHARGE FOR LATE PAYMENT (2.1 SR) - Intentionally Omitted**

**13. LEASE ADMINISTRATIVE COST (2.2 SR) - Intentionally Omitted**

**14. SECURITY DEPOSIT (2.3 SR) - Intentionally Omitted**

**15. RECORDS AND ACCOUNTS (2.4 SR) - Intentionally Omitted**

**16. MAINTENANCE OBLIGATIONS OF TENANT – CONDITIONS AND CARE OF PREMISES (2.5 SR)**

A. Tenant shall, to the satisfaction of County, keep and maintain, or cause to be kept and maintained, the Premises and all Tenant Improvements (as defined in Clause 18) of any kind in place and used, occupied, or otherwise operated or maintained by the Tenant on the Premises prior to the Commencement Date, or which may be erected, installed, or made thereon by Tenant, during the Term of this Lease, in good condition and in substantial repair, provided that in the event (i) of substantial damage to any such Tenant Improvements it shall be at Tenant's option whether to repair or replace such improvements (provided that if the Tenant Improvements are not to be repaired or replaced, then they shall be placed into a safe condition or removed), as provided in Clause 20 (OPERATIONAL REQUIREMENTS OF TENANT) below or (ii) Tenant ceases to use any Tenant Improvements, it shall be at Tenant's option to not repair or replace any such improvement so long as the improvement is maintained in a safe condition or removed. Subject to the foregoing, it shall be Tenant's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

B. Tenant shall keep the Premises clean and in good repair during any time which Tenant, its agents, or employees use the Premises at its sole cost and expense. Except as otherwise expressly set forth in this Lease, Tenant shall be responsible for all costs relating to the operation and maintenance of the Premises.

C. Tenant shall be solely responsible for all costs and expenses for any maintenance and repairs necessitated by the actions of Tenant or use of the Premises by the public, or licensee(s).

D. If Tenant fails to maintain or make repairs or replacements as required herein, County shall notify Tenant in writing of said failure. Should Tenant fail to correct the situation, or reasonably commence correction, within thirty (30) business days after receipt of written notice specifying the condition to be corrected (provided that such 30-day period may be extended accordingly if a longer time is necessary to correct the condition and Tenant promptly commences such cure and diligently prosecutes it to completion), County may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials, equipment shall be paid by Tenant within thirty (30) calendar days of receipt of a statement, including reasonable supporting documentation, of said cost from County. County may, at its sole option, choose other remedies available herein, or by law.

E. If Tenant receives an inspection notice or a deficiency notice following an inspection by any public or regulatory agency having jurisdiction, Tenant agrees to make any and all corrections in the manner and timeframe required by the particular public or regulatory agency, or a reasonable manner or timeframe if none is specified, upon receipt of such notice from either the public or regulatory agency or the County. Tenant's failure to comply with the provisions of this Clause 16

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shall constitute a Tenant Default and the County may proceed with any and all County Remedies as defined in Clause 30 (DEFAULTS AND REMEDIES) and this Lease shall be subject to termination at County's option.

F. County shall have no obligation or responsibility to dredge, remove debris, or to maintain, repair, or replace improvements constructed within the Premises, except as otherwise provided by law. Tenant shall have no obligation to dredge the Premises nor to maintain, supervise, repair or replace any improvements installed by County or any other party (other than Tenant's licensees) nor for debris or materials which are not deposited by Tenant or its licensees and which comes onto or out of the Premises.

### **17. CONSTRUCTION AND/OR ALTERATIONS BY TENANT (2.6 SR) - Intentionally Omitted**

### **18. OWNERSHIP OF IMPROVEMENTS (2.7 SR)**

Tenant shall provide all equipment necessary for use of the Premises consistent with this Lease. All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the Premises by Tenant ("**Tenant Improvements**") must, upon completion, be free and clear all liens, claims, or liability for labor or material and at County's option shall be the property of County at the expiration of this Lease or upon earlier termination hereof. County retains the right to require Tenant, at Tenant's cost, to remove all Tenant Improvements located on the Premises at the expiration or termination hereof by written notice to Tenant at least ninety (90) calendar days prior to the expiration of the Term or within fifteen (15) business days following any termination of this Lease on account of an Event of Default. In the event that County provides such notice and Tenant thereafter fails to remove said Tenant Improvements within ninety (90) calendar days following receipt of written notice from County to do so, such Tenant Improvements will be deemed abandoned and Tenant shall lose all right, title and interest in and thereto, and County may elect (i) at Tenant's cost, to remove, demolish, or otherwise dispose of some or all of such items or (ii) sell or make use of any or all such items.

### **19. MECHANICS LIENS OR STOP NOTICES (2.8 SR)**

Tenant shall at all times indemnify, defend with counsel reasonably approved in writing by County and save County harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with Tenant's construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees and costs.

In the event a lien or stop notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation by Tenant, Tenant shall within thirty (30) calendar days after such imposition, either:

- A. Record a valid Release of Lien, or
- B. Cause its contractors to procure and record a bond in accordance with Section 8424 or 9000 et seq. of the Civil Code, which frees the Premises from the claim of the lien or stop notice and from any action brought to foreclose the lien.

Should Tenant fail to accomplish either of the two optional actions above within thirty (30) days after the filing of such a lien or stop notice, the Tenant shall be in Tenant Default and shall be subject to immediate termination.

**20. OPERATIONAL REQUIREMENTS OF TENANT (2.9 SR)**

A. Quality and Service Standards. Tenant shall at all times operate the Premises in a manner consistent with Clause 3 (USE).

B. Standards of Operation. Tenant shall operate the Premises in a manner similar its other public marina facilities and in accordance with applicable provisions of the Newport Beach Municipal Code.

C. Protection of Environment. Tenant shall takes all reasonable measures to prevent:

1. Littering within the Premises.
2. Excessive noise emanating from the Premises.
3. Excessive light and glare from light fixtures within the Premises that could impact the safe operation of automobiles, watercraft and aircraft in the area.
4. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source on the Premises into the waters within or adjacent to the Premises or other activities that are harmful to water quality.
5. Tenant, upon notice or becoming aware of any spillage, leakage, or discharge of any toxic, hazardous or polluting materials, shall immediately report the same to the proper authorities.

**21. INSURANCE (3.0 SR)**

Tenant agrees to purchase all required insurance at Tenant's expense and to deposit with the County certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the County during the entire term of this Lease. Tenant shall deposit the Certificate of Insurance with CEO Real Estate, consistent with the Notice clause, through electronic correspondence on or before the Effective Date of this Lease and annually throughout the Term, as necessary to: insurance.ceore@ocgov.com

Tenant agrees that Tenant shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Director. In no cases shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Director will only accept certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Tenant also agrees that upon cancellation, termination, or expiration of Tenant's insurance, County may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Director reinstates the Lease.

If Tenant fails to provide Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, County and Tenant agree that this shall constitute a material breach of the Lease. Upon County's issuance of a notice of default sent to Tenant, said material breach shall permit County to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the

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general public, and Tenant's employees and agents, from entering the Premises until such time as Director is provided with adequate evidence of insurance required herein. Tenant further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the County's action.

Tenant may occupy the Premises only upon providing to County the required insurance stated herein and maintaining such insurance for the entire term of this Lease. County reserves the right to terminate this Lease at any time Tenant's insurance is canceled or terminated and not reinstated within thirty (30) days of said cancellation or termination. Tenant shall provide to County immediate notice of any insurance cancellation or termination.

All contractors performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Tenant, to the extent of coverages typically required of a contractor. Tenant shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the County from the Tenant under this Lease, as to such coverages. It is the obligation of the Tenant to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by Tenant through the entirety of this Lease and be available for inspection by a County representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIRs in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by the County's Risk Manager, or designee.

**Qualified Insurer**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Tenant shall provide the minimum limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence

Marina Operator's Legal Liability

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<u>Coverages</u>	<u>Minimum Limits</u>
(applicable to TENANT only)	\$1,000,000 per occurrence
Longshore and Harbor's Workers' Compensation (if applicable)	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Pollution Liability	\$1,000,000 per claims-made or per occurrence; \$2,000,000 aggregate
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all, contents and any Tenant improvements including Business Interruption/Loss of Rents with a 12 month limit.	

### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage at least as broad.

### **Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, employees, agents* as Additional Insureds. Blanket coverage may also be provided which will state- *As Required By Written Agreement*.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the Tenant's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees and agents as Additional Insureds.

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- 2) A primary and non-contributing endorsement evidencing that Tenant's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation polic(ies) shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees*. Blanket coverage may also be provided which will state- *As Required By Written Agreement*.

All Commercial Property insurance policies required by this lease shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

If Tenant's Pollution Liability policy is a claims-made policy, Tenant shall agree to maintain coverage for two (2) years following termination of the Lease.

Insurance certificates should be forwarded to the County address provided in the Clause entitled "NOTICES" below or to an address provided by Director. Tenant has ten (10) business days to provide adequate evidence of insurance after the County's written request for such information or this Lease may be cancelled.

County expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease, consistent with coverages maintained by other lessees of similar properties in Orange County, California. Any increase or decrease in insurance will be as reasonably deemed by County of Orange Risk Manager as appropriate to adequately protect County, so long as it is consistent with other lessees of similar properties in Orange County, California.

County shall notify Tenant in writing of changes in the insurance requirements. If Tenant does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, County may issue a notice of default to the Tenant in accordance with Section 30 of this Lease.

The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

## **22. INDEMNIFICATION (3.1 SR)**

A. Tenant's Indemnity. Tenant hereby agrees to indemnify, hold harmless, and defend County, its elected and appointed officials, officers, agents, employees, and those special districts and agencies which the Board of Supervisors acts as the governing board, with counsel reasonably approved by County, against any and all claims, loss, demands, damages, costs, expenses or liability arising out of the ownership, maintenance, or use of the Premises, except for liability



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arising out of the negligence or willful misconduct of County, its elected and appointed officials, officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

In the event County is named as co-defendant, Tenant shall notify County of such fact and shall represent County, with counsel reasonably approved by County, in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event County shall pay for its own litigation costs, expenses and attorneys' fees. In the event judgment is entered against County and Tenant because of the concurrent negligence of County and Tenant, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Each Party shall bear its own attorneys' fees and costs.

B. County's Non-liability. County shall not be liable to Tenant and Tenant hereby waives all claims against County, its employees and agents for loss of or damage to any property, or any injury to any person, resulting from any condition of the Premises, including, but not limited to, acts or omissions (criminal or otherwise) of third parties, or their agents, employees or invitees, fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Premises, regardless of the negligence of County, its agents or any and all affiliates of County in connection with the foregoing. It is understood that any such condition may require the temporary evacuation or closure of all or a portion of the Premises. Should Tenant elect to receive any service from a concessionaire, licensee or third-party tenant of County, Tenant shall not seek recourse against County for any breach or liability of that service provider. Notwithstanding anything to the contrary contained in this Lease, in no event shall County be liable for Tenant's loss or interruption of business or income (including without limitation, Tenant's consequential damages, lost profits or opportunity costs), or for interference with light or other similar intangible interests. Tenant shall immediately notify County in case of fire or accident in the Premises and of defects in any improvements or equipment within the Premises.

C. Waiver of Subrogation. County and Tenant each hereby waives all rights of recovery against the other on account of loss and damage occasioned to the Premises of such waiving Party to the extent that the waiving Party is entitled to proceeds for such loss and damage under any property insurance policies carried or otherwise required to be carried by this Lease; provided however, that the foregoing waiver shall not apply to the extent of Tenant's obligation to pay deductibles under any such policies and this Lease. By this waiver it is the intent of the Parties that neither County nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other Party for any loss or damage insured against under any property insurance policies, even though such loss or damage might be occasioned by the negligence of such Party, its agents, employees, contractors or invitees.

County and Tenant each acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542, which provides as follows:

**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.**

County and Tenant, each being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

### 23. HAZARDOUS MATERIALS (3.2 SR)

A. Definition of Hazardous Materials. For purposes of this Lease, the term “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, County, acting in its governmental capacity, the State of California or the United States government.

B. Use of Hazardous Materials. Tenant or Tenant’s employees, agents, independent contractors or invitees (collectively “**Tenant Parties**”) shall not cause or authorize any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this clause shall include the subsurface soil and ground water). Notwithstanding the foregoing, Tenant and Tenant Parties may keep on or about the Premises small quantities of Hazardous Materials that are used in the ordinary, customary, and lawful cleaning of and business operations on the Premises. Said permitted Hazardous Materials shall be stored in a safe location and shall be disposed of in a manner provided by law.

C. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination or any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, Tenant shall pay the cost of any such cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or authorized by Tenant or Tenant Parties to be introduced on, under or about the Premises. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the Director, which consent shall not be unreasonably withheld, conditioned or delayed. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by Director, which approval shall not be unreasonably withheld, conditioned or delayed.

### 24. BEST MANAGEMENT PRACTICES (3.3 SR)

A. Tenant shall conduct operations under this Lease so as to assure that Tenant, or Tenant’s agents actions do not cause pollutants to enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems (“**Stormwater Drainage System**”), and to ensure that Tenant’s actions do not cause pollutants to directly impact Receiving Waters (as used herein, “**Receiving Waters**” include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans) in violation of applicable law or regulations.

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B. The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (“**NPDES**”) permits (“**Stormwater Permits**”) to the County, and to the Orange County Flood Control District and cities within Orange County - of which Tenant is a member city, as co-permittees (hereinafter collectively referred to as “**County Parties**”) which regulate the discharge of urban runoff from areas within the County, including the Premises leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

C. To assure compliance with the Stormwater Permits and water quality ordinances, the County has developed a Drainage Area Management Plan (“**DAMP**”) which includes a Local Implementation Plan (“**LIP**”) for each jurisdiction that contains Best Management Practices (“**BMP(s)**”) as provided in Exhibit C, and which may change from time to time, in connection with changes to the MS4 permit requirements on the County, that Tenant’s using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost-effective manner. These BMPs are found within County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “**BMP Fact Sheets**”) and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

D. BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as Exhibit C. These BMP Fact Sheets may be modified during the term of the Lease in connection with changes to the MS4 permit requirements on the County; and County shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its sub tenants, agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, in connection with changes to the MS4 permit requirements on the County, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified, Connection with changes to the MS4 permit requirements on the County. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

E. Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets, and in compliance with the Tenant’s obligations as a County Party.

F. County may enter the Premises and/or review Tenant’s records at any reasonable time and upon reasonable prior written notice to assure that activities conducted on the Premises comply with the requirements of this clause.

G. Among other requirements, the industrial NPDES permit requires periodic stormwater inspections by the State and/or County OC Watersheds staff to ensure facility compliance, which may include annual inspections of the Premises, with follow up inspections as a result of observed violations requiring corrective actions.

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H. The BMP's shall stipulate the process for the Tenant to take corrective actions, and state the consequences of non-compliance or County options under the Lease to self-remedy the matter. The Santa Ana and San Diego Regional Water Quality Control Boards have established penalties/consequences for non-compliance and those are to be included in this Lease. County to have the option to terminate the Lease if the Tenant does not correct a non-compliance situation in a timely manner.

I. Upon written agreement between the Parties, reasonable environmental indemnification language may be added or amended from time to time if in response to changes to the MS4 permit requirements on the County.

J. Work activities are to be conducted in a controlled area where pollutants shall be contained and any heavy metals detected at significantly higher levels than the benchmarks set by the Regional Board shall be addressed. All applicable BMPs are to be properly implemented, including any and all future modifications, updates, or replacement BMPs that may be issued from time to time, shall be used by Tenant.

K. Site modifications, such as distinctly designated work areas with controls to prevent pollutants from escaping and wastewater drain, will be required to be segregated from stormwater drain.

L. In the event Tenant fails to comply with all applicable BMPs, County, in addition to any and all remedies available in Clause 30 (DEFAULTS AND REMEDIES), shall have the right to self-help remedies or terminate the Lease as follows:

1. Terminate the Lease due to non-compliance with the BMPs incorporated in the Lease and as BMPs may change from time to time, if Tenant does not cure such non-compliance within ten (10) business days after written notice from County to Tenant notifying Tenant of the non-compliance, or;
2. Remedy a non-compliance situation with a chargeback to the Tenant for the cost. The details regarding notification, timeline, and procedure are to be drafted and mutually agreed upon by both Parties to ensure all water quality issues are addressed within the Lease. In the event the Tenant's BMP implementation is lacking or if the Tenant allows a prohibitive discharge to occur, then the Regional Board will only take enforcement action against County. Therefore, this Lease must establish a BMP compliance partnership with the Tenant and the Lease must ensure the protection of water quality is inherent in the Tenant's day-to-day operations.

## **25. BUILDING AND SAFETY REQUIREMENTS (3.4 SR)**

During the Term of this Lease, Tenant, at Tenant's sole cost, agrees to maintain the Premises in compliance with all applicable laws, rules, regulations, building codes, statutes, and orders they are applicable on the date of this Lease, and as they may be subsequently amended, including but not limited to the California Building Code, Title 24, Seismic Code, Fire and Life Safety requirements and, if applicable, California Green Building Standard Code.

Included in this provision is compliance with the Americans with Disabilities Act ("ADA") and all other federal, state, and local codes, statutes, and orders relating to disabled access as they are applicable on the dates of this Lease, and as they may be subsequently amended and all regulations issued by the U. S. Attorney General or other agencies under the authorization of the ADA.

## Attachment G

However, Tenant shall not be responsible for any ADA violations resulting from alterations made by County or the placement of fixtures or equipment by County.

Tenant shall use commercially reasonable efforts to comply with, and to repair and maintain the Premises as necessary for such compliance, as a “safe place of employment,” as defined in the California Occupational Safety and Health Act (California Labor Code, Division 5, Part 1, Chapter 3, beginning with Section 6400) and the Federal Occupational Safety and Health Act, where the provisions of such Act exceed, or supersede, the California Act, as the provisions of such Act are applicable on the date of this Lease, and as they may be subsequently amended. County agrees to notify Tenant of any repair or maintenance necessary within the Premises to comply with such Act and if compliance is required of Tenant with respect to the particular repair or maintenance, Tenant agrees to diligently act to repair or maintain appropriately.

In the event Tenant does not comply with the foregoing requirements to the extent reasonably applicable to the Premises as aforesaid, following thirty (30) days after written notice from County to Tenant providing notice, County may,

- a. thirty (30) days following a second written notice, subject to Tenant’s reasonable attempt to cure and diligent efforts to pursue completion thereof, County may terminate this Lease with written notice to the Tenant; or
- b. at County’s sole option, cure any such Tenant Default by performance of any act, including payment of money, and bill Tenant for the cost thereof plus reasonable administrative costs (not to exceed ten percent (10%).

Tenant agrees to reimburse and indemnify, and defend County for any expenses incurred because of the failure of the Premises to conform with any and all applicable laws, rules, regulations, building codes, statutes, and orders, including the costs of making any alterations, renovations, or accommodations required by the ADA, or any governmental enforcement agency, or any court, any and all fines, civil penalties, and damages awarded against County resulting from a violation or violations of the above-cited laws, rules, regulations, building codes, statutes, and orders and regulations, and all reasonable legal expenses incurred in defending claims made under the above-referenced laws, rules, regulations, building codes, statutes, and orders, including reasonable attorneys’ fees. Should Tenant fail to comply with the provisions of this Clause 25, Tenant may be found in Tenant Default and the County may exercise those remedies set forth in Clause 30 (DEFAULTS AND REMEDIES).

### **26. DAMAGE TO OR DESTRUCTION OF PREMISES AND/OR TENANT IMPROVEMENTS (3.5 SR)**

A. Premises. In the event of any damage to or destruction of the Premises or in the event the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, County shall have the immediate right to terminate this Lease effective upon providing written notice to Tenant. In the event of said termination, County shall be entitled to receive and retain any and all insurance proceeds resulting from or attributable to such casualty, except for those proceeds payable under any separate policy maintained by Tenant which specifically insures Tenant’s personal property and trade fixtures. In the event that County does not elect to terminate this Lease following said casualty, County, at County’s expense, may rebuild, reconstruct and restore the Premises, excluding Tenant’s personal property and trade fixtures, which shall be the responsibility of Tenant. Tenant understands and acknowledges that County shall be free to make such changes and modifications to the Premises as County deems appropriate in the exercise of its reasonable and good faith discretion. During any period when

## Attachment G

County determines in its reasonable and good faith discretion that there is substantial interference with Tenant's use of the Premises by reason of such casualty, the monthly Rent payable hereunder shall be temporarily abated in proportion to the degree of such substantial interference. With respect to damage or destruction which County elects to repair, Tenant waives and releases its rights under California Civil Code Sections 1932 (2) and 1933 (4).

B. Tenant Improvements. In the event of damage to or destruction of Tenant Improvements located within the Premises or in the event Tenant Improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of Tenant Improvements to the same size as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Premises for the purposes required by the Lease. Repair, replacement, or reconstruction of Tenant Improvements within the Premises shall be accomplished in a manner and according to plans approved by the Director, which approval shall not be unreasonably withheld, delayed or conditioned, provided however that if the event causing the damage was an extraordinary occurrence not caused by Tenant (e.g. earthquake hurricane, tornado, tsunami, explosion, act of terror, war, or other casualty beyond the reasonable control of Tenant), Tenant may elect not to so repair or replace such improvements, in its sole discretion (provided that if the improvements are not to be repaired or replaced, then they shall be placed into a safe condition or removed), and the Rent shall be reduced accordingly based upon the reduction in use.

County shall not be liable for any damage to Tenant Improvements or Tenant personal property or of others located on the Premises, nor for the loss of or damage to any property of Tenant or others by theft or otherwise. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant, unless such damage is caused by County willful misconduct or gross negligence.

Notwithstanding the foregoing, should the Premises be substantially damaged (and not repaired by County) or the Tenant Improvements substantially damaged (and not repaired by Tenant) such that Tenant cannot make use of the Premises as contemplated by this Lease, Tenant shall have the right to terminate this Lease upon thirty (30) days' written notice to County after Tenant makes Tenant Improvements safe or secure.

### **27. ASSIGNMENT AND SUBLETTING (3.6 SR)**

Subject to prior review and approval by County, Tenant may allow for the rental, licensing, permitting, or subletting, etc. of the Premises when doing so results in providing for the uses permitted in Clause 3 (USE) above. Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, license, permit, or assignment (hereinafter in this clause referred to collectively as "**Encumbrance**") of Tenant's interest in the Premises, or any part or portion thereof without the prior written approval of County is prohibited. All Encumbrances are subject to County's review and approval, including those Encumbrances that result in providing for the uses permitted in Clause 3 (USE) above. County approval is subject to negotiation by the Parties and may result in charges for rent. County may reasonably withhold such approval.

Should County consent to any Encumbrance, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease or be construed as County's consent to any further Encumbrance. Such terms, covenants or conditions shall apply to each and every Encumbrance hereunder and shall be severally binding upon each and every party thereto. Any document to

## Attachment G

mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

Tenant may, with prior notice, engage the services of a professional management company and such employment shall not be construed to be an assignment or transfer of the Lease. Any license, sublease, permit, etc. issued by Tenant shall be consistent with and subject to the terms and conditions of this Lease and shall be subject to review and approval by the County, whose approval shall not be unreasonably withheld. Each license, sublease, permit, etc. issued by Tenant shall require adequate commercially reasonable insurance, as determined by the County, with the County of Orange named as additional insured, and shall indemnify the County of Orange, its elected officials, agents, officers, and employees.

### **28. TAXABLE POSSESSORY INTEREST ASSESSMENTS (3.7 SR)**

Should this Lease create any possessory interest, which is subject to the payment of taxes levied on such interest, it is understood and agreed that all assessments associated with said taxable possessory interest shall be the full responsibility of the Tenant, and Tenant shall cause said assessments to be paid promptly.

### **29. ESTOPPEL CERTIFICATE (3.8 SR) - Intentionally Omitted**

### **30. DEFAULTS AND REMEDIES (3.9 SR)**

A. **Tenant Default:** Tenant shall be deemed in default of this Lease if, in the event of any non-monetary breach of this Lease, Tenant fails within fifteen (15) days after receipt by Tenant of written notice specifying wherein such obligation of Tenant has not been performed; provided however, that if the nature of Tenant's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then Tenant shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a “**Tenant Default**”).

B. **County Default:** County shall be deemed in breach of this Lease if: a) in the event of any monetary breach of this Lease by County, Tenant shall notify County in writing of such breach, and County shall have ten (10) days from such notice in which to cure said breach or b) in the event of any non-monetary breach of this Lease, County fails within fifteen (15) days after receipt by County of written notice specifying wherein such obligation of County has not been performed; provided however, that if the nature of County's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then County shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a “**County Default**”).

C. **Tenant Remedies:** Tenant's sole remedy for a County Default shall be against the County's interest in the Premises (including, without limitation, proceeds from the sale of the Premises, condemnation awards to which County is entitled under the terms of the Lease and proceeds from insurance policies that County maintains under the Lease) and includes only the right to damages and/or injunctive relief (collectively, “**Tenant Remedies**”), and in no event shall Tenant have the right to terminate this Lease or to rent abatement hereunder.

D. **County Remedies:** County's remedies as the result of Tenant Default for breach shall be the right to damages, injunctive relief, and/or any other rights at law or in equity, and termination of the Lease pursuant to the Sections specified herein. No delay or omission of County to exercise any right or remedy shall be construed as a waiver of such right or remedy or of any Tenant Default hereunder.

**31. LABOR CODE COMPLIANCE (4.0 SR)**

Tenant shall comply with the provisions of the California Labor Code and the Davis-Bacon Act with respect to the performance of any public work on the Premises, including compliance with any and all applicable laws related to public projects, goods and services, including but not limited to payment of prevailing wage, as applicable.

**32. RIGHT TO WORK AND MINIMUM WAGE LAWS (4.1 SR)**

Tenant shall comply with applicable laws regarding the hiring and employment of workers on the Premises, including the federal Immigration Reform and Control Act of 1986, federal Fair Labor Standards Act of 1938, and California Labor Code section 1178.5.

**33. SIGNAGE (4.2 SR)**

Subject to prior review and approval by County, Tenant may install and maintain signs or displays on the Premises. Such signage must comply with all applicable laws and zoning and site plan requirements. Unapproved signs, awnings, banners, flags, etc., may be removed by County without prior written notice to Tenant provided a reasonable period of time prior to any such proposed removal.

**34. AUTHORITY (4.3 SR)**

The persons executing this Lease on behalf of County or Tenant warrant that they have the power and authority to bind County or Tenant to this Lease.

**35. LEASE ORGANIZATION (4.4 SR)**

The various headings in this Lease, the numbers thereof, and the organization of the Lease into separate sections and paragraphs are for purposes of convenience only and shall not be considered otherwise.

**36. SUCCESSORS IN INTEREST (4.5 SR)**

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of whom shall be jointly and severally liable hereunder.

**37. AMENDMENTS (4.6 SR)**



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This Lease sets forth the entire agreement between Lessor and County and any modification must be in the form of a written amendment.

### **38. PARTIAL INVALIDITY (4.7 SR) – Intentionally Omitted**

### **39. WAIVER OF RIGHTS (4.8 SR)**

The failure of Tenant or County to insist upon strict performance of any of the terms, conditions, and covenants in this Lease shall not be deemed a waiver of any right or remedy that Tenant or County may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

### **40. HOLDING OVER (4.9 SR)**

In the event Tenant shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease, EXCEPT that monthly Rent shall be equal to one hundred and fifty percent (150%) of the Rent due during the last month of the Term.

### **41. EARTHQUAKE SAFETY (5.0 SR)**

Tenant accepts the Premises “as is” and “where is” and County offers no warranties or representations whatsoever that the Premises is or has been in compliance with applicable seismic safety regulations and building codes at the time of construction. All such seismic, safety and building regulation compliance is the responsibility of the Tenant.

### **42. QUIET ENJOYMENT (5.1 SR)**

County agrees that, subject to the terms, covenants and conditions of this Lease, Tenant may, upon observing and complying with all terms, covenants and conditions of this Lease, peaceably and quietly occupy the Premises.

### **43. GOVERNING LAW AND VENUE (5.2 SR)**

This agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

### **44. ATTORNEYS’ FEES (5.3 SA)**

In the event of a dispute between Tenant and County concerning claims arising out of this Lease, or in any action or proceeding brought to enforce or interpret any provision of this Lease or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys’ fees and costs.

### **45. TIME OF ESSENCE (5.4 SR)**

Time is of the essence of this Lease. Failure to comply with any time requirements of this Lease shall constitute a material breach of this Lease.

**46. INSPECTION OF PREMISES BY A CERTIFIED ACCESS SPECIALIST (5.5 SR)**

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.

Pursuant to California Civil Code 1938, County hereby represents that the Premises has not undergone an inspection by a certified access specialist and no representations are made with respect to compliance with accessibility standards. If it is determined during this tenancy that a violation of handicapped access laws (including the Americans with Disabilities Act) exists at the Premises, Tenant shall take all commercially reasonable measures to correct such non-compliance at Tenant’s cost.

**47. FORCE MAJEURE (5.6 SR)**

For purposes of this Lease, the term “**Force Majeure**” means any of the following events which are beyond the control of either Party: act of God, unavailability of equipment or materials (but only if such equipment and materials were ordered in a timely fashion), enemy or terrorist act, act of war, riot or civil commotion, strike, lockout or other labor disturbance, fire, earthquake, explosion, governmental delays (including nonstandard delays in issuance of any permit or other necessary governmental approval or the scheduling of any inspections or tests), nonstandard delays by third party utility providers, or any other matter of any kind or character beyond the reasonable control of the Party delayed or failing to perform under this Lease despite such Party’s best efforts to fulfill the obligation. “**Best Efforts**” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the extent reasonably possible. Force Majeure shall not include inability to obtain financing or other lack of funds. Tenant and County shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond either Party’s control.

**48. CONDEMNATION (5.7 SR)**

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, “**Condemnation**”), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If all or a material portion of the rentable area of the Premises are taken by Condemnation, Tenant may, at Tenant’s option to be exercised in writing within ten (10) days after County shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. County shall also have

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the right to terminate this Lease if there is a taking by Condemnation of any portion of the building or property which would have a material adverse effect on the ability to profitably operate the remainder of the building. If neither Party terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be apportioned between County and Tenant pursuant to each of their rights under applicable law. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

### **49. CONSENT OR APPROVAL (5.8 SR)**

Unless expressly stated otherwise, where the consent or approval of a Party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed.

### **50. UNENFORCEABLE PROVISIONS (5.9 SR)**

If any paragraph or clause hereof shall be determined illegal, invalid or unenforceable, it is the express intention of the Parties hereto that the remainder of the Lease shall not be affected thereby, and it is also the express intentions of the Parties hereto that in lieu of each paragraph or clause of this Lease which may be determined to be illegal, invalid or unenforceable, there may be added as a part of this Lease a paragraph or clause as similar in terms to such illegal or invalid or unenforceable paragraph or clause as may be possible and may be legal, valid and enforceable.

### **51. CONTROL OF HOURS, PROCEDURES, AND PRICES (6.0 SR)**

Tenant shall at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation on or from the Premises. A schedule of prices charged for all goods and/or services supplied to the public on or from the Premises shall also be maintained.

Tenant agrees that when alternate forms of packaging are available, only items packaged in a manner most compatible with the goals of reducing litter and preserving the environment shall be sold. Sale of beverages in pop-top cans or in non-returnable metal or glass containers shall not be permitted. Recyclable, push-top type beverage containers may be permitted subject to reasonable approval by the Director.

Upon written request, Tenant shall furnish the Director a copy of said schedules and procedures. Should Director, upon review and conference with Tenant, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, Tenant, upon written notice from Director, shall modify said schedules or procedures to the reasonable satisfaction of said Director.

Primary consideration shall be given to the public's benefit in implementing this clause.

Tenant agrees that it will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

Tenant shall at all times retain active, qualified, competent, and experienced personnel to supervise Tenant's operation and to represent and act for Tenant.

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In compliance with the terms of the memorandums of understanding between Tenant and its workforce, Tenant shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Tenant shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

Tenant shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. Tenant shall replace any employee whose conduct is detrimental to the best interests of the public.

### **52. LIMITATION OF THE LEASEHOLD (6.1 SR)**

This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's interest therein. Tenant has accepted the Premises in its "as is" / "where is" condition.

### **53. PERMITS AND LICENSES (6.2 SR)**

Tenant shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Premises as set out herein. No permit, approval, or consent given hereunder by County, in its governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

### **54. PAYMENT CARD COMPLIANCE (6.3 SR) – Intentionally Omitted**

### **55. NONDISCRIMINATION (6.4 SR)**

Tenant agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease. Tenant shall make its accommodations and services available to the public on fair and reasonable terms.

### **56. CONDITION OF PREMISES UPON TERMINATION (6.5 SR)**

Except as otherwise agreed to herein or in subsequent approval in writing by County, upon termination of this Lease, Tenant shall redeliver possession of said Premises to County in substantially the same condition that existed immediately prior to Tenant's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted. It is agreed that any Tenant Improvement on the Premises may be considered the personal property of County at County's sole discretion. Upon termination, County will notify Tenant if any such Tenant Improvements need to be removed at Tenant's sole cost and expense. References to the "termination of the Lease" in this Lease shall include termination by reason of the expiration of the lease term.

**57. DISPOSITION OF ABANDONED PERSONAL PROPERTY (6.6 SR)**

If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Tenant and left on the Premises fifteen (15) days after written notice of such personal property remaining upon the Premises shall, at County's option, be deemed to have been transferred to County. County shall have the right to remove and to dispose of such property without liability therefor to Tenant or to any person claiming under Tenant and shall have no need to account therefor. The disposal of vessels that are not the property of Tenant shall be in accordance with applicable laws by the Tenant.

**58. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (6.7 SR)**

Upon termination of this Lease for any reason, including but not limited to termination because of Tenant Default, upon Tenant's receipt of a written request from County, Tenant shall execute, acknowledge, and deliver to County, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of Tenant in the Premises is quitclaimed to County. Should Tenant fail or refuse to deliver the required deed to County, County may prepare and record a notice reciting the failure of Tenant to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of Tenant or those claiming under Tenant in and to the Premises.

**59. PUBLIC RECORDS (6.8 SR)**

Any and all written information submitted to and/or obtained by County from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, at the option of County, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code Section 6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public and Tenant hereby waives, for itself, its agents, employees, sub-Tenants, and any person claiming by, through or under Tenant, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold County harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by Tenant or any third party that such information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

**60. RELATIONSHIP OF PARTIES (6.9 SR)**

The relationship of the Parties hereto is that of Lessor and Tenant, and it is expressly understood and agreed that County does not in any way or for any purpose become a partner of or a joint venturer with Tenant in the conduct of Tenant's business or otherwise, and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

**61. NO BROKERS USED (7.0 SR)**

Neither Party has employed any broker or finder or incurred any liability for any brokerage fee, commission, finder's fee, or reimbursement expenses in connection with the transactions contemplated by this Lease.

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**62. NOTICES (7.1 SR)**

All written notices pursuant to this Lease shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be deemed received upon personal delivery, delivery by, electronic mail, or seventy-two (72) hours after deposit in the United States Mail.

To: Tenant

City of Newport Beach  
Attn: City Manager  
100 Civic Center Drive  
Newport Beach, CA 92660

With a copy to:

City of Newport Beach  
Attn: Real Property Administrator  
100 Civic Center Drive  
Newport Beach, CA 92660

To: County

County of Orange  
OC Parks  
Attn: Director  
13042 Old Myford Road  
Irvine, CA 92602

With a copy to:

County of Orange, CEO Real Estate  
Attn: Chief Real Estate Officer  
County Administration North  
400 Civic Center Drive – 5th Floor  
Santa Ana, CA 92701

Insurance:

All insurance certificates and insurance related correspondence shall be emailed or mailed to the following with appropriate Project name, lease/license/contract # to:

[insurance.ceore@ocgov.com](mailto:insurance.ceore@ocgov.com).

All other types of notices are to be mailed to:

County of Orange,  
County Administration North (CAN)  
400 Civic Center Drive – 5th Floor  
Santa Ana, CA 92701

Any and all insurance related mail shall include the Lease number and project name and City shall mail all insurance certificates and insurance-related correspondence to:  
[insurance.ceore@ocgov.com](mailto:insurance.ceore@ocgov.com).

**63. ATTACHMENTS TO LEASE (7.2 SR)**

This Lease includes the following, which are attached hereto and made a part hereof:

**I. EXHIBITS**

- Exhibit A – Description of Premises
- Exhibit B – Depiction of Premises

Attachment G

Exhibit C – Best Management Practices

**64. DEDICATION OF CITY DOCKS.** The Irvine Company has plans to construct the City Docks as part of its Balboa Marina expansion and then offer it for dedication to Tenant. Tenant's acceptance of the City Docks shall be a condition precedent to the execution of this Lease and the Lease shall not be effective until such acceptance.

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IN WITNESS WHEREOF, the Parties have executed this Lease the day and year first above written.

APPROVED AS TO FORM:

**TENANT**

CITY ATTORNEY'S OFFICE

CITY OF NEWPORT BEACH  
a California municipal corporation and charter city

By: \_\_\_\_\_  
Aaron C. Harp  
City Attorney

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Leliani I. Brown  
City Clerk

APPROVED AS TO FORM:

**COUNTY**

OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

COUNTY OF ORANGE

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

\_\_\_\_\_  
Thomas A. Miller, Chief Real Estate Officer  
Orange County, California



Attachment G  
**EXHIBIT A**

**DESCRIPTION OF PREMISES**

**Project:** Lower Newport Bay Tideland Leases  
**Facility No.:** HA55D

**Parcel No.:** 452

That portion of the tide and submerged lands of Newport Bay, in the City of Newport Beach, County of Orange, State of California, described in the decree of the Superior Court of the State of California, in and for the County of Orange, in Case No. 20436, recorded May 6, 1926 in Book 651, Page 72 of Deeds, in the office of the County Recorder of said county, described as follows:

Beginning at the northwest corner of Lot A of Tract No. 5361, filed in Book 190, Pages 47 and 48 of Miscellaneous Maps, in said County Recorder's Office, said corner also being a point on that certain line shown as the "Line of Mean High Tide" on said map; thence South 24°56'00" West, 66.03 feet along the northwesterly line of said Lot A and said Line of Mean High Tide; thence leaving said line, South 87°18'31" West, 61.50 feet to a line shown as the "U.S. Pierhead Line" on said map; thence North 24°56'00" East, 66.03 feet along said U.S. Pierhead Line to the westerly prolongation of the northerly line of said Lot A; thence North 87°18'31" East, 61.50 feet along said westerly prolongation to the POINT OF BEGINNING.

Containing 3,598 Square Feet, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED  
Kevin Hills, County Surveyor, L.S. 6617

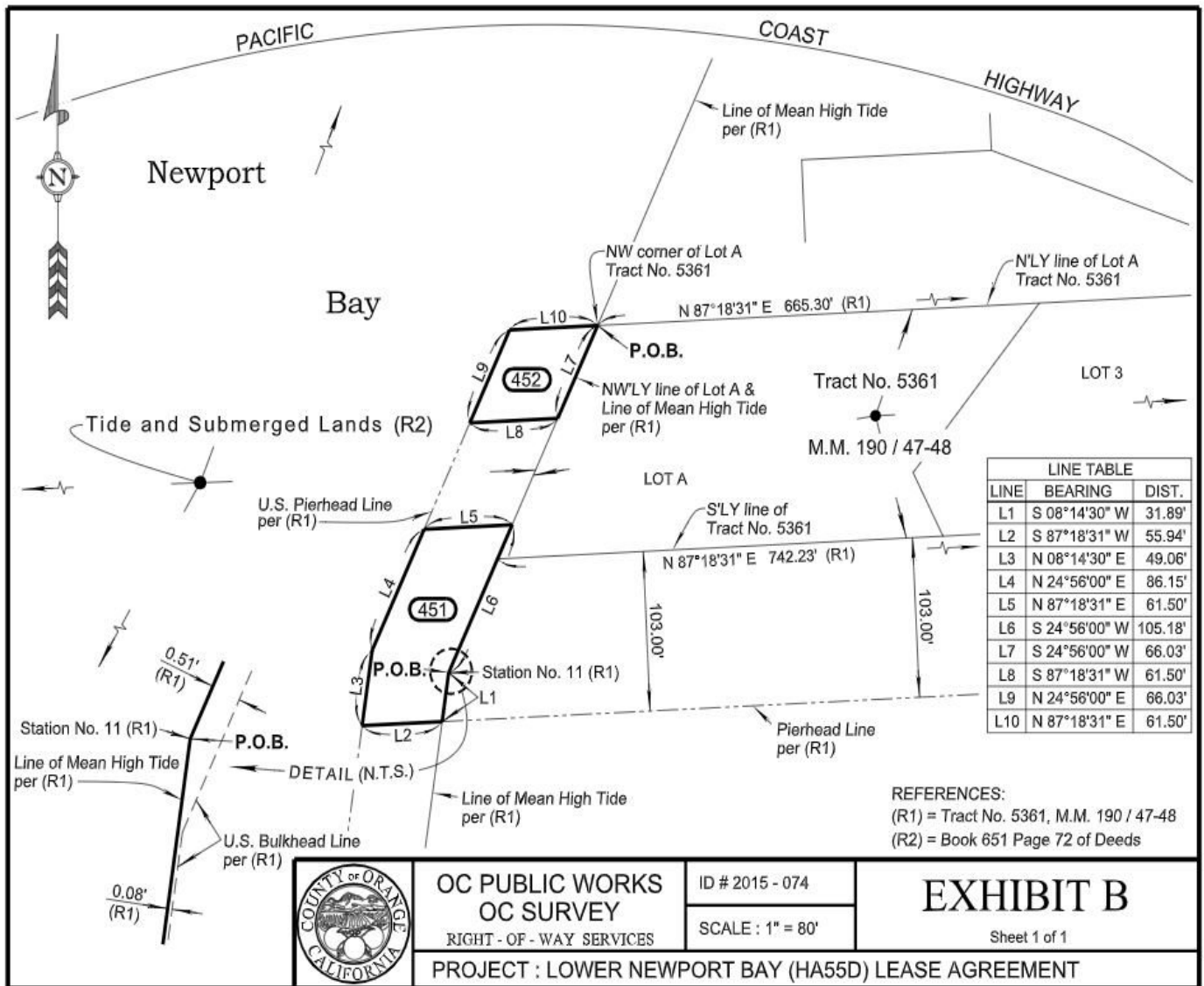
  
By: Raymond J. Rivera, L.S. 8324

Date: 09-12-2022



**EXHIBIT B**

**DEPICTION OF PREMISES**



**EXHIBIT C**

Best Management Practices ("BMPs" Fact Sheets)

Tenant shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Tenant's operations. Tenant is to be aware that the BMP clause within this lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this lease.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at OC Watersheds BMP Industrial/Commercial Business Activities webpage: <http://ocwatersheds.com/documents/bmp> (website may change from time to time):

- IC3 Building Maintenance
- IC4 Carpet Cleaning
- IC5 Concrete & Asphalt Production, Application, & Cutting
- IC6 Contaminated or Erodible Surface Areas
- IC7 Landscape Maintenance
- IC9 Outdoor Drainage from Indoor Areas
- IC10 Outdoor Loading/Unloading of Materials
- IC11 Outdoor Process Equipment Operations & Maintenance
- IC12 Outdoor Storage of Raw Materials, Products, & Containers
- IC13 Over Water Activities
- IC14 Painting, Finishing, & Coatings of Vehicles, Boats, Buildings, & Equipment
- IC15 Parking & Storage Area Maintenance
- IC17 Spill Prevention & Cleanup
- IC21 Waste Handling & Disposal
- IC22 Eating & Drinking Establishments
- IC23 Fire Sprinkler Testing/Maintenance
- IC24 Wastewater Disposal Guidelines