



MA# 080-\_\_\_\_\_

## LEASE AGREEMENT

THIS LEASE (“**Lease**”) is made \_\_\_\_\_, 2026 (“**Effective Date**”), by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, (hereinafter referred to as “**DISTRICT**”) and the CITY OF ORANGE, a municipal corporation (hereinafter referred to as “**TENANT**”). DISTRICT and TENANT may sometimes hereinafter individually be referred to as “**Party**,” or jointly as “**Parties**.”

### RECITALS

- A.** DISTRICT is the fee owner of an approximately 0.9-acre parcel of land, comprised of portions of Assessor Parcel Numbers (APN) 232-062-06 and 232-062-04, and portions of the District-owned property for which a separate Assessor’s Parcel Number has not been assigned (the “**Parcel**”), as more particularly described in Exhibit B attached hereto and incorporated herein by reference. The Parcel is generally located along Rampart Street, south of East Orangewood Avenue and north of West Chapman Avenue, adjacent to the eastern border of the Santa Ana River Flood Control Channel (“**Channel**”), at approximately Mile 12 of the Santa Ana River Trail (“**SART**”), within the City of Orange.
- B.** The Parcel is used by the DISTRICT for purposes of flood control operation and maintenance in accordance with the Orange County Flood Control Act, as set forth in California Uncodified Water Code, Act 5682, Section 2, also cited as Water Code Appendix Sections 36-1 et seq., and also referred to as Chapter 723 of the Statutes of 1927 (the “**Flood Control Act**”).
- C.** In conformance with the City of Orange’s General Plan, TENANT proposes to develop and operate a passive park on approximately 0.9 acres along the western boundary of the Parcel. The proposed improvements include a walkway, monumentation and/or trail signage, and landscaping.
- D.** The DISTRICT and TENANT desire to enter into this Lease to accommodate the City’s development and operation of a passive park on a portion of the DISTRICT’s Parcel, provided such use does not interfere with the DISTRICT’s flood control purposes or its use of the land.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### 1. **DEFINITIONS** (PMA2.1 S)

The terms described hereinabove in the Recitals are incorporated herein by this reference and the following words in this Lease have the significance attached to them in this section, unless otherwise apparent from context:

**"Board of Supervisors"** means the Board of Supervisors of the County of Orange acting as the governing board of the Orange County Flood Control District.

**"Chief Real Estate Officer"** means the Chief Real Estate Officer, County of Orange, or designee.

**"City"** means the City of Orange, State of California.

**"County"** means the County of Orange, a political subdivision of the State of California.



“**Director of OCPW**” means the Director, OC Public Works, County of Orange, or designee.

“**Tenant Improvements**” means and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made or constructed on the Premises by TENANT. Under no circumstances shall the TENANT Improvements include a restroom or a structure for human habitation.

**2. PREMISES (PMA3.1 N)**

Commencing with the Effective Date of this Lease, DISTRICT leases to TENANT a portion of the Parcel, as more particularly described in **Exhibit A** and depicted in **Exhibit B**, which are attached hereto, incorporated by this reference, and hereinafter referred to as the "**Premises.**"

**3. TERMINATION OF PRIOR AGREEMENTS (PMA4.1 S) – Intentionally omitted**

**4. LIMITATION OF THE LEASEHOLD & DISTRICT’S RESERVED RIGHTS (PMA5.1 S)**

This Lease and the rights and privileges granted TENANT to use the Premises are subject to all easements, 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 DISTRICT, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or DISTRICT's interest therein. TENANT acknowledges that TENANT has conducted a complete and adequate investigation of the Premises and that TENANT has accepted the Premises in its "where is-as is" condition.

DISTRICT reserves the right for DISTRICT and DISTRICT’s authorized representatives to enter the Premises and perform work or take other actions in accordance with the Flood Control Act, including but not limited to improving, construction, reconstructing, rehabilitating, operating, and maintaining the Channel and/or SART. At any reasonable time, DISTRICT may also enter the Premises to (i) determine whether TENANT is complying with TENANT’s obligations hereunder, or (ii) enforce any rights held by DISTRICT in said Premises. DISTRICT shall take care not to unreasonably interfere with TENANT’s use of the Premises in exercising its rights under this Section.

Further, DISTRICT’s reserved rights to enter onto, over, or under the Premises and participate fully in any flood control operations related thereto shall be superior to TENANT’s leasehold rights contained herein.

DISTRICT further reserves a right to utilize a portion of the Parcel and Premises for revenue generation in its sole and absolute discretion. TENANT agrees to cooperate with DISTRICT to accommodate any future DISTRICT desire to facilitate revenue generation on this Parcel and Premises, provided TENANT does not incur costs related to such DISTRICT endeavors and TENANT operation of a passive park is allowed to continue on the remaining portion of the Parcel rent-free. The Parties agree to amend this Lease as necessary to reflect the area utilized by the TENANT as a passive park.

**5. USE (PMB1.2 N)**

TENANT’s use of the Premises shall be limited to the operation of a passive public recreational park, including access to and from the Premises for its use, maintenance, repair, and upkeep related thereto. The Premises and its amenities and Tenant Improvements shall be made available for use by and at no cost to the public, including all Orange County residents. Restroom facilities or any habitable structures shall not be permitted on the Premises. These Tenant Improvements and related costs shall be at the sole expense of TENANT. Notwithstanding the above, there shall be no commercial use of the Premises at any time nor any cultivation or distribution of marijuana allowed thereon.



TENANT may not collect money for use of the Premises. Under no circumstances shall an entrance fee or fee be charged by TENANT to those who use the Premises. Reservations for use of Premises are not permitted. Premises are to remain open to the public during normal operating hours as determined by TENANT. TENANT shall ensure Premises are not utilized for habitation purposes and shall be responsible for taking action to prevent encampments and overnight occupancy.

TENANT agrees not to conduct or permit to be conducted any public or private nuisance in, on, or from the Premises, or to commit or permit to be committed any waste, including, but not limited to Hazardous Materials (defined in Section 19), within the Premises, nor shall TENANT engage in or authorize activities within or upon the Premises which are incompatible or interfere with DISTRICT's flood control activities in, on or about the Premises. TENANT's use of the Premises for any other purpose without DISTRICT's prior written approval shall cause this Lease and all TENANT's rights hereunder to immediately terminate upon written notice from Chief Real Estate Officer, and without further action on the part of DISTRICT.

NO ALCOHOL, TOBACCO, OR MARIJUANA PRODUCTS SHALL BE SOLD FROM OR CONSUMED WITHIN THE PREMISES.

**6. TERM (PMB2.1 N)**

The term of this Lease shall be thirty (30) years, commencing on the Effective Date of this Lease, unless sooner terminated as a result of non-compliance with any term or condition of this Lease as hereinafter provided.

**7. RELOCATION OR TERMINATION BY DISTRICT**

TENANT acknowledges that the Premises lie on, over or about a portion of the Channel and TENANT further acknowledges that the primary purpose of the Premises is for flood control purposes per the Flood Control Act. Upon determination by the Chief Real Estate Officer, in the exercise of his/her reasonable discretion, that the TENANT Improvements or uses interfere with DISTRICT's use of the area or impede a critically important public infrastructure project, TENANT shall, following receipt of written request, relocate or remove the TENANT Improvements pursuant to this Lease ("**Notice to Relocate**") within 5 days of DISTRICT's written request.

DISTRICT shall, upon written request of TENANT, have the Chief Real Estate Officer or designee meet and confer with TENANT to determine whether the TENANT Improvements can remain in place or whether modifications to the TENANT Improvements may be made to avoid the need for relocation or removal. To the extent TENANT cannot mitigate interference with DISTRICT's operations to the reasonable satisfaction of the Chief Real Estate Officer or Director of OCPW, the Chief Real Estate Officer may terminate this Lease one hundred (100) days from the date of the Notice to Relocate or as such relocation date may be extended. TENANT agrees this Lease does not create an obligation for DISTRICT to relocate TENANT or find a replacement location for providing a passive park at no cost to the public.

**8. RENT (N)**

In consideration of TENANT maintaining the Premises to a standard which complies with the Flood Control Act, at no cost to DISTRICT, and performing operations without charging a fee to the public, the Premises are leased to TENANT on a rent-free basis.

TENANT shall pay a one-time non-refundable administrative cost in connection with the negotiation and processing of this Lease in the amount of ten-thousand dollars (\$10,000) to DISTRICT prior to, and as a condition of, the Effective Date of this Lease.



## **9. CONSTRUCTION AND MAINTENANCE (PMES2.2N)**

Should TENANT plan to build, erect, install, or construct any Tenant Improvements or conduct any construction, landscaping, maintenance or excavation activities or otherwise disturb the surface of the Premises, TENANT agrees to notify Chief Real Estate Officer in writing sixty (60) days in advance of such planned activities, obtain Chief Real Estate Officer's written approval of all related plans, and obtain a permit through Orange County Property Permits ("CPP") department with payment of normal processing fees therefor and shall provide evidence of adequate insurance coverage prior to commencement of any construction of the facilities in, on, under or about the Premises; and upon completion of any such construction, TENANT shall immediately notify Chief Real Estate Officer in writing of such completion.

DISTRICT approval of TENANT's construction, landscaping and/or maintenance plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. DISTRICT is not responsible for permitting of any construction and/or maintenance, design, assumptions, or accuracy of TENANT's construction and/or maintenance plans. DISTRICT will rely on the professional expertise of the Engineer of Record when approving TENANT's construction and/or maintenance plans. The Engineer of Record is defined as the licensed professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of the engineering documents supporting TENANT's construction and/or maintenance plans.

Prior DISTRICT approval shall not be necessary in any emergency situation or in conducting routine maintenance activities, which do not involve disturbance of the surface area. However, TENANT shall notify Orange County Operations and Maintenance at 714-955-0200 within five (5) business days of commencing any emergency repair work and, if so required by the Chief Real Estate Officer, TENANT shall secure a permit through CPP for the purpose of documenting such emergency work.

TENANT acknowledges the Premises are within areas which may be designated as environmentally sensitive or in which cutting roots and other activities may require regulatory agency approval (e.g., approvals or permits from U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and California Regional Water Quality Control Board). TENANT shall obtain and remain in compliance with all regulations and laws pertaining to its activities under this LEASE and shall make every effort to ensure any cutting of roots or like activities, and any excavation shall be implemented in such a manner as will cause the least injury to the surface of the ground and any improvements and/or landscaping around such excavation, and that the earth so removed shall be replaced and the surface of the ground and any improvements and/or landscaping around such excavation, damaged shall be promptly restored by TENANT at its expense to the same condition as existed prior to excavation, to Chief Real Estate Officer's satisfaction.

TENANT shall, at no cost to DISTRICT, maintain in good repair and in safe condition all facilities constructed, used or placed within the Premises by or on behalf of TENANT pursuant to this Lease.

## **10. MECHANICS LIENS OR STOP-NOTICES (PMD4.1 S)**

In addition to the responsibilities described in Section 21 (Indemnification) below, TENANT shall at all times indemnify, defend with counsel approved in writing by DISTRICT, and save DISTRICT and County harmless from all claims, losses, demands, damages, costs, expenses, or liabilities arising from mechanics liens or stop notices in connection with the use, construction, repair, alteration, or installation of structures, improvements, equipment, or facilities by TENANT over, across, within, upon, or under 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, TENANT shall either:

- A. Record a valid Release of Lien, or



- B. Procure and record a bond in accordance with Section 8424 or 9364 of the California 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 one of the two actions above within fifteen (15) days after the file of such a lien or stop-notice, this Lease shall be in default and shall be subject to immediate termination. Such termination, however, shall not relieve TENANT from any of its obligations set forth in this section.

#### **11. "AS-BUILT" PLANS (PMD5.2 S)**

Within sixty (60) days following completion of any substantial improvement within the Premises, TENANT shall furnish Chief Real Estate Officer a complete set of reproducible Mylars and two sets of prints of "As-Built" plans. TENANT shall also furnish the Chief Real Estate Officer with all CAD data stored on compact disc ROM as "read only" files which shall be in one of the following software formats:

AutoCAD DXF format; Microsoft Windows based system.

Other (generic) DXF format; Microsoft Windows based system.

All CAD files are also to be converted to Acrobat Reader (\*.pdf format), which shall be included on CD ROM. No other formats are acceptable. Chief Real Estate Officer reserves the right to reject CAD files delivered in any other formats not specified above.

#### **12. CONSTRUCTION AND/OR ALTERATION BY DISTRICT (N)**

Except in an emergency found to exist by the Chief Real Estate Officer or the Director of OCPW, if DISTRICT intends to disturb the surface or subsurface of the Premises, then Chief Real Estate Officer shall give TENANT not less than thirty (30) calendar days' prior written notice specifying the date of such entry, the duration thereof, and the nature of the work to be performed by DISTRICT.

In the event DISTRICT finds it necessary to enter on and disturb the surface or subsurface of the Premises in order to maintain, repair, reconstruct, replace, improve or enlarge DISTRICT's Channel or any flood control facilities (e.g., the Orange Reservoir or Impoundment Area), DISTRICT's only responsibility under this Lease shall be to backfill the affected portion of the Premises with compacted earth to the grade of the surrounding property following completion of DISTRICT's activity. DISTRICT shall have no responsibility or liability under this Lease for restoring improvements owned, constructed, placed or permitted by TENANT within, upon, under or above the Premises, including but not limited to the Tenant Improvements as defined in Section 13 below. DISTRICT shall endeavor to minimize any damage, disruption or extirpation of any improvements during such DISTRICT activities.

#### **13. OWNERSHIP OF TENANT IMPROVEMENTS (PMD6.1 N)**

All Tenant Improvements must, upon completion, be free and clear of all liens, claims, or liability for labor or materials and excepting trade fixtures shall, at DISTRICT's option, become the property of DISTRICT at the expiration or sooner termination of this Lease. DISTRICT retains the right to require TENANT, at TENANT's cost, to remove any or all of Tenant Improvements located within, upon, under, or above the Premises at the expiration or termination hereof. TENANT agrees that should DISTRICT require removal of said Tenant Improvements, TENANT shall: (i) remove the Tenant Improvements, including any underground obstructions, at TENANT's cost within sixty (60) days of being notified by DISTRICT; (ii) leave the Premises in a level, safe, clean, sanitary and neat condition free of weeds and debris; (iii) remove any underground obstructions; (iv) leave any excavated area compacted to ninety percent (90%) compaction; and (v) replace any erosion control landscaping that may have been destroyed or removed as the result of any of the aforesaid activities.

#### **14. CONDEMNATION**



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. 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.

#### **15. UTILITIES & TAXES (PME1.1 N)**

A. Utilities. TENANT shall construct, or cause to be constructed, all necessary utility facilities to be used by TENANT within the Premises in accordance with the terms of this Lease and shall be responsible for and pay, prior to the delinquency date, all charges, assessments for utilities used by TENANT on the Premises.

B. Taxes. During the Term, TENANT shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, “**Taxes**” shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special DISTRICT thereof, as against any legal or equitable interest of DISTRICT in the Premises or any payments in lieu of taxes required to be made by DISTRICT, including, but not limited to, the following:

- (1) Any assessment, tax, fee, levy, improvement DISTRICT tax, charge or similar imposition in substitution, partially or totally, of any assessment, tax, fee, levy, charge or similar imposition previously included within the definition of Taxes. It is the intention of TENANT and DISTRICT that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of “Taxes” for the purpose of this Lease.
- (2) Any assessment, tax, fee, levy, charge or similar imposition allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the city, county, state or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by TENANT of the Premises, or any portion thereof;
- (3) Any assessment, tax, fee, levy, charge or similar imposition upon this transaction or any document to which TENANT is a party, creating or transferring an interest or an estate in the Premises, including any possessory interest tax levied on TENANT’s interest under this Lease;
- (4) Any assessment, tax, fee, levy, charge or similar imposition by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

The definition of “**Taxes**,” including any additional tax the nature of which was previously included within the definition of Taxes, shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring as a result of a sale or otherwise.



## **16. MAINTENANCE OBLIGATIONS OF TENANT** (PME2.1 N)

TENANT agrees to maintain the Premises and all Tenant Improvements thereon in good order and repair, and to keep said Premises in a neat, clean, orderly, safe, and sanitary condition to the satisfaction of Chief Real Estate Officer, and in compliance with all applicable laws. TENANT shall keep all Tenant Improvements free from graffiti at its sole cost. TENANT further agrees to provide approved containers for trash and garbage, which shall be emptied by TENANT at frequent and regular intervals, and to keep the Premises free and clear of rubbish, litter, and waste to prevent the accumulation of any refuse or waste materials which might constitute a fire hazard or a public or private nuisance. TENANT agrees to manage and maintain the premises consistent with other parks within the City of Orange, and as such will follow City of Orange park rules. TENANT shall ensure Premises are not utilized for habitation purposes and shall be responsible for taking action to prevent encampments and overnight occupancy.

TENANT shall designate in writing to Chief Real Estate Officer a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order of the Premises.

Chief Real Estate Officer shall have the right to enter upon and inspect the Premises anytime for cleanliness and safety and to confirm compliance with terms and conditions of this Lease. If TENANT fails to maintain or make repairs or replacements as required herein, Chief Real Estate Officer shall notify TENANT in writing of said failure. Should TENANT fail to correct the situation within three (3) days after receipt of written notice, Chief Real Estate Officer 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, and an administrative fee equal to fifteen percent (15%) of the sum of such items, shall be paid by TENANT within ten (10) days of receipt of a statement of said cost from Chief Real Estate Officer. Chief Real Estate Officer may, at Chief Real Estate Officer's option, choose other remedies available herein, or by law. Failure of TENANT to properly maintain and repair the Premises shall constitute a material breach of the terms of this Lease, upon which the Chief Real Estate Officer may immediately suspend or terminate this Lease.

## **17. INSURANCE** (AML10.1 N)

TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the Chief Real Estate Officer certificates of insurance, including all endorsements required herein, or valid evidence of self-insurance necessary to satisfy DISTRICT that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the evidence, certificates and endorsements therefore on deposit with DISTRICT during the entire term of this Lease.

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 Chief Real Estate Officer. In no cases shall assurances by TENANT, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid 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, DISTRICT may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Chief Real Estate Officer reinstates the Lease.

If TENANT fails to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, DISTRICT and TENANT agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to TENANT, said material breach shall permit DISTRICT 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 general public, and TENANT's employees and agents, from entering the Premises until such time as Chief Real Estate Officer is provided with adequate evidence of insurance required herein. TENANT



further agrees to hold DISTRICT and County, their elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment, 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 DISTRICT's action.

TENANT may occupy the Premises only upon providing to DISTRICT the required insurance stated herein and maintain such insurance for the entire term of this Lease. DISTRICT reserves the right to terminate this Lease at any time TENANT's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. TENANT shall pay DISTRICT a fee of One Thousand Five Hundred Dollars (\$1,500) for processing the reinstatement of the Lease. TENANT shall provide to DISTRICT immediate notice of said 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. TENANT shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by DISTRICT from TENANT under this Lease. It is the obligation of 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 DISTRICT representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. If TENANT has an SIR, TENANT, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold DISTRICT harmless against any and all liability, claim, demand or suit resulting from TENANT's, its agents, employee's or subcontractor's performance of this Agreement, TENANT shall defend DISTRICT at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) TENANT's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and TENANT's SIR provision shall be interpreted as though TENANT was an insurer and DISTRICT was the insured.

### **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 TENANT shall provide the minimum limits and coverage as set forth below:



<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit each accident
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Pollution Liability	\$1,000,000 per claims made or occurrence

### **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 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 DISTRICT and the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state words to the effect of - "***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 TENANT's insurance is primary and any insurance or self-insurance maintained by DISTRICT or the County of Orange shall be excess and non-contributing.

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

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.



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

All insurance policies required by this Lease shall waive all rights of subrogation against DISTRICT and 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, as respects the DISTRICT’s or the County’s financial interest, when applicable.

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).

Insurance certificates should be forwarded to DISTRICT address provided in Section 22 (NOTICES) below or to an address provided by Chief Real Estate Officer. TENANT has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

DISTRICT 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. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect DISTRICT.

Chief Real Estate Officer 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 the Chief Real Estate Officer incorporating such changes within thirty (30) days of receipt of such notice, this Lease may be in breach without further notice to TENANT, and DISTRICT shall be entitled to all legal remedies.

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.

#### **18. ASSIGNING, SUBLETTING, AND ENCUMBERING PROHIBITED** (PME7.3S)

Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, sublease amendment, or assignment (hereinafter in this Section referred to collectively as "**Encumbrance**") of TENANT’s interest in the Premises, or any part or portion thereof, is prohibited. Any attempted Encumbrance shall be null and void and shall confer no right, title, or interest in or to this Lease.

#### **19. HAZARDOUS MATERIALS** (PMF9.1 S)

A. Definition of Hazardous Materials. For purposes of this Lease, the term "**Hazardous Material**" or "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, DISTRICT, 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 permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, over, from or about the Premises (which for purposes of this Section shall include the subsurface soil and ground water). Notwithstanding the foregoing, TENANT may, subject to the Chief Real Estate Officer’s prior written permission, keep on or about the Premises small quantities of Hazardous Materials that are used in the ordinary, customary, and lawful cleaning of and 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, over, or about the Premises caused or permitted by TENANT or by any of the 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 of any real or personal property wherever situated, TENANT shall immediately notify the Chief Real Estate Officer of said damages, and/or contamination and/or injuries, and TENANT, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises and/or any real or personal property wherever situated to the condition existing prior to the introduction of such Hazardous Materials and to remedy or repair any such injury, damage or contamination. Without limiting any other rights or remedies of DISTRICT under this Lease, TENANT shall pay the cost of any cleanup or remedial work performed in, on, under, over or about the Premises or any real or personal property wherever situated 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 permitted by TENANT or any of the TENANT Parties. Notwithstanding the foregoing, TENANT shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials in, on, under, over, or about the Premises caused or permitted by TENANT or any of the 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 DISTRICT. 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 the Chief Real Estate Officer.

D. Indemnification for Hazardous Materials. To the fullest extent permitted by law, TENANT hereby agrees to indemnify, hold harmless, protect and defend (with counsel approved in writing by DISTRICT) DISTRICT and County, their elected officials, officers, employees, agents, and independent contractors, the Premises, and any owner of real or personal property wherever located, from and against any and all liabilities, losses, damages (including, but not limited to, damages for the loss or restriction of use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing and diminution in the value of the Premises, or any real or personal property wherever located), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorney fees, disbursements and court costs and all other professional or consultant expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under, over or about the Premises by TENANT or any of the TENANT Parties. The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

## 20. BEST MANAGEMENT PRACTICES (PMF11.2S)

TENANT and all TENANT Parties shall conduct operations and activities under this Lease so as to assure that pollutants do not 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 pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits ("**Stormwater Permits**") to the County of Orange, and to the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "**County Parties**") which regulate the discharge of urban runoff from areas within the County of Orange, 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.



To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (“**DAMP**”) which includes a Local Implementation Plan (“**LIP**”) for each jurisdiction that contains Best Management Practices (“**BMP(s)**”) that parties 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 the 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.

BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as **Exhibit D**. These BMP Fact Sheets may be modified during the term of the Lease; and TENANT shall be responsible for the acquisition of any updated BMP Fact sheets in a timely manner. TENANT and TENANT Parties shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, 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. TENANT agrees to maintain current copies of the BMP Fact Sheets in TENANT’s administrative offices throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

TENANT may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the Chief Real Estate Officer through the CPP process for review and approval prior to implementation.

Chief Real Estate Officer may enter the Premises and/or review TENANT’s records at any time to assure that activities conducted on the Premises comply with the requirements of this Section. TENANT may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this Section.

## **21. INDEMNIFICATION AND HOLD HARMLESS (PMGE 10.2N)**

TENANT acknowledges that the Premises may be subject to all hazards associated therewith including, but not limited, to noise, dust, inundation, erosion, settling, overflow and rapid and potentially dangerous increases in the volume of water due to the Premises location by the Channel. TENANT on behalf of itself, its assigns, and successors in interests agrees to assume all risks, financial or otherwise, associated therewith, including but not limited to, destruction of its improvements or facilities, and/or interruption in or restricted use of or access to the Premises whether temporary or permanent, due to flood conditions, storm runoff, dust, noise, or due to DISTRICT’s use of or operations conducted in, on, over, or about the Premises.

TENANT hereby agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless, DISTRICT and the County, their respective elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the Premises, and/or TENANT's exercise of the rights under this Lease including use of the Premises by the general public, except for liability arising out of the active or sole negligence of DISTRICT, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT and/or County is named as co-defendant in a lawsuit in connection with this Lease, TENANT shall notify DISTRICT of such fact and shall represent DISTRICT and/or County in such legal action unless DISTRICT undertakes to represent itself as co-defendant in such legal action, in which event, TENANT shall pay to DISTRICT and County their litigation costs, expenses, and attorney fees. If judgment is entered against DISTRICT and TENANT by a court of competent jurisdiction because of the concurrent



active negligence of DISTRICT and TENANT, DISTRICT and TENANT agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. A judgment or other judicial determination regarding DISTRICT's negligence shall not be a condition precedent to TENANT's obligations stated in this Section.

TENANT 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.*

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

**22. NOTICES (PMF10.1 N)**

All notices, documents, correspondence, and communications concerning this Lease shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, with postage prepaid. Any such mailing shall be deemed served or delivered forty-eight (48) hours after mailing. Each Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery, or by courier service such as FedEx and, so given, shall be deemed to have been given upon receipt.

To DISTRICT:

Orange County Flood Control District  
c/o Chief Real Estate Officer  
RE: Rampart Park, Orange  
400 W. Civic Center Dr., 5<sup>th</sup> fl.  
Santa Ana, CA 92702

To TENANT:

City of Orange  
c/o Director, Community Services Dept.  
RE: Rampart Park  
300 E. Chapman Ave  
Orange, CA 92866

With a copy to:

Orange County Flood Control District  
c/o OC Public Works  
Attn: Director  
601 N. Ross Street, 4<sup>th</sup> Floor  
Santa Ana, CA 92701

**23. SURVIVAL OF TERMS, COVENANTS, AND CONDITIONS**

The terms, covenants, and conditions set forth in Section 13 (Ownership of Tenant Improvements), Section 19 (Hazardous Materials), and Section 21 (Indemnification & Hold Harmless) shall survive the termination of this Lease.



**24. ENTIRE AGREEMENT**

This Lease and any related CPP permit shall contain the entire agreement between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein. Additionally, this Lease supersedes all prior agreements and understandings between the Parties with respect to the Premises that is the subject of this Lease and in the event of a conflict between the terms of this Lease and any other agreement, communication, or other form of communication between DISTRICT and TENANT, the provisions of this Lease shall prevail.

**24. GENERAL CONDITIONS**

This Lease includes the General Conditions, attached hereto as **Exhibit C** and by this reference made a part hereof.

**25. ATTACHMENTS TO LEASE (AMLC-15.1 S)**

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

- I. Exhibit A – Description of Property
- II. Exhibit B – Depiction of Premises
- III. Exhibit C – General Conditions
- IV. Exhibit D – Best Management Practices



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

**DISTRICT**

APPROVED AS TO FORM:  
Office of the County Counsel  
Orange County, California

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic

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

By: \_\_\_\_\_  
Thomas A. Miller, Chief Real Estate Officer  
Orange County, California  
Per Resolution No. 23-153 and Minute Order  
Dated December 5, 2023

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



Orange County Flood Control District Parcel-SART  
Santa Ana River RFP – Segment 1  
City of Orange - Rampart Park

APPROVED AS TO FORM:  
City Attorney

By: \_\_\_\_\_  
Nathalie Adouraian  
City Attorney

**TENANT**

CITY OF ORANGE,  
a municipal corporation

By: \_\_\_\_\_  
Daniel R. Slater  
Mayor

By: \_\_\_\_\_  
Pamela Coleman  
City Clerk



Orange County Flood Control District Parcel-SART  
Santa Ana River RFP – Segment 1  
City of Orange - Rampart Park

## **EXHIBIT A**

### **DESCRIPTION OF PROPERTY**

PROJECT NO: SART Parcel – Segment 1 (Rampart Park)      DATE: September 10, 2025  
PROJECT: CEO-REAL ESTATE      VERIFIED BY: GMC

**UPDATED PROPERTY DESCRIPTION FORTHCOMING**

All the Premises as shown on Exhibit B, attached hereto and made a part hereof, being located in the City of Orange, County of Orange, State of California, comprising approximately 0.9 acres.



## DEPICTION OF PROPERTY

UPDATED PROPERTY DESCRIPTION FORTHCOMING





## **Exhibit C**

### **General Conditions**

#### **1. TIME (PMG1.1 S)**

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

#### **2. SIGNS (PMG2.1 S)**

TENANT agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except as approved by Chief Real Estate Officer. Unapproved signs, banners, flags, etc., may be removed by Chief Real Estate Officer without prior notice to TENANT.

#### **3. PERMITS AND LICENSES (PMG3.1 S)**

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 DISTRICT, in its governmental capacity, shall affect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by DISTRICT, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

#### **4. CONTROL OF HOURS, AND PROCEDURES (PMG4.1 N)**

TENANT shall at all times maintain a written schedule delineating the operating hours and operating procedures for the Premises. Upon written request, TENANT shall furnish the Chief Real Estate Officer a copy of said schedule and procedures. Should Chief Real Estate Officer, 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 Chief Real Estate Officer, shall modify said schedules or procedures to the satisfaction of said Chief Real Estate Officer.

Primary consideration shall be given to the public's benefit in implementing this section. TENANT agrees that it will operate and manage the facilities offered in a competent and efficient manner at least comparable to other well managed parks 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.

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.

TENANT's failure to comply with the provisions of this section shall constitute a serious breach of this Lease and DISTRICT may immediately terminate this Lease.



**5. LEASE ORGANIZATION (PMG5.1 S)**

The various headings and numbers herein, the grouping of provisions of this Lease into separate sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

**6. AMENDMENTS (PMG6.1 S)**

This Lease is the sole and only agreement between the parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by both parties.

**7. UNLAWFUL USE (PMG7.1 S)**

TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

**8. NONDISCRIMINATION (PMG8.1 S)**

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.

**9. INSPECTION (PMG9.1 S)**

DISTRICT or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine if the provisions of this Lease are being complied with.

**10. HOLD HARMLESS (PMGE10.1 S) – Intentionally Omitted**

**11. TAXES AND ASSESSMENTS (PMG11.1 S)**

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

**12. SUCCESSORS IN INTEREST (PMG12.1 S)**

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.

**13. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMG13.1 S)**

If DISTRICT shall be delayed or prevented from the performance of any act required hereunder by reason of Acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for



the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**14. PARTIAL INVALIDITY (PMG14.1 S)**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**15. WAIVER OF RIGHTS (PMG15.1 S)**

The failure of DISTRICT or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that DISTRICT or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

**16. DEFAULT AND REMEDIES (PMG16.1 S)**

A. Events Of Default. The occurrence of any one or more of the following events shall constitute a default hereunder by TENANT:

1. The abandonment or vacation of the Premises by TENANT.
2. The failure or inability by TENANT to observe or perform any of the provisions of this Lease to be observed or performed by TENANT, where such failure shall continue for a period of ten (10) days after written notice thereof from DISTRICT to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 et seq.; provided, further, that if the nature of such failure is such that it can be cured by TENANT but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then TENANT shall not be deemed to be in default if TENANT shall commence such cure within said ten (10) days, and thereafter diligently prosecute such cure to completion.
3. The making by TENANT of any general assignment for the benefit of creditors.
4. A case is commenced by or against TENANT under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against TENANT, the same is not dismissed within sixty (60) days of such commencement.
5. The appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Lease, where such seizure is not discharged within thirty (30) days.
6. TENANT's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of TENANT in and to the Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of DISTRICT hereunder or by law; provided, it shall be lawful for DISTRICT to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and TENANT and its creditors (other than DISTRICT) shall have no further claim thereon or hereunder.



B. Remedies. In the event of any default by TENANT, then, in addition to any other remedies available to DISTRICT at law or in equity, DISTRICT may exercise the following remedies:

1. DISTRICT may terminate this Lease and all rights of TENANT hereunder by giving written notice of such termination to TENANT. In the event that DISTRICT shall so elect to terminate this Lease, then DISTRICT may recover from TENANT:

(a) The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof;

(b) The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof 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 and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided;

(d) Any other amount necessary to compensate DISTRICT 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, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; and

(e) Any other amount which DISTRICT may by law hereafter be permitted to recover from TENANT to compensate DISTRICT for the detriment caused by TENANT's default.

The term "rent" as used herein shall be deemed to be and to mean the annual rent and all other sums required to be paid by TENANT pursuant to the terms of this Lease. All such sums, other than the annual rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in subparagraphs B.1.(a) and B.1.(b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in subparagraph B.1.(c) above, the "worth at the time of award" shall be 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%), but not in excess of ten percent (10%) per annum.

2. DISTRICT may continue this Lease in effect without terminating TENANT's right to possession even though TENANT has breached this Lease and abandoned the Premises and to enforce all of DISTRICT's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided, however, that DISTRICT may at any time thereafter elect to terminate this Lease for such previous breach by notifying TENANT in writing that TENANT's right to possession of the Premises has been terminated.

Nothing in this section shall be deemed to affect TENANT's indemnity of DISTRICT liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under the indemnification section or sections contained in this Lease.

No delay or omission of DISTRICT to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by TENANT hereunder. The acceptance by DISTRICT of rent or any other



sums hereunder shall not be (a) a waiver of any preceding breach or default by TENANT of any provision thereof, other than the failure of TENANT to pay the particular rent or sum accepted, regardless of DISTRICT's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of DISTRICT's right to exercise any remedy available to DISTRICT by virtue of such breach or default. No act or thing done by DISTRICT or DISTRICT's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by DISTRICT.

Any installment or rent due under this Lease or any other sums not paid to DISTRICT when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

All covenants and agreements to be performed by TENANT under any of the terms of this Lease shall be performed by TENANT at TENANT's sole cost and expenses and without any abatement of rent. If TENANT shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by TENANT, then in addition to any other remedies provided herein, DISTRICT may, but shall not be obligated to do so, and without waiving or releasing TENANT from any obligations of TENANT, make any such payment or perform any such act on TENANT's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by DISTRICT on TENANT's behalf shall not give rise to any responsibility of DISTRICT to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by DISTRICT in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by DISTRICT shall be deemed to be additional rent hereunder and shall be paid by TENANT with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

#### **17. RESERVATIONS TO DISTRICT (PMG18.1 S)**

The Premises are accepted as is and where is by TENANT subject to any and all existing easements and Encumbrances. DISTRICT reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. DISTRICT also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Premises. No right reserved by DISTRICT in this section shall be so exercised as to interfere unreasonably with TENANT's operations hereunder or to impair the security of any secured creditor of TENANT.

DISTRICT agrees that rights granted to third parties by reason of this section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. DISTRICT further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by TENANT, the rental shall be reduced in proportion to the interference with TENANT's use of the Premises.



**18. HOLDING OVER (PMG19.1 S)**

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.

**19. CONDITION OF PREMISES UPON TERMINATION (PMG20.1 S)**

Except as otherwise agreed to herein, upon termination of this Lease, TENANT shall re-deliver possession of said Premises to DISTRICT 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. References to the "termination of the Lease" in this Lease shall include termination by reason of the expiration of the Lease term.

**20. DISPOSITION OF ABANDONED PERSONAL PROPERTY (PMG21.1 S)**

If TENANT abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises fifteen (15) days after such event shall, at DISTRICT's option, be deemed to have been transferred to DISTRICT. DISTRICT 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.

**21. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (PMG22.1 S)**

Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall execute, acknowledge, and deliver to DISTRICT, 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 DISTRICT. Should TENANT fail or refuse to deliver the required deed to DISTRICT, DISTRICT 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.

**22. DISTRICT'S RIGHT TO RE-ENTER (PMG23.1 S)**

TENANT agrees to yield and peaceably deliver possession of the Premises to DISTRICT on the date of termination of this Lease, whatsoever the reason for such termination.

Upon giving written notice of termination to TENANT, DISTRICT shall have the right to re-enter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Premises by DISTRICT shall in no way alter or diminish any obligation of TENANT under the Lease terms and shall not constitute an acceptance or surrender.

TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Premises for any lawful reason or in the event DISTRICT re-enters and takes possession of the Premises in a lawful manner.



**23. AUTHORITY OF TENANT (PMG 24.1 S)**

If TENANT is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

**24. PUBLIC RECORDS (PMG25.1 S)**

Any and all written information submitted to and/or obtained by DISTRICT 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 DISTRICT, may be treated as a public record open to inspection by the public pursuant to the California Public Records Act (California Government Code Section 7920, 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, subTENANTS, 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 DISTRICT 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.

**25. RELATIONSHIP OF PARTIES (PMG26.1 S)**

The relationship of the parties hereto is that of DISTRICT and TENANT, and it is expressly understood and agreed that DISTRICT 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.

**26. CHILD SUPPORT ENFORCEMENT (PMG27.1S) – Intentionally Deleted**

**27. ATTORNEYS' FEES (PMG28.1)**

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 attorney fees and costs.

**28. VENUE (PMG29.1)**

The parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, 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 California Code of Civil Procedure Section 394. Furthermore, the parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.



## Exhibit D

### Best Management Practices (“BMPs” Fact Sheets)

Best Management Practices can be found at: <https://ocerws.ocpublicworks.com/> which website may change from time to time.

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 section 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:**

**<https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/oc-watersheds/documents/best-management-practices-bmp>** (which website may change from time to time):

- 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
- IC15 Parking & Storage Area Maintenance
- IC17 Spill Prevention & Cleanup
- IC21 Waste Handling & Disposal
- IC24 Wastewater Disposal Guidelines