DISCUSSION

20. Revised Title to read:
   Health Care Agency - Receive and file status report and approve continuance of local health emergency and local emergency related to Novel Coronavirus (COVID-19); and set review to determine need for continuing local emergency for 11/8/20 11/17/20, 9:30 a.m. and every 30 days thereafter until terminated. Updates will be provided by County Executive Office, Health Care Agency, and other County departments concerning efforts to address and mitigate the public health and other impacts caused by the Novel Coronavirus (COVID-19) emergency, and (2) provide direction to the County Executive Officer and other County Officers concerning ongoing County operations, allocation of County resources and personnel, maintenance of essential public services and facilities, temporary suspension and/or closure of nonessential public services and facilities, management of County property and finances, measures necessary to protect public health and safety, and expenditures necessary to meet the social needs of the population - All Districts (Continued from Special Meeting 3/2/20, Item 1; 3/24/20, Item 23; 4/14/20, Item 8; 5/5/20, Item 28; 6/2/20, Item 53; 6/23/20, Item 48, 7/14/20, Item 17; 8/11/20, Item 10; 9/15/20, Item 8; 10/6/20, Item 12)

28. Revised Title to read:
   County Executive Office - Approve grant applications/awards submitted by Health Care Agency, OC Community Resources and Probation and retroactive grant applications/awards submitted by Registrar of Voters in 11/3/20 grant report and other actions as recommended; adopt resolution authorizing OC Parks Director or designee to conduct all negotiations, submit application, execute all related documents required to State Department of Parks and Recreation for Per Capita Grant Program - All Districts

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

   Items:  20 & 28

Supplemental Item(s)

S33A. Vice Chairman Do - Receive and file 26th Annual Report on the Conditions of Children in Orange County 2020

S33B. Supervisor Bartlett - Orange County Mental Health Board - Appoint Denis James Taylor, San Juan Capistrano, to complete term ending 12/11/22

S33C. Vice Chairman Do - Approve addition of Orange County Civic Center Japanese Garden and Tea House Anniversary events in November to County Event Calendar and make related findings per Government Code Section 26227
S33D. **John Wayne Airport** - Approve Certificated Passenger Airline Leases, Certificated Passenger Airline Operating Licenses, Commuter Airline Operating License and Cargo Leases with various airlines, 1/1/21 - 12/31/25; authorize Director or designee to make modifications and amendments under certain conditions; and consider application of Final Environmental Impact Report No. 617 and other findings - District 2 (4/5 vote of the members present)

S33E. **Sheriff-Coroner** - Approve contract MA-060-21010113 with PVP Communications Inc. for motorcycle helmet communications equipment, 11/16/20 - 11/15/23 ($465,000); and authorize County Procurement Officer or authorized Deputy to execute contract - All Districts

S33F. **Health Care Agency** - Approve master agreement with Jamboree Housing Corporation for Project Homekey Program operator services, 11/3/20 - 11/2/25 ($18,246,786); and authorize County Procurement Officer or authorized Deputy to execute agreement - District 2

S33G. **Continued to 11/17/20, 9:30 a.m.**

    **Health Care Agency** - Approve selection of and contact MA-042-21010449 with Telecare Corporation for Clinically Managed Withdrawal Management, Residential Treatment and Co-occurring Residential Treatment services, 11/3/20 - 6/30/22 ($7,046,098); renewable for three additional one-year terms; authorize County Procurement Officer or authorized Deputy to exercise cost contingency increase not to exceed 10% under certain conditions and execute contract - District 3

S33H. **Sheriff-Coroner** - Adopt resolution ratifying proclamation of local emergency by the Chairwoman of the Emergency Management Council for 2020 Silverado and Blue Ridge fires related to high winds, power outages, and resulting debris management; and set review to determine need for continuing local emergency for 12/15/20, 9:30 a.m. and every 60 days thereafter until terminated - All Districts
Revision to ASR and/or Attachments

Date: October 28, 2020
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Frank Kim, County Executive Officer
Re: ASR Control #: N/A, Meeting Date 11/3/20, Item No. # 20
Subject: Receive and File Status Report and Approve Continuance of Local Health Emergency and Local Emergency Related to Novel Coronavirus (COVID-19)

Explanation:

Update review to determine need for continuing local health emergency and local emergency to November 17, 2020, from December 8, 2020.

☐ Revised Recommended Action(s)

1. Receive and file status report and approve continuance of local health emergency and local emergency related to Novel Coronavirus COVID-19; and set review to determine need for continuing local health emergency and local emergency for November 17, 2020—December 8, 2020, 9:30 a.m. and every 30 days thereafter until terminated.

☐ Make modifications to the:
  ☐ Subject ☐ Background Information ☐ Summary ☐ Financial Impact

☐ Revised Attachments (attach revised attachment(s) and redlined copy(s))
MEETING DATE: 11/03/20  
LEGAL ENTITY TAKING ACTION: Board of Supervisors  
BOARD OF SUPERVISORS DISTRICT(S): All Districts  
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)  
DEPARTMENT CONTACT PERSON(S): Peter DeMarco (714) 834-5777, Cynthia Shintaku (714) 834-7086  

SUBJECT: Grant Applications/Awards Report  

<table>
<thead>
<tr>
<th>CEO CONCUR</th>
<th>COUNTY COUNSEL REVIEW</th>
<th>CLERK OF THE BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concur</td>
<td>Approved Resolution to Form</td>
<td>Discussion 3 Votes Board Majority</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Budgeted: N/A</th>
<th>Current Year Cost: N/A</th>
<th>Annual Cost: N/A</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Staffing Impact: No</th>
<th># of Positions:</th>
<th>Sole Source: N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Fiscal Year Revenue: N/A</td>
<td>County Audit in last 3 years: No</td>
<td></td>
</tr>
<tr>
<td>Funding Source: N/A</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Prior Board Action: N/A  

RECOMMENDED ACTION(S):  
Approve grant applications/awards as proposed and other actions as recommended.

1. Approve Retroactive Grant Application and Approve Grant Award – Registrar of Voters Planning and Operationalizing Safe and Secure Election Administration in Orange County in 2020 – $2,682,902.25.  
2. Approve Grant Award – Housing Opportunities for Persons with AIDS (HOPWA) Program Agreement – Health Care Agency – $894,322.  
3. Approve Grant Application and Adopt Resolution – OC Community Resources – Per Capita Grant Program – $5,044,010.  
4. Approve Grant Application – OC Community Resources – South Orange County Regional Coastal Resilience Strategic Plan – $214,500.  
5. Approve Grant Award – Probation – Young Adult Court – $77,000.  
SUMMARY:
See the attached Grants Report.

BACKGROUND INFORMATION:
See the attached Grants Report.

FINANCIAL IMPACT:
N/A

STAFFING IMPACT:
N/A

ATTACHMENT(S):
Attachment A - Grants Report
Attachment B - OCCR Per Capita Resolution
The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants $50,000 or less is delegated to the County Executive Officer. Grant awards greater than $50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County’s grants activities. It also serves to inform Orange County’s Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On November 3, 2020 the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTION ITEMS:

1. Approve Retroactive Grant Application and Approve Grant Award – Registrar of Voters Planning and Operationalizing Safe and Secure Election Administration in Orange County in 2020 – $2,682,902.25.

2. Approve Grant Award – Housing Opportunities for Persons with AIDS (HOPWA) Program Agreement – Health Care Agency – $894,322.

3. Approve Grant Application and Adopt Resolution – OC Community Resources – Per Capita Grant Program – $5,044,010.

4. Approve Grant Application – OC Community Resources – South Orange County Regional Coastal Resilience Strategic Plan – $214,500.

5. Approve Grant Award – Probation – Young Adult Court – $77,000.

**CEO-Legislative Affairs Office**  
**Grant Authorization eForm**

**GRANT APPLICATION / GRANT AWARD**

<table>
<thead>
<tr>
<th>Today's Date:</th>
<th>10/22/20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requesting Agency/Department:</td>
<td>Registrar of Voters</td>
</tr>
<tr>
<td>Grant Name and Project Title:</td>
<td>Planning and operationalizing safe and secure election administration in Orange County in 2020</td>
</tr>
</tbody>
</table>
| Sponsoring Organization/Grant Source: | Center for Tech and Civic Life (CTCL)  
(If the grant source is not a government entity, please provide a brief description of the organization/foundation) |
| Application Amount Requested: | Open |
| Application Due Date: | October 1, 2020 |
| Board Date when Board Approved this Application: | N/A |
| Awarded Funding Amount: | $2,682,902.25 |
| Notification Date of Funding Award: | 10/20/2020 |
| Is this an Authorized Retroactive Grant Application/Award? | Yes  
(If yes, attach memo to CEO) |

**Recurrence of Grant**

<table>
<thead>
<tr>
<th>New ☑</th>
<th>Recurrent ☐</th>
<th>Other ☐ Explain:</th>
</tr>
</thead>
</table>

**If this is a recurring grant, please list the funding amount applied for and awarded in the past:**

| N/A |

**Does this grant require CEQA findings?**

| Yes ☐ | No ☑ |

**What Type of Grant is this?**

| Competitive ☐ | Other Type ☑ Explain: Allocation |

**County Match?**

| Yes ☑ Amount Dollar for Dollar ☐ or _____ % | No ☑ |

**How will the County Match be Fulfilled?**

(Please include the specific budget)

| N/A |

**Will the grant/program create new part or full-time positions?**

| No |

**Purpose of Grant Funds:**

Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.

Election offices can use the funds to cover certain 2020 expenses incurred between June 15, 2020 and December 31, 2020. These include the costs associated with the safe administration of the following election responsibilities.

**Ensure Safe, Efficient Election Day Administration**

- Maintain open in-person polling places on Election Day
- Procure Personal Protective Equipment (PPE) and personal disinfectant to protect election
officials and voters from COVID-19
- Support and expand drive-thru voting, including purchase of additional signage, tents, traffic control, walkie-talkies, and safety measures

### Expand Voter Education & Outreach Efforts
- Publish reminders for voters to verify and update their address, or other voter registration information, prior to the election
- Educate voters on safe voting policies and procedures

### Launch Poll Worker Recruitment, Training & Safety Efforts
- Recruit and hire a sufficient number of poll workers and inspectors to ensure polling places are properly staffed, utilizing hazard pay where required
- Provide voting facilities with funds to compensate for increased site cleaning and sanitization costs
- Deliver updated training for current and new poll workers administering elections in the midst of pandemic

### Support Early In-Person Voting and Vote by Mail
- Expand or maintain the number of in-person early voting sites

**Deploy additional staff and/or technology improvements to expedite and improve mail ballot processing**

<table>
<thead>
<tr>
<th>Board Resolution Required? (Please attach document to eForm)</th>
<th>Yes ☐ No ☒</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)</td>
<td>Jacqueline Guzman</td>
</tr>
</tbody>
</table>

### Recommended Action/Special Instructions
(Please specify below)

- Approve Grant Application and Award

**Department Contact:**
List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

**Kim Golden (714) 567-5107, Kimberly.golden@rov.ocgov.com**

**Name of the individual attending the Board Meeting:**
List the name of the individual who will be attending the Board Meeting for this Grant Item:

**Neal Kelley**
### GRANT APPLICATION / ☑ GRANT AWARD

**Today’s Date:** 10/22/2020  
**Requesting Agency/Department:** Health Care Agency  
**Grant Name and Project Title:** Housing Opportunities for Persons with AIDS (HOPWA) Program Agreement  
**Sponsoring Organization/Grant Source:** City of Anaheim  
**Application Amount Requested:** N/A  
**Application Due Date:** N/A  
**Board Date when Board Approved this Application:** 07/28/20 (Recurring Grant Matrix Application – Health Care Agency)  
**Awarded Funding Amount:** $894,322  
**Notification Date of Funding Award:** 10/19/20  
**Is this an Authorized Retroactive Grant Application/Award?**  
(If yes, attach memo to CEO)  
**Recurrence of Grant**  
New ☐ Recurrent ☑ Other ☐ Explain:  
**If this is a recurring grant, please list the funding amount applied for and awarded in the past:**  
FY 2019-20 awarded amount: $894,323  
**Does this grant require CEQA findings?**  
Yes ☐ No ☑  
**What Type of Grant is this?**  
Competitive ☐ Other Type ☑ Explain: Annual Allocation  
**County Match?**  
Yes ☐ Amount _____ or _____ % ☑ No ☐  
**How will the County Match be Fulfilled?**  
(Please include the specific budget)  
N/A  
**Will the grant/program create new part or full-time positions?**  
No  
**Purpose of Grant Funds:**  
Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.  

HOPWA funds are allocated to housing and support services for low-income individuals living with HIV to prevent homelessness. Services include short-term supportive housing; emergency payments for rent, mortgage, and utilities; emergency payments for rent or utility deposits, housing placement assistance; and group education on practical living skills.  

**Board Resolution Required?**  
(Please attach document to eForm)  
Yes ☐ No ☑  
**Deputy County Counsel Name:**  
(Please list the Deputy County Counsel that approved the Resolution)  
N/A  
**Recommended Action/Special Instructions**
The Health Care Agency requests that the Board of Supervisors approve and sign this agreement, approve the Recommended Action authorizing the Agency to accept this grant, and delegate authority to the HCA Director, or designee, to execute the Cooperative Agreement for the term of July 1, 2020 through June 30, 2021.

This Agreement contains a mutual indemnification clause that differs from the County’s standard of sole indemnification that requires each party to indemnify and hold harmless the other party against claims resulting from acts of the party or its subcontractors as part of performing the Agreement. CEO Risk Management has reviewed and approved this provision.

Authorize the Health Care Agency Director, or designee, to execute such future amendments to the Agreement referenced above that do not change the Agreement amount by more than 10% of the original amount and/or make immaterial changes to the scope of work.

<table>
<thead>
<tr>
<th>Department Contact:</th>
<th>List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marc Meulman, (714) 834-2980, <a href="mailto:MMeulman@ochca.com">MMeulman@ochca.com</a></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of the individual attending the Board Meeting:</th>
<th>List the name of the individual who will be attending the Board Meeting for this Grant Item:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Margaret Bredehoft, (714) 834-3882, <a href="mailto:MBredehoft@ochca.com">MBredehoft@ochca.com</a></td>
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</tr>
</tbody>
</table>
GRANT APPLICATION / □ GRANT AWARD

<table>
<thead>
<tr>
<th>Today’s Date:</th>
<th>11/03/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requesting Agency/Department:</td>
<td>OC Community Resources/OC Parks</td>
</tr>
</tbody>
</table>
| Grant Name and Project Title: | Per Capita Grant Program, two projects-  
  - Orange County Zoo Large Animal Exhibit  
  - Mile Square Regional Park Golf Course Conversion |
| Sponsoring Organization/Grant Source: | California Department of Parks and Recreation/Proposition 68 |
| Application Amount Requested: | $5,044,010 |
| Application Due Date: | December 31, 2021 |
| Board Date when Board Approved this Application: | N/A |
| Awarded Funding Amount: | N/A |
| Notification Date of Funding Award: | N/A |
| Is this an Authorized Retroactive Grant Application/Award? | No |
| Recurrence of Grant | New ☑ Recurrent ☐ Other ☐ Explain: |
| If this is a recurring grant, please list the funding amount applied for and awarded in the past: | N/A |
| Does this grant require CEQA findings? | Yes ☑ No ☐ |
| What Type of Grant is this? | Competitive ☐ Other Type ☑ Explain: This is an allotment grant based on population. |
| County Match? | Yes ☑ Amount _20_ % No ☐ |
| How will the County Match be Fulfilled? (Please include the specific budget): | Match will be met through the OC Parks funded portion of each project. |
| Will the grant/program create new part or full-time positions? | No |
| Purpose of Grant Funds: | Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented. |

If approved, allotted grant funds would be used to complete two large scale parks improvement projects:

- $1,909,345 would be used to fund the Irvine Regional Park-OC ZOO Large Animal exhibit.
- $3,134,665 would be used to fund phase I of the 93-acre Mile Square Regional Park golf course conversion project.

Board Resolution Required? (Please attach document to eForm) | Yes ☑ No ☐ |
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Grant Authorization eForm) | Mark Batarse
<table>
<thead>
<tr>
<th>Recommended Action/Special Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Please specify below)</td>
</tr>
<tr>
<td>1. Authorize the OCCR Director or Designee to apply for use of OC Parks allotment from the State of California Department of Parks and Recreation, Prop 68 Per Capita Grant and to sign all documents required for participation in the program including, but not limited to agreements, deed restrictions, and amendments as reviewed and approved as to form by County Counsel.</td>
</tr>
<tr>
<td>2. Adopt the attached Resolution for the California Department of Parks and Recreation Per-Capita Grant Program.</td>
</tr>
</tbody>
</table>

**Department Contact:**

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Sue McIntire, OC Parks Grants Manager- (714) 478-3421; sue.mcintire@ocparks.com

**Name of the individual attending the Board Meeting:**

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Stacy Blackwood, OC Parks Director or designee
RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

November 3, 2020

APPROVING APPLICATIONS FOR PER CAPITA GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantee’s Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and

WHEREAS, the grantee will enter into a contract(s) with the State of California to complete project(s);

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby:

1. Approves the filing of project application(s) for Per Capita program grant project(s); and

2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and

3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and

4. Certifies that all projects proposed will be consistent with the park and recreation element of the Orange County general or recreation plan (PRC §80063(a)), and

5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and

6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and

7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the “Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters,” dated January 12, 2017, the County of Orange will consider a range of actions that include, but are not limited to, the following:
   (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
   (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
   (C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.
   (D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.
   (E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
(F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.

(G) Identifying possible staff liaisons to diverse populations.

8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).

9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient’s annual expenditures. (PRC §80062(d)).

10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and

11. Delegates the authority to the Director, Orange County Parks or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and

12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.
CEO-Legislative Affairs Office
Grant Authorization eForm

☑ GRANT APPLICATION / ☐ GRANT AWARD

<table>
<thead>
<tr>
<th><strong>Today’s Date:</strong></th>
<th>11/03/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Requesting Agency/Department:</strong></td>
<td>OC Community Resources/OC Parks</td>
</tr>
<tr>
<td><strong>Grant Name and Project Title:</strong></td>
<td>Coastal Resilience Grant, South Orange County Regional Coastal Resilience Strategic Plan</td>
</tr>
<tr>
<td><strong>Sponsoring Organization/Grant Source:</strong></td>
<td>Ocean Protection Council/Proposition 68</td>
</tr>
<tr>
<td><strong>Application Amount Requested:</strong></td>
<td>$214,500</td>
</tr>
<tr>
<td><strong>Application Due Date:</strong></td>
<td>November 14, 2020</td>
</tr>
<tr>
<td><strong>Board Date when Board Approved this Application:</strong></td>
<td>N/A</td>
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<tr>
<td><strong>Awarded Funding Amount:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Notification Date of Funding Award:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Is this an Authorized Retroactive Grant Application/Award?</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Recurrence of Grant</strong></td>
<td>New ☑ Recurrent ☐ Other ☐ Explain: N/A</td>
</tr>
<tr>
<td><strong>Does this grant require CEQA findings?</strong></td>
<td>Yes ☑ No ☐</td>
</tr>
<tr>
<td><strong>What Type of Grant is this?</strong></td>
<td>Competitive ☑ Other Type ☐ Explain:</td>
</tr>
<tr>
<td><strong>County Match?</strong></td>
<td>Yes ☑ Amount 15% No ☐</td>
</tr>
<tr>
<td><strong>How will the County Match be Fulfilled?</strong></td>
<td>Staffing and administrative costs will be used to meet the match.</td>
</tr>
<tr>
<td><strong>Will the grant/program create new part or full-time positions?</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Purpose of Grant Funds:</strong></td>
<td>Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.</td>
</tr>
</tbody>
</table>

If awarded, grant funds will be used to create a regional, collaborative strategic plan to reduce the risk factors associated with the region’s chronically eroding shoreline. This Regional Coastal Resilience Strategic Plan will be a Community Capacity project to address the long-term impacts of erosion from Dana Point Harbor to San Clemente covering approximately 7 miles of beach shoreline.

The proposed strategic plan would link to the Orange Coastal Regional Sediment Management Plan, to move coastal sediment management needs towards implementation.

<table>
<thead>
<tr>
<th><strong>Board Resolution Required?</strong></th>
<th>Yes ☑ No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deputy County Counsel Name:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>(Please list the Deputy County Counsel that approved the Resolution)</td>
<td></td>
</tr>
</tbody>
</table>
### Recommended Action/Special Instructions

(Please specify below)

<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Authorize the OCCR Director or Designee to apply for a Prop 68 Coastal Resilience Grant.</td>
</tr>
<tr>
<td>2.</td>
<td>Authorize the OCCR Director or Designee to sign all documents required for participation in the program including, but not limited to, the Grant Agreement as reviewed and approved as to form by County Counsel.</td>
</tr>
</tbody>
</table>

### Department Contact:

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

<table>
<thead>
<tr>
<th>Name</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sue McIntire, OC Parks Grants Manager</td>
<td>(714) 478-3421; <a href="mailto:sue.mcintire@ocparks.com">sue.mcintire@ocparks.com</a></td>
</tr>
</tbody>
</table>

### Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

<table>
<thead>
<tr>
<th>Name</th>
<th>Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stacy Blackwood</td>
<td>OC Parks Director or designee</td>
</tr>
</tbody>
</table>
The Community Action Partnership of Orange County (CAPOC) is a community action agency and works to enhance the quality of lives. They address the root causes of poverty and advocate for change through systemic reforms, social justice and racial equity. CAPOC applied and was awarded for the 2020 Community Services Block Grant (CSBG) funding by the Coronavirus Aid, and Economic Security (CARES) Act. The CSBG CARE Act grant funding is to prevent, prepare for, and respond to the 2020 Coronavirus pandemic, for carrying out activities in the low-income communities to achieve economic self-sufficiency. Thus, in partnership with University of California, Irvine (UCI) Youth Adult Court (YAC) CAPOC is supporting UCI for their YAC project. The funding from CAPOC is to support a portion of a Deputy Probation Officer (DPO) assigned to the YAC. These funds will be passed through Probation as a sub-recipient.

On October 8, 2020, UCI and CAPOC notified Probation of the approved grant and the allocation of
$77,000 to Probation. The funding period is November 20, 2020 through December 21, 2021. Probation will be using this funding to offset salaries and employee benefits costs for a DPO assigned to the YAC, this will not be a new position/employee.

<table>
<thead>
<tr>
<th>Board Resolution Required?</th>
<th>Yes ☐ No ☒</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy County Counsel Name:</td>
<td>(Please list the Deputy County Counsel that approved the Resolution)</td>
</tr>
<tr>
<td>Recommended Action/Special Instructions</td>
<td>(Please specify below)</td>
</tr>
<tr>
<td>1. Authorize the Chief Probation Officer, or designee, to accept the allocated funding with the Community Action Partnership of Orange County for the grant funding amount of $77,000 for the period of November 20, 2020 through December 21, 2021.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Department Contact:</th>
<th>List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debbie Le, Department Grant Coordinator</td>
<td>(714) 645-7079    <a href="mailto:Debbie.Le@prob.ocgov.com">Debbie.Le@prob.ocgov.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of the individual attending the Board Meeting:</th>
<th>List the name of the individual who will be attending the Board Meeting for this Grant Item:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steven J. Sentman, CPO</td>
<td>(714) 645-7001    <a href="mailto:Steven.Sentman@prob.ocgov.com">Steven.Sentman@prob.ocgov.com</a></td>
</tr>
<tr>
<td>Or</td>
<td></td>
</tr>
<tr>
<td>Sue Delacy, CDPO</td>
<td>(714) 645 – 7004    <a href="mailto:Sue.Delacy@prob.ocgov.com">Sue.Delacy@prob.ocgov.com</a></td>
</tr>
<tr>
<td>Todd Graham, CDPO</td>
<td>(714) 645 – 7003    <a href="mailto:Todd.Graham@prob.ocgov.com">Todd.Graham@prob.ocgov.com</a></td>
</tr>
</tbody>
</table>
MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Supervisor Andrew Do, Vice Chairman

Subject: The 26th Annual Report on the Conditions of Children in Orange County

Please add the supplemental item of business to the November 3, 2020 Board Agenda. The title of the supplemental item should read:

The 26th Annual Report on the Conditions of Children in Orange County
MEETING DATE: 11/3/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Supervisor Do
DEPARTMENT CONTACT PERSON(S): Chris Wangsaporn (714) 834-3110

SUBJECT: The 26th Annual Report on the Conditions of Children in Orange County

Budgeted: N/A            Current Year Cost: N/A            Annual Cost: N/A

Staffing Impact: N/A       # of Positions:          Sole Source: N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A        County Audit in last 3 years: N/A

Prior Board Action: 10/22/2019 #8

RECOMMENDED ACTION(S):
Receive and File the 26th Annual Report on the Conditions of Children in Orange County 2020.

SUMMARY:
Acceptance of the 26th Annual Report on the Conditions of Children in Orange County allows the Orange County Children’s Partnership to continue to provide a unified voice that champions health, education, safety and economic stability to meet the needs of all children and families in Orange County.

BACKGROUND INFORMATION:
The Orange County Children’s Partnership (OCCP), formerly the Children’s Services Coordination Committee (CSCC), is a 22-member advisory body established by the Orange County Board of Supervisors (Board) in November 1982. The OCCP provides a forum for departments and agencies to disseminate and discuss issues and challenges concerning the Juvenile Justice/Dependency systems. The OCCP collectively focuses its’ efforts to provide a unified voice that champions health, education, safety and economic stability to meet the needs of all children and families in Orange County.

Since 1993, the OCCP has sponsored the Annual Report on the Conditions of Children in Orange County. Most recently, on October 22, 2019, the Board received and filed the 25th consecutive Annual Report on the Conditions of Children in Orange County.

FINANCIAL IMPACT: N/A

STAFFING IMPACT: N/A

ATTACHMENT(S): Conditions of Children in Orange County Report
THE 26TH ANNUAL REPORT ON THE
CONDITIONS OF CHILDREN
IN ORANGE COUNTY
LETTER FROM THE CHAIR

The future of Orange County rests on the health and well-being of our children. Each year, our Conditions of Children report provides an opportunity to assess our progress and take steps to improve.

This year, 2020, is an unprecedented period for our children due to the coronavirus pandemic. Data does not yet exist to capture the immediate, let alone the long-term, impacts of COVID-19 on children in Orange County. Instead, we must rely largely on anecdotal experiences to understand what is happening with our children and families and do what we can to support the continuity of care and services for those most affected by the economic, health and social ramifications of COVID-19.

Current data shows that prior to the pandemic there was substantial progress made across many key indicators.

- The teen birth rate continues to drop to the lowest level in 10 years.
- More women in Orange County are receiving early prenatal care.
- More than half of third graders are now meeting or exceeding statewide achievement standards for English language arts and mathematics.

While we have made improvements, there is still work that needs to be done.

For example, despite the increase in the percentage of third grade students meeting or exceeding statewide achievement standards, substantial gaps persist across racial and ethnic lines; foster youth experience higher chronic absenteeism and high school dropout rates than their classmates; and one in four economically disadvantaged 5th graders are at risk for obesity compared to one in 10 5th graders who are economically advantaged. Meanwhile, poverty increases among all Orange County’s children. Poverty is a risk factor for diabetes, which is a growing health concern in Orange County.

These problems require action. We need to deliver on our promise of a bright future for all our children. To achieve this requires that everyone – parents, teachers, business and community leaders and service providers – get involved.

Join me, the Orange County Children’s Partnership and more than 20 member organizations in our work to advance data-informed solutions to meet the needs of our children and families.

Sincerely,

Andrew Do, Chair
Orange County Children’s Partnership

ORANGE COUNTY CHILDREN’S PARTNERSHIP 2020 MEMBERS

Chair
Supervisor Andrew Do
First District
Orange County Board of Supervisors

Vice Chair
Debra J. Baetz
County of Orange Social Services Agency

Members
Eldon Baber
The Raise Foundation
Donald Barnes
Orange County Sheriff
Kimberly Goll, MURP
First 5 Orange County
Hon. Joanne Motoike
Presiding Judge of the Orange County Juvenile Court
Al Mijares, PhD
Orange County Superintendent of Schools
Jeff Nagel, PhD
Orange County Health Care Agency, Behavioral Health
Paula Noden
Regional Center of Orange County
Leon J. Page
County Counsel
Martin Schwarz
Public Defender (Interim)
Denise Schleicher
Contract Attorney for Children
Steven J. Sentman
Chief Probation Officer
Todd Spitzer, JD, MPP
Orange County District Attorney
Clayton Chau, MD, PhD
Orange County Health Care Agency, Public Health Officer

Lynda Perring
Juvenile Justice Commission
Vacant
Foster Parent Representative
Vacant
Group Home Representative
Candice Gomez, MSHCA
CalOptima
Vacant
Former Foster Youth

For more information about the priorities, work and public meetings of the OCCP, please visit: ochealthinfo.com/phs/about/family/OCCP.

As of August 2020
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The 26th Annual Report on the Conditions of Children in Orange County studies four interdependent focus areas: Good Health, Economic Well-Being, Educational Achievement and Safe Homes and Communities. Each focus area includes the most recent data for indicators to assess improving or worsening trends over 10 years and help identify potential areas to be addressed to ensure all Orange County children thrive. The most recent data ranges from 2017 to 2020, and up to 10 years of data are reported.

Orange County's infants remain in good health with a recent positive increase in mothers receiving early prenatal care and continued declines in babies born pre-term and with low birth weights. Young children continue to progress academically in both Math and English Language Arts, while college readiness among high school students maintains its seven-year positive trend. Youth are safer today, as overall injury death rates and gang activity continue to decline.

These positive outcomes are not achieved by all. Disparities persist in Orange County among races and ethnicities, socioeconomic status and geographic communities, depending on the indicator. For example, some communities face greater economic hardship than others, as poverty among children increases and nearly 30,000 students experience insecure housing. Low income students are nearly three times less likely than their peers to exceed the third-grade mathematics and English language standards than their peers, with some communities experiencing this disparity more so than others. While Hispanic and Latinx students make up the largest group of graduates at 45.1% of student population, they are the least likely to be college ready making up just 41.3% of students considered college ready. Despite some improvement, foster youth still experience the highest chronic absentee at 27.6% and high school dropout rates at 21.0%.

These disparities will likely be exacerbated by the novel coronavirus-2019 (COVID-19). Due to standard delays in data collection and reporting, a data-driven understanding of these impacts is not yet available. The report's special edition explores Orange County’s proactive response to the known and perceived impacts of this public health crisis on children and families and showcases examples of the response across the four focus areas.
The outbreak of the novel coronavirus disease-2019 (COVID-19) has had dramatic and devastating impacts locally. Orange County organizations working with children and families have observed several emerging impacts, outlined on the following page. Some of these impacts are related to new issues or concerns, whereas others are connected to existing issues that may have been exacerbated by COVID-19. While the Conditions of Children Report cannot capture the impacts of the virus with data in real time, it is our hope that bringing them to light will help build public awareness around these challenges and help us as a community focus on how best to address them.

COVID-19 in Orange County
Orange County reported 54,760 COVID-19 cases and 1,287 deaths at the time this report went to print on October 5, 2020.1 The rate of COVID-19 cases among children ages 0 to 17 years was lower at 553.2 per 100,000 in Orange County compared to California (949.3) and the United States (629.8).2 Youth ages 0 to 17 years accounted for 7.2 percent of all cases.

RATE OF COVID-19 AMONG 0 TO 17 YEAR-OLDS (PER 100,000)

Orange County 553.2
California 949.3
United States 629.8

These social determinants of health have left certain groups at higher risk of contracting the disease.4 Among those youth who contracted COVID-19 with known race and ethnicity, Orange County trends suggest similar disparities with 82.6% of cases among minority populations ages 0 to 17 years.5

PERCENT CASES IN ORANGE COUNTY AMONG POPULATIONS AGES 0 TO 17 YEARS, BY RACE AND ETHNICITY

67.5% HISPANIC 15.6% WHITE 11.8% OTHER 3.7% ASIAN 0.4% BLACK OR AFRICAN AMERICAN 0.9% MULTIPLE RACES

Note: Percent cases are among children 0 to 17 years with known race and ethnicity. As of October 5, 2020, 55% (2,182) of the COVID-19 cases among youth have a known race and ethnicity.

COVID-19 Testing Sites Increase Access for the Most Vulnerable
Within weeks of the first reported COVID-19 cases in the county, and in an effort aimed to protect the most vulnerable populations including Asian Pacific Islander and the Middle Eastern and North African populations, Orange County Health Care Agency launched a multifaceted community outreach and advertising initiative to promote and provide testing. Partnering with community health centers, private providers and California state testing locations, the initial five testing sites expanded quickly to 20 locations, promoted through news print, social media outlets and multi-language street teams.

The County of Orange launched the Latino Health Equity Initiative in June 2020 after testing data showed higher COVID-19 positivity among Latinos in Orange County, particularly in the cities of Anaheim and Santa Ana. The initiative is a partnership between OC Health Care Agency, Latino Health Access, school districts and others. Through this initiative, Latino Health Access offers increased testing, outreach, education, contact notification support and referral services.

The County also opened two drive through testing “super sites” at Anaheim Convention Center and Orange County Fair Grounds in Costa Mesa for the testing of first responders, essential workers and those exhibiting symptoms of COVID-19. In addition, the County is partnering with school districts to prioritize testing for students, faculty and staff who meet the testing criteria to be tested at these super site locations to assist schools with their re-opening efforts.

Local Response to COVID-19

To support an early understanding of how the pandemic has impacted children and families, interviews were conducted and written input gathered in July 2020 from staff in leadership roles across the OCCP’s social service, health, education, child support and criminal justice agencies and community-based member organizations. The interviews provided an account of what service providers are seeing as emerging impacts for children and families, and many examples of wide-ranging efforts to meet children and families’ needs.

At a high level, conversations with the community leaders and child advocates point to the various ways COVID-19 has transformed the day-to-day lives of children and families. School closures, social distancing, isolation and economic hardship has increased the risk of food insecurity among children, increased anxiety and stress and created barriers to accessing vital services.¹

According to California’s Employment Development Department, during the first months of the pandemic, Orange County experienced the loss of 222,400 jobs, increasing the unemployment rate to 14 percent in April.² Orange County organizations who have historically provided safety net services and resources for families and children experiencing economic and health challenges, found themselves needing to mobilize and identify new ways to increase their capacity to meet the growing demand. For example, the County of Orange Social Services Agency (SSA), which receives calls for Medi-Cal public health insurance, CalFresh (aka Food Stamps)³, General Relief and CalWORKs benefits, saw an increase on average (March-August 2020) of approximately 20,000 additional calls per month about public assistance benefits versus monthly call volumes in the prior year. Of this call volume, approximately 55 to 60% of all inquiries were for CalFresh.⁴

The increase in applications for benefits from March to August 2020 compared to the same time period in 2019 were as follows:
- Medi-Cal applications, federally known as Medicaid, were up 10.6%;⁵
- CalFresh, federally known as the Supplemental Nutrition Assistance Program (SNAP), applications were up 29.1%;⁶ and
- Direct cash aid, known as CalWORKs, for families with children increased by 36.4%.⁷

| TOTAL APPLICATIONS RECEIVED FROM MARCH TO AUGUST, 2019 AND 2020 |
|-------------------|-------------------|
| **Medi-Cal**       | **CalFresh**      |
| 2019: 58,774      | 2019: 60,760      |
| 2020: 64,989      | 2020: 78,463      |
| **CalWORKs**      |                   |
| 2019: 8,868       |                   |
| 2020: 12,096      |                   |

¹ Health Management Associates. (2020, July). Findings from key informant interviews with Orange County community leaders. ² California Employment Development Department, retrieved from https://edd.ca.gov/. ³ CalFresh is the California implementation of the federal Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp program, which provides financial assistance for purchasing food to low-income California residents. ⁴ Orange County Social Services Agency, Call Center as of September 17, 2020. ⁵ CalWIN MRH53R. ⁶ CalWIN MRH53R. ⁷ CalWIN MRH53R.
Pivoting to Meet Expanding Need

Orange County has a robust network of services available to support families struggling to get by. That said, COVID-19 has increased the number of families in need of those support services while simultaneously presenting the challenge of how to maintain services during a pandemic when in-person interactions are restricted. Orange County responded proactively and quickly pivoted to new and innovative ways to meet this growing need, including:

- Expansion of online social benefit enrollment options and extended hours for call centers;
- The rapid transition to providing existing services in alignment with social distancing guidelines;
- The design and deployment of new services to meet the immediate and emerging needs of children and families;
- Increased collaboration to expand access and improve services, with a specific focus on inequities and disparities among people of different races and ethnicities, learning abilities, criminal justice involvement and age groups.

Orange County organizations have come together around three areas of need: 1) Transforming services to a virtual platform as needed, 2) Ensuring food security by expanding food distribution channels and 3) Increasing awareness about the role of mandated reporters in preventing child abuse.

Transforming Services to Virtual Platforms

The most substantial change in service delivery was the rapid transition to virtual formats as needed. Services from education to healthcare visits to court appearances were quickly moved online or conducted by phone to meet the state and county mandated stay-at-home orders. While this rapid transition was not without challenges for both agencies and consumers, it was necessary to ensure the continuation of services with minimal disruption. As agencies continue to build their internal capacity to efficiently and effectively provide services virtually, addressing the technological divide (i.e., computer and internet access and knowledge of technology) will be important to minimize barriers to services. As one example, Orange County Schools transitioned over 450,000 students to virtual learning, providing 144,529 learning devices, as well as 16,485 units of internet connectivity.

Addressing Food Insecurity

The percentage of children experiencing food insecurity is projected to increase 83.0% to 20.4% in 2020, from 11.2 in 2018. One indicator of this increased food insecurity is the number of calls to inquire about CalFresh food benefits. The SSA Call Center has experienced a 40.6% increase in call volumes for CalFresh benefits; in August 2020 the Call Center received 26,649 calls for CalFresh compared to 18,827 calls for CalFresh in August 2019.

In response to this growing need, the California Department of Social Services (CDSS) issued

**Access to Technology**

<table>
<thead>
<tr>
<th>PERCENT OF ORANGE COUNTY HOUSEHOLDS WITH NO COMPUTER OR SMART PHONE</th>
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</thead>
<tbody>
<tr>
<td>5.6%</td>
</tr>
<tr>
<td>CITY WITH HIGHEST PERCENT OF HOUSEHOLDS</td>
</tr>
<tr>
<td>25.1%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PERCENT OF ORANGE COUNTY HOUSEHOLDS WITH NO INTERNET ACCESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.2%</td>
</tr>
<tr>
<td>CITY WITH HIGHEST PERCENT OF HOUSEHOLDS</td>
</tr>
<tr>
<td>38.2%</td>
</tr>
</tbody>
</table>

1 U.S. Census Bureau, ACS, 5-year estimates 2014-2018, Table S2801. 2 Percentage of households with no access to the internet through subscription broadband, dial-up, satellite, cellular data or any other service.
Pandemic Electronic Benefit Transfer (P-EBT) benefits beginning in June 2020 to CalFresh, Medi-Cal, CalWORKs and Foster Care households with children who are eligible for free or reduced-price school meals as well as to households with children who are eligible for free or reduced-price school meals whose schools are closed due to the COVID-19 emergency. Through the program, households will receive up to $365 for each child who is eligible for P-EBT benefits. On average, approximately $13 million in P-EBT benefits have been issued to more than 75,000 households each month between March and August 2020, for a total issuance of over $80 million to Orange County families thus far.

Beyond the expansion of benefits, numerous county agencies, community-based and faith-based organizations and ramped up efforts to increase food distribution on a daily, weekly and monthly basis. For example, the County of Orange secured approximately $3 million in Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to assist food distribution organizations like Second Harvest and OC Food Bank to help feed 16,234 more families. In addition, the Raise Foundation has increased its food distribution events for families-in-need from bi-monthly to as many as four times a week. Since March, they have held 43 food distribution events and served over 32,000 individuals. During this same period, Orange County schools provided almost 9 million meals to students and their families.

Increasing Awareness About the Role of Mandated Reporters

School closures and the move to virtual services have reduced the number of mandated reporters (i.e., people like childcare providers, pediatricians and teachers who must report when they know or suspect that child abuse is occurring) who would normally have regular in-person contact with children. The decrease in call volume to the the 24/7 Orange County Child Abuse Registry (CAR) hotline between March and August 2020 revealed a 37% reduction in calls overall.

Number of CAR Calls Received from March to August

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Calls</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>33,257</td>
<td></td>
</tr>
<tr>
<td>2020</td>
<td>21,099</td>
<td>37%</td>
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Many agencies and organizations in Orange County are working hard to increase their outreach and communications about this issue and educate individuals on what to do in the event that child abuse is suspected. With the knowledge that mandated reporters were having less contact with school-aged children due to the stay-at-home order, initiatives were launched to build awareness for individual roles in reporting child abuse:

- SSA published regular and frequent messaging to the community via social media, in press conferences and via Board of Supervisor updates. The agency also partnered with the Orange County Sheriff and Orange County District Attorney on a public service announcement to encourage relatives and neighbors to check in with families and reminders to report to the CAR hotline if abuse/neglect is suspected.
- OC School Districts and the Orange County Emergency Operations Center and Care and Shelter Branch collaborated on messaging to educators about mandated reporting requirements.
- Family emergency planning materials were shared in student lunches (during drive through pick-ups).

The largest reduction in CAR calls occurred at the beginning of the stay-at-home order, from April (58% decrease in calls) to May (55% decrease), when some services, such as schools and medical offices, were temporarily shut down and prior to the roll-out of digital or virtual service options.

The following pages present several additional highlights meant to showcase the response across Orange County four focus areas: Good Health, Economic Well-Being, Educational Achievement and Safe Homes and Communities.
Good Health

Homelessness COVID-19 Collaborative – The Family Solutions Collaborative – a coalition of 21 nonprofit organizations working to prevent and address family homelessness, primarily funded through First 5 Orange County and the County of Orange, quickly identified a designated individual to coordinate service provision for any families with children ages 0 – 5 who test positive for COVID-19. Once notified, this person works across organizations to locate the best site for them to receive care while maintaining social distance.

Multipronged approach to Support Emotional Health and Well-Being – Orange County Health Care Agency (HCA) Behavioral Health division has designed a six-pronged strategic approach to supporting youth and family’s mental health and wellbeing in response to COVID-19. Specifically, strategies focus on suicide prevention, violence prevention, building youth resilience, addressing health disparities, social norm campaigns and expanding virtual care, including telehealth capacity. Activities within each strategy focus on delivery of services in new ways to increase and expand access, provide support and resources to both providers of services as well as recipients of those services and building community capacity to identify and support those struggling with suicidal ideation, domestic violence or abuse. In addition, HCA developed a Mental Health Supports webpage with a wide variety of resources on the County’s COVID-19 website. This webpage, community resources, and help-seeking multi-media messaging have been developed, and/or promoted through a wide variety of community campaigns, including a partnership with Angels Baseball.

Economic Well-Being

Orange County Child Care Database – In March, Early Childhood OC initiated an Emergency Child Care Task Force to support child care providers and programs working to stay open safely. The taskforce created a centralized child care database in an effort to simplify the process for essential workers and families needing alternative child care options for children birth to 12 to allow them to continue to work. This database, the first of its kind in Orange County, was developed in response to uncertainty regarding which providers were open during different phases of the COVID-19 pandemic and how to re-open safely according to public health guidelines. The site also offers information on financial assistance for families; health and safety guidelines; stipends, grants and support for providers; and other free resources and materials.

Education

Orange County Together – The local Orange County Health Care Agency (OCHCA), the Orange County Department of Education (OCDE) and school districts across Orange County have developed a comprehensive guide with recommendations for reopening more than 600 schools. While school boards and superintendents will approve and implement plans specific to their districts, the guide serves as a key resource to inform and support decision-making.

Learning Continuity and Attendance Plan – For the 2020/21 school year, Local Education Agencies are producing Learning Continuity and Attendance Plans (LCP), established by Senate Bill 98, to capture how learning continuity will be addressed during COVID-19. The LCP will be in lieu of the Local Control Accountability Plan (LCAP) for this year and will share how districts are responding to the impacts of COVID-19 on instruction and how they are offsetting learning loss. Once approved, plans will be found on both the Orange County Department of Education’s website and the websites for each local school district.

Safe Homes and Communities

Triple P – Positive Parenting Program – The Orange County Health Care Agency purchased online licenses for the evidence-based Triple P curriculum and provided them to families at no cost. The Triple P gives parents simple and practical strategies to help them build strong, healthy relationships with their children while managing their child’s behavior and preventing problems from developing. This additional resource has supported parents and families as they navigate this uniquely difficult and stressful time.

Orange County Gang Reduction and Intervention Partnership (OC GRIP) – The Orange County District Attorney’s Office continues to seek to reduce juvenile gang crime during the pandemic via OC GRIP, focusing its work on reducing truancy and providing gang prevention and resiliency building criteria. OC GRIP quickly tailored the student intervention component to a virtual platform,
which is the program’s most crucial component, where school staff identify students in need of intervention to the OC GRIP team. Protocols for student intervention meetings now utilize the use of conference calls and documentation and support services. More than 600 remote student interventions, home visits, and mental health resources have taken place across 65 schools in Orange County. Ongoing input from the schools and parents will help each GRIP community to maintain a positive trajectory for the participating students through the COVID-19 pandemic.

The Path Forward

OCCP’s mission is to serve as a unified voice championing health, education, safety and economic stability by advancing more responsive services that effectively meet the needs of children and families in Orange County. Never has this mission been more critical. In the months and years to come, data will be analyzed and reported so that the impacts of COVID-19 are better understood and services and resources are responsive to those impacts. OCCP remains committed to serving in this important role, championing those current and future efforts to meet the needs of children and families.
ORANGE COUNTY SNAPSHOT

Population

- Over 3.2 million people are living in Orange County in 2019, up from 3.0 million in 2010 – 6.8% increase
- Median Age in 2018: 38.3

Number of Births in Orange County

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<th>Year</th>
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<tr>
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<td>2018</td>
<td>35,578</td>
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Percent Children in Orange County

<table>
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<th>Year</th>
<th>Percentage</th>
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<tr>
<td>2009</td>
<td>25.4%</td>
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<td>2018</td>
<td>22.5%</td>
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Population Increase Due to Net Migration vs Natural Increase

<table>
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<th>Year</th>
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<th>Natural Increase</th>
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<tbody>
<tr>
<td>2009/10</td>
<td>-4,344</td>
<td>22,617</td>
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<td>2018/19</td>
<td>-9,278</td>
<td>14,893</td>
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Demographics, 2018/19

Grade K-12 Student Population by Race/Ethnicity Group

- African American/Black: 1.3%
- Asian American: 16.9%
- White: 25.0%
- Hispanic/Latino: 49.1%
- Other: 7.5%

Percent of Children Ages 5 and Older Who Speak a Language Other Than English at Home

- Spanish: 24.8%
- Asian/Pacific Islander Languages: 15.2%
- Other Indo-European Languages: 4.3%
- Other Languages: 1.2%

Good Health, 2018

- Last Visit to the Dentist Was 6 Months Ago or Less Among 3-11 Year Olds: 71.1%
- Health Status of 0 to 17 Year Olds Is Excellent or Very Good: 81.3%

Economic Well-Being

- Median Home Price: 2010: $546,050, 2019: $828,000
- Median Average Rental Rate: 2010: $1,507, 2019: $2,004

Educational Achievement

- Annual Expenditure Per Pupil: 2009/10: $7,955, 2019/20: $12,081
- Children Are Read to Daily (0 to 5 Years Old): 54.3%

Safe Homes and Communities, 2018/19

- Minimum Income Needed to Purchase a Median-Income Home: 2018/19: $162,800
- Youth Ages 16 to 19 Years Old Who Are Neither Working Nor in School: 4.2%

Note: Current data reflect the most recent year of data available, ranging from 2017 to 2020. *Natural increase is total births minus total deaths. Net migration is the net movement including intrastate, interstate and international moves.
The following snapshot includes data points both depicting direct impacts of COVID-19, as well as children and families who may be uniquely susceptible to its health, social and economic effects. Data included elsewhere in the report (e.g., child poverty) has not been included.

**Children 0 to 17 Years Old, 2018**

- **Children in Single Parent Households**: 25.1% (178,893)
- **Children Living with Grandparent**: 7.6% (53,921)
- **Percent of Households with Children with Parents in the Workforce**: 64%

**Children Under 6 with Both Parents in the Workforce**: 31% (133,412)

**Children Under 6 with Single Parent in the Workforce**: 32% (41,856)

**Percent of Children 5 to 17 Years with Self-Care Difficulty**: 1.4% (7,082)

**Percent of Children with Disability**: 2.9% (20,575)

**Child Food Insecurity**:
- **2018**: 11.2%
- **Projected Increase**: 83%
- **2020 Projection**: 20.4%

**Child Care, 2018/19**

- **Number of Families Needing Child Care, by Reason**:
  - Employed: 6,073
  - Seeking Employment: 1,389
  - School/Training: 1,114
  - Other: 417

- **Number of Children Needing Child Care, by Type**:
  - Full Time: 8,412
  - Part Time: 3,055
  - Daytime Hours: 9,414
  - Alternative Care Hours: 1,237

**Employment**

- **Unemployment in 2020**:
  - June: 13.8%
  - February: 2.8%

- **Number of Individuals in the Workforce**:
  - June 2020: 1.68M
  - June 2019: 1.49M
  - Change: 11.5%

**Industries with Largest Number of Job Losses**:

- Leisure & Hospitality: 28.1%
- Professional & Business Services: 9.7%
- Government: 11.4%
- Manufacturing: 10.7%
- Education & Health Services: 6.3%
- Retail Trade: 9.7%

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## Good Health Indicators

### Access to Health Care

- **Percent of Uninsured Children**
  - 2009: 10.4%
  - 2018: 2.9%

### Early Prenatal Care

- **Percent of Women Who Received Early Prenatal Care in the First Trimester Excluding Self-Pay Deliveries**
  - 2009: 88.3%
  - 2018: 89.9%

### Teen Births

- **Birth Rate per 1,000 Females 15 to 19 Years of Age**
  - 2009: 25.3
  - 2018: 8.3

### Infant Mortality

- **Rate of Infant Mortality per 1,000 Live Births**
  - 2009: 4.1
  - 2018: 2.8

### Breastfeeding

- **Percent Exclusive Breastfeeding at Time of Hospital Discharge**
  - 2012: 63.1%
  - 2018: 67.0%

### Preterm Births

- **Percent of Preterm Births**
  - 2009: 9.4%
  - 2018: 7.6%

### Physical Fitness and Nutrition

- **Percent of 5th Grade Students with Health Risk Due to Body Composition**
  - 2013/14: 18.3%
  - 2018/19: 18.3%

- **Percent of 5th Grade Students with Health Risk Due to Aerobic Capacity**
  - 2013/14: 5.8%
  - 2018/19: 6.4%

### Immunizations

- **Percent of Children Adequately Immunized by Kindergarten**
  - 2010: 89.0%
  - 2019: 95.5%

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### Note:

Variation in data ranges are due to availability of data and frequency of data collection.
ACCESS TO HEALTH CARE

IN 2018, THE PERCENTAGE OF CHILDREN WHO WERE UNINSURED DECREASED SLIGHTLY WHILE CALIFORNIA RATES STAYED THE SAME.

DESCRIPTION OF INDICATOR

This indicator reports the number and percentage of children 18 years old and under who are uninsured; the number and percentage who do not have a usual source of care; and those who experienced delayed care or did not receive medical care or prescription medications.

Why is this indicator important?

Improving health care access for all children helps to improve prevention, early diagnosis and treatment of health problems. Children with health insurance are more likely to get timely prescription medications and medical or mental health care when needed; are more likely to get preventive care (including immunizations, dental care and vision screenings); and, overall, have better health outcomes.

Findings

• In 2018, 2.9% of children were uninsured, representing a drop in uninsured rates by 71.8% since 2009 (10.4%).

• Orange County has a similar rate of uninsured children (2.9%) compared to California (3.1%) and for the fifth consecutive year, this is a lower rate than the United States (5.2% in 2018).

• Hispanic children continue to have higher uninsured rates than other race and ethnicity groups, with 3.9% uninsured in 2018, compared with Asian children (2.5%), White children (1.9%) and Other races (1.1%).

• Uninsured percentages of very young children (0-5 years old) have dropped overall by 72.7%, from 8.9% in 2009 to 2.4% in 2018. Similarly, rates of uninsured 6 to 17-year-olds have dropped by 71.8%, from 11.2% in 2009 to 3.2% in 2018.

• In addition, the California Health Interview Survey [pooled estimate for 2014 through 2018] reveals: 3
  - An estimated 11.2% Orange County children annually did not have a usual source of care to go to when they were sick or needed health advice.
  - Approximately 2.7% of Orange County children experienced a delay or lack of medical care and 2.2% experienced a delay or lack of needed prescription medications.
  - Most Orange County children who had access to a usual source of care went to a doctor’s office (70.0%), while 18.1% went to a clinic or community hospital. The proportion of children who regularly visited an Emergency Department, urgent care center or other location were those without a usual source of care (11.2%).

1 Due to changes in data reporting with the U.S. Census, data as of 2017 includes children 0-18 years. Prior year data included only children ages 0-17. The U.S. Census released the following statement regarding the changes: “[In 2017] Multiple health insurance tables were updated to have categories that better align with the current health insurance landscape.” 2 Estimates for 2017 and 2018 include children ages 0-16. Increases in the percent of uninsured children in 2017 from 2016 may be attributable to this change in reported age groups. See prior footnote. 3 UCLA Center for Health Policy Research, Los Angeles, CA. AskCHIS. Available at http://askchis.ucla.edu.
Percent of Children Uninsured, by Race/Ethnicity, 2010 to 2018

Source: U.S. Census Bureau, American Community Survey, 1-Year Estimates, Tables B27001 A-I, C2700E
Other includes: Black/African American, AIAN, 2+ races and Other races
* Increases in the percent of uninsured children in 2017 and after may be attributable to change in reported age groups. See footnote 1.

Percent of Children Under 18 Years Who Were Uninsured

*Estimate unstable due to small population of children.

Source: U.S. Census Bureau, American Community Survey, 5-Year Estimates, 2018

Percent of Children 18 Years and Under Who Were Uninsured, by Community of Residence

5-Year Average, 2018

*See footnote 1
EARLY PRENATAL CARE

NINE IN 10 WOMEN WHO USE INSURANCE RECEIVE EARLY PRENATAL CARE.

DESCRIPTION OF INDICATOR

This indicator tracks the number and percent of infants born to women whose prenatal care began during the first trimester (the first three months) of pregnancy.

Why is this indicator important?

Getting regular prenatal care as soon as a woman knows she is pregnant improves the potential for a healthy pregnancy resulting in a full-term baby. Ideally, this care should begin with a preconception care visit to a health care provider. Prenatal care provides screening and management of a woman’s risk factors and health conditions to reduce pregnancy complications, as well as education and counseling on healthy behaviors during and after pregnancy. While the value of initiating prenatal care during early pregnancy is not disputed, evidence equating late prenatal care with adverse pregnancy outcomes is limited. Additionally, certain genetic, behavioral, social, environmental and other factors can also adversely affect the ability to have a healthy, full-term baby. Still, late prenatal care has been associated with risk of maternal death in all women (especially among minorities), increased rates of preterm delivery, low birth weight and congenital malformations.

Findings

- In 2018, Orange County’s rate of women receiving early prenatal care was 88.4%, up 4% since 2016 and greater than both California (85.7%) and the United States (77.5%).
- The percent of women receiving early prenatal care has begun to rebound from a decreasing trend between 2013 and 2016. This decrease was correlated with an increase in self-pay deliveries.
- Self-pay deliveries are those paid through cash payment rather than health insurance and are often associated with foreign visitors that travel to the U.S. to give birth. These women generally arrive in the U.S. late in their pregnancy and leave shortly after giving birth; therefore, these births typically have no recorded prenatal care. In 2018, there were 3,896 self-pay deliveries in Orange County, an increase from 823 in 2008. Nearly 84% of self-pay deliveries in 2018 were among Asian/Pacific Island women.
- When self-pay deliveries are excluded, the percent of women who received early prenatal care in Orange County in 2018 increases from 88.4% to 89.9%.
- With self-pay deliveries excluded, 93.3% of White women received early prenatal care followed by Asian/Pacific Islander (91.4%), Hispanic (86.9%) and Black (86.6%) women. Early prenatal care rates for each race/ethnicity increased from 2016, continuing the upward trend seen since 2014 and besting rates seen in 2009.

1 Hagan, J. F., Shaw, J. S., and Duncan, P. M., Eds. (2008). 2 Smith, A. and Bassett-Novoa, E., Late Presentation to Prenatal Care, American Family Physician, Volume 92, Number 5, September 1, 2015. 3 National Center for Health Statistics, final natality data. Retrieved from www.marchofdimes.org/peristats. 4 Self-pay deliveries in Orange County increased substantially in 2014, 2015 and 2016. Analysis of trends indicates correlation of individuals with self-pay deliveries with lack of documentation of early prenatal care. Self-pay deliveries are mostly to Asian women. Self-pay deliveries only comprise a minor percentage for all other races/ethnicities and exclusion does not affect the prenatal care percentages for these groups. Further analyses indicates that early prenatal care in Orange County remains relatively stable when self-pay deliveries are considered.
Percent of Women who Received Early Prenatal Care, Excluding Self-Pay Deliveries in Orange County, by City of Residence, 2018

**Orange County**

- **IRVINE**: 92.1%
- **LA HABRA**: 90.5%
- **LA PALMA**: 92.7%
- **LAGUNA BEACH**: 92.6%
- **LAGUNA HILLS**: 86.1%
- **LAGUNA NIGUEL**: 92.3%
- **LAGUNA WOODS**: 92.2%
- **LAKE FOREST**: 90.2%
- **LOS ALAMITOS**: 93.2%
- **MIDWAY CITY**: 83.7%
- **MISSION VIJEJO**: 92.2%
- **NEWPORT BEACH**: 88.6%
- **NEWPORT COAST**: 88.6%
- **ORANGE**: 92.8%
- **PLACENTIA**: 90.5%
- **PORTOLA HILLS**: 100.0%
- **RANCHO SANTA MARGARITA**: 90.5%
- **SAN CLEMENTE**: 90.5%
- **SAN DIEGO**: 87.5%
- **SAN JUAN CAPISTRANO**: 87.5%
- **SEAL BEACH**: 87.5%
- **SEAPORT VILLAGE**: 87.5%
- **STANTON**: 87.5%
- **TRABUCO CANYON**: 92.4%
- **TUSTIN**: 90.5%
- **VILLA PARK**: 100.0%
- **WESTMINSTER**: 87.5%
- **YORBA LINDA**: 93.0%

**California**

- **ORANGE**: 50.0% - 88.9%
- **90.0% - 93.2%**
- **93.3% - 100.0%**

*Note: If comparing to state and national data, beginning in 2006, individuals whose race/ethnicity is not stated or is unknown have been grouped with Non-Hispanic Whites for CA and U.S. statistics. As a result, Hispanic rates are potentially underestimated. Source: Orange County Health Care Agency, Family Health Division*

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**Percent of Women who Received Early Prenatal Care in the First Trimester, Excluding Self-Pay Deliveries, by Race/Ethnicity, 2009 to 2018**

- **White**: 90.1%
- **Hispanic**: 89.7%
- **Asian**: 92.1%
- **Other**: 87.3%

*Note: *For 2009 to 2016, “Other” includes Pacific Islander, Multiracial, Other and Unknown. Rates for Pacific Islander were included with Asian starting in 2017.*

**Orange County**

- **ALISO VIEJO**: 93.1%
- **ANAHEIM**: 89.0%
- **ANAHEIM HILLS**: 91.4%
- **BREA**: 92.2%
- **BUENA PARK**: 88.1%
- **COSTA MESA**: 92.3%
- **COTO DE CAZA**: 100.0%
- **CYPRUS**: 87.6%
- **DANA POINT**: 90.1%
- **FOOTHILL RANCH**: 90.1%
- **FOUNTAIN VALLEY**: 91.2%
- **FULLERTON**: 89.4%
- **GARDEN GROVE**: 87.3%
- **HUNTINGTON BEACH**: 92.2%
- **IRVINE**: 92.1%
- **LA HABRA**: 86.9%
- **LA PALMA**: 90.2%
- **LADERA RANCH**: 95.6%
- **LAGUNA BEACH**: 92.2%
- **LAGUNA HILLS**: 88.8%
- **LAGUNA NIGUEL**: 92.3%
- **LAGUNA WOODS**: 50.0%
- **LAKE FOREST**: 90.2%
- **LOS ALAMITOS**: 93.2%
- **MIDWAY CITY**: 84.1%
- **MISSION VIJEJO**: 92.2%
- **NEWPORT BEACH**: 95.9%
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- **PLACENTIA**: 90.0%
- **PORTOLA HILLS**: 100.0%
- **RANCHO SANTA MARGARITA**: 95.9%
- **SAN CLEMENTE**: 89.3%
- **SAN DIEGO**: 87.5%
- **SAN JUAN CAPISTRANO**: 89.3%
- **SEAL BEACH**: 92.3%
- **STANTON**: 81.8%
- **TRABUCO CANYON**: 92.4%
- **TUSTIN**: 98.9%
- **VILLA PARK**: 100.0%
- **WESTMINSTER**: 89.3%
- **YORBA LINDA**: 93.0%

**California**

- **ORANGE**: 89.9%
- **91.4% - 93.0%**
- **93.1% - 100.0%**

*Note: Rate is based on fewer than five births. Rates based on less than five events are unstable and should be interpreted with caution. Source: Orange County Health Care Agency, Family Health Division*
INFANT MORTALITY

2018 INFANT MORTALITY RATE IS THIRD LOWEST IN LAST TEN YEARS.

DESCRIPTION OF INDICATOR

The infant mortality indicator refers to deaths of infants under one year of age. The number and rate of infant mortality is calculated per 1,000 live births per year.

Why is this indicator important?

The infant mortality rate is a widely-used indicator of societal health because it is associated with maternal health, quality of and access to medical care, socioeconomic conditions and public health practices. Improvements in the infant mortality rate may reflect progress in medical technology, hygiene and sanitation systems, economic well-being and the availability and use of both preventive and clinical health services. Despite the overall decline in infant mortality since 2002, there continue to be racial disparities in the rates. In the past, these disparities had been only partially explained by factors such as adequacy and quality of prenatal care.

Findings

• In 2018, there were 100 infant deaths in Orange County.

• The infant mortality rate was 2.8 deaths per 1,000 births in 2018, a 31.7% decrease since 2009. This rate is lower than California’s rate of 4.2 and the United States’ rate of 5.8. However, this rate is an increase of 86.6% from a low of 1.5 deaths per 1,000 births in 2016.

• Leading causes of infant mortality were maternal causes (24%), congenital anomalies (birth defects) (22%), all other causes (22%), short gestation/low birth weight (14%) and other conditions of the perinatal period (10%).

• In 2018, disparities among races and ethnicities narrowed. Infant mortality rates (per 1,000 live births) were highest among White (3.0) infants, followed by Hispanic (2.8) and Asian (2.1) infants.

1 MacDorman, M F, Mathew, MS, 2013. 2 State of California, Center for Health Statistics, Vital Statistics Query System. 3 Centers for Disease Control, CDC Wonder, 2017. 4 Maternal Causes includes causes such as hypertension, premature rupture of membranes, malpresentation, placenta previa, alcohol/drug abuse, or other complications of labor and delivery.
**GOOD HEALTH**

**Infant Mortality Rate per 1,000 Live Births, Orange County and California, 2009 to 2018**

- Orange County
- California

*Source: Orange County Health Care Agency*

**Infant Mortality Rate per 1,000 Live Births, by Race and Ethnicity**

- Hispanic
- White
- Asian

*Note: Rates based on less than five deaths are unstable, and therefore should be interpreted with caution. Black infant mortality rates are not included because the relatively low numbers of Black infant births and deaths in Orange County yield unreliable statistics for annual comparison.*

*Source: Orange County Health Care Agency*

**Percent of Infant Deaths, by Cause, 2018**

- Maternal Causes*
- Congenital Anomalies (Birth Defects)
- All Other Causes
- Short Gestation/Low Birth Weight
- Other Conditions of Perinatal Period
- Sudden, Unexpected Infant Death (SUID)**
- Pneumonia and Influenza
- Respiratory Distress Syndrome (RDS)
- Accidents and Adverse Effects

*Maternal Causes includes causes such as hypertension, premature rupture of membranes, malpresentation, placenta previa, alcohol/drug abuse, or other complications of labor and delivery.

**Beginning 2017, SIDS cases will be categorized within SUID.

*Note: Due to rounding percentages may not add up to 100.*

*Source: Orange County Health Care Agency, Orange County Coroner Division*
LOW BIRTH WEIGHT

LOW BIRTH WEIGHT REMAINS STEADY AT 6.3% OF ALL BIRTHS.

DESCRIPTION OF INDICATOR

This indicator reports the total number of low birth weight infants and very low birth weight infants as a proportion of the total number of births. Low birth weight is defined as infants born weighing less than 2,500 grams (5 pounds, 8 ounces). Very low birth weight infants are defined as a subset of low birth weight infants born weighing less than 1,500 grams (3 pounds, 5 ounces).

Why is this indicator important?

Low birth weight infants have an increased risk of experiencing developmental problems and delays. In addition, these infants are at higher risk for serious illness, disability, lifelong health difficulties and are more likely to die before their first birthday. Among very low birth weight infants, the risks are higher and the negative outcomes more severe, especially the risk of death in the first year – 22% compared to 1% for low birth weight infants. The primary causes of low birth weight are premature birth and fetal growth restriction. Risk factors for low birth weight include maternal smoking, alcohol/drug use during pregnancy, multiple births, poor nutrition, maternal age, socioeconomic factors, domestic violence and maternal or fetal infections.

Findings

- In 2018, there were 35,578 births to residents in Orange County, of which 6.3% (2,227) were low birth weight infants, a 6.0% decrease from the 10-year high of 6.7% in 2011. However, the percent of low birth weight infants increased by 8.6% from the previous year (5.8% in 2017).
- Overall, the Orange County rate is lower than the 2018 rates for California (6.8%) and the United States (8.3%).
- Very low birth weight infants comprised less than 1.0% (312) of the total births.
- When assessed by race/ethnicity, the percent of low birth weight infants within each group were: Black (9.7%), Hispanic (6.6%), Asian (6.4%) and White (5.5%) infants. Percent of low birth weight infants increased across all race/ethnicity groups between 2017 and 2018.
Percent of Infants with Low Birth Weight, by Community of Residence, 2018

- LA HABRA 7.0%
- LA PALMA 13.8%
- LADERA RANCH 5.4%
- LAGUNA BEACH 5.7%
- LAGUNA HILLS 3.5%
- LAGUNA NICUEL 6.1%
- LAGUNA WOODS 0.0%
- LAKE FOREST 6.4%
- LAS FLORES N/A
- LOS ALAMITOS 8.0%
- MIDWAY CITY 8.4%
- MISSION VIEJO 6.4%
- NEWPORT BEACH 7.2%
- NORTH TUSTIN N/A
- ORANGE 7.0%
- PLACENTIA 5.9%
- RANCHO SANTA MARGARITA 4.8%
- ROSSMOOR N/A
- SAN CLEMENTE 4.7%
- SANTA ANA 7.2%
- SEAL BEACH 4.8%
- STANTON 8.8%
- TUSTIN 7.1%
- VILLA PARK 7.7%
- WESTMINSTER 5.3%
- YORBA LINDA 6.2%

*Notes:*
- N/A is no data available.
- Rates based on less than five low birthweight births (less than 2,500 grams) are unstable and therefore should be interpreted with caution.

Source: Orange County Health Care Agency, Family Health Division

Percent of Infants with Low Birth Weight, by Race/Ethnicity, 2009 to 2018

- Black
- Asian
- White
- Hispanic

Note: Due to relatively low numbers of Black infants, statistics for this group are unreliable. Source: Orange County Health Care Agency, Family Health Division

Percent of Infants with Low Birth Weight, by Community of Residence, 2018

<table>
<thead>
<tr>
<th>Community</th>
<th>% Low Birth Weight</th>
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</thead>
<tbody>
<tr>
<td>ALISO VIEJO</td>
<td>5.2%</td>
</tr>
<tr>
<td>ANAHEIM</td>
<td>7.7%</td>
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<tr>
<td>BREA</td>
<td>5.5%</td>
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<td>BUENA PARK</td>
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</tbody>
</table>

Note: N/A is no data available. *Rates based on less than five low birthweight births (less than 2,500 grams) are unstable and therefore should be interpreted with caution.

Source: Orange County Health Care Agency, Family Health Division
PRETERM BIRTHS

10-YEAR DECREASE IN PRETERM BIRTHS FOR ALL RACES AND ETHNICITIES.

DESCRIPTION OF INDICATOR

This indicator reports the percentage of total annual births which are preterm. Preterm birth is defined as the delivery of an infant at less than 37 weeks of gestation, the period of time between conception and birth. Late preterm births (occurring between 34 to 36 weeks of gestation), moderate preterm births (occurring between 32 to 33 weeks of gestation) and very preterm births (occurring less than 32 weeks of gestation) are subsets of preterm births.¹

Why is this indicator important?

Preterm birth is an important public health issue requiring sustained focus on its causes, consequences and prevention strategies.² Several factors – economic, personal, medical and behavioral – may increase the likelihood that a woman has preterm labor and delivers early.³ Compared to infants born at term, preterm infants are more likely to suffer lifelong neurologic, cognitive and behavioral problems.⁴,⁵ Preterm births and low birth weight are often, but not always, associated. The United States preterm birth rate in 2018 remained the same as the previous year at 9.9%, as did the rate of low birthweight (8.3% in 2018).⁶ Preterm births cost the United States’ health care system more than $25.2 billion each year.⁷

Findings

• Preterm births accounted for 7.6% of the 35,578 births to Orange County residents in 2018. This percentage represents a 19.0% decrease from 2009 (9.4%). By comparison, the rate for the United States was higher at 9.9% as was the rate for California [8.8%].⁸

• Disparities persist with preterm births among Black infants at 9.4%, followed by Hispanic (8.7%), White (7.3%) and Asian (6.4%) infants. The percentages decreased for all races and ethnicities, compared to 2009.

• Mothers under the age of 15 and over the age of 40 had the highest rate of preterm births at 12.5% and 11.4%, respectively. Mothers ages 25 - 29 had the lowest rate at 6.6%.

Percent of Preterm Births, Orange County, California and United States, 2009 to 2018

- United States
- California
- Orange County

Note: Percent calculated from number of births with known obstetric estimate gestational age less than 37 weeks for 2014. Rates prior to 2014 were calculated from last menstrual cycle dates.

Source: Orange County Health Care Agency; March of Dimes Report Card

Percent of Preterm Births, by Race/Ethnicity 2009 to 2018

- Black
- White
- Hispanic
- Asian

Source: Orange County Health Care Agency

Percent of Preterm Births by Mother’s Age, Orange County, 2009 to 2018

- <15 Years
- 15-19 years
- 20-24 years
- 25-29 years
- 30-34 Years
- 35-39 Years
- 40+ Years

Source: Orange County Health Care Agency

Percent of Preterm Births, by Community of Residence, 2018

- ALISO VIEJO 8.2%
- ANAHEIM 8.8%
- BREA 5.1%
- BUENA PARK 7.6%
- COSTA MESA 6.2%
- COTO DE CAZA* 8.1%
- CYPRESS 9.2%
- DANA POINT 6.3%
- Foothill Ranch 5.3%
- FOUNTAIN VALLEY 8.5%
- FULLERTON 7.0%
- GARDEN GROVE 8.0%
- HUNTINGTON BEACH 7.5%
- IRVINE 5.6%
- LA HABRA 10.0%
- LA PALMA 6.9%
- LADERA RANCH 6.0%
- LAGUNA BEACH 9.5%
- LAGUNA HILLS 6.6%
- LAGUNA NIGUEL 8.4%
- LAGUNA WOODS* 0.0%
- LAKE FOREST 7.1%
- LOS ALAMITOS 7.4%
- MIDWAY CITY 6.6%
- MISSION Viejo 7.4%
- NEWPORT BEACH 7.6%
- ORANGE 9.3%
- PLACENTIA 7.3%
- RANCHO SANTA MARGARITA 7.6%
- ROSSMoor N/A
- SAN CLEMENTE 6.0%
- SAN JUAN CAPISTRANO 5.4%
- SANTA ANA 9.2%
- SEAL BEACH 5.4%
- STANTON 9.4%
- TRABUCO CANYON 4.7%
- TUSTIN 8.2%
- VILLA PARK* 3.8%
- WESTMINSTER 7.5%
- YORBA LINDA 8.8%

Source: Orange County Health Care Agency, Family Health Division

Note: Percentages based on less than five preterm births (17-36 weeks) are unstable and therefore should be interpreted with caution.

Source: Orange County Health Care Agency, March of Dimes Report Card
TEEN BIRTHS

TEEN BIRTH RATE CONTINUES TO DECLINE WHILE RACIAL AND ETHNIC DISPARITIES PERSIST.

DESCRIPTION OF INDICATOR

This indicator reports the percent of total annual births occurring among female residents ages 19 years and under and the teen birth rate, which is a calculation of annual teen births per 1,000 females ages 15 to 19 years per year.

Why is this indicator important?

Giving birth as a teen can have profoundly negative consequences for both the teen parents and the infant. Teen births also have negative consequences for society. Teen mothers are less likely to complete high school or college. They are more likely to require public assistance and live in poverty than their peers who are not mothers. Infants born to teen mothers are at greater risk for low birth weight, preterm birth and death in infancy. These infants have a lower probability of obtaining the emotional and financial resources they need throughout childhood to develop into independent, productive, well-adjusted adults. Teen birth rates have declined significantly since 1991, representing an estimated annual U.S. taxpayer savings of $4.4 billion in 2015 alone. However, teen births still cost taxpayers an estimated $1.9 billion in 2015. For California, the estimated taxpayer costs were $159 million in 2015 and for Orange County, $8.96 million in 2015 (societal costs are estimated to be even higher).

Findings

- In 2018, 2.6% (935) of all Orange County births were to teen females ages 19 years and under, a 61.8% decrease from 6.8% (2,764) in 2009. Overall, total births decreased 12.0% from 40,431 in 2009 to 35,578 births in 2018.
- The teen birth rate in Orange County in 2018 was 8.3 births per 1,000 females ages 15 to 19, a decrease of 67.2% from 25.3 births per 1,000 in 2009.
- At 8.3 births per 1,000 teen females, Orange County has a lower teen birth rate than California (13.6) and the United States (17.4).
- When assessed by race/ethnicity, Hispanic teens had the highest birth rate (15.9 births per 1,000 Hispanic teen females), followed by Black (8.2), White (2.1) and Asian (0.8) teens in Orange County.
- Teen birth rates in Orange County have declined for all races and ethnicities, with Hispanic teens experiencing the most dramatic drop (69.5% in 10 years).

Birth Rate per 1,000 Females 15 to 19 Years of Age, Orange County, California and United States, 2009 to 2018

- United States
- California
- Orange County

Note: Rates calculated using data from State of California, Department of Finance
Source Orange County: Orange County Health Care Agency
Source California: State of California, Health Information and Research Section
Source United States: National vital statistics reports: National Center for Health Statistics

Birth Rate per 1,000 Females 15 to 19 Years of Age, by Race/Ethnicity, 2009 to 2018

- Hispanic
- Black
- White
- Asian

Source: Orange County Health Care Agency

Birth Rates per 1,000 Females 15 to 19 Years of Age, by Community of Residence, 2014 to 2018, 5 year Average

- ALISO VIEJO 1.2
- ANAHEIM 15.4
- BREA 4.2
- BUENA PARK 13.0
- COSTA MESA 11.8
- COTO DE CAZA 0.0
- CYPRESS 3.3
- DANAPoint 1.4
- FOOTHILL RANCH N/A
- FOUNTAIN VALLEY 2.9
- FULLERTON 8.8
- GARDEN GROVE 9.6
- HUNTINGTON BEACH 5.2
- IRVINE 0.6
- LA HABRA 13.2
- LA PALMA 4.4
- LADERA RANCH 1.2
- LAGUNA BEACH 1.5
- LAGUNA HILLS 13.9
- LAGUNA NIGUEL 3.3
- LAKE FOREST 4.7
- LOS ALAMITOS 5.6
- MIDWAY CITY 17.9
- MISSION VIEJO 5.7
- NEWPORT BEACH 0.5
- ORANGE 14.3
- PLACENTIA 11.4
- RANCHO SANTA MARGARITA 0.6
- SAN CLEMENTE 11.9
- SAN JUAN CAPISTRANO 8.7
- SANTA ANA 25.2
- SEAL BEACH 2.9
- STANTON 9.3
- TRABUCO CANYON N/A
- TUSTIN 12.8
- VILLA PARK CITY 0.0
- WESTMINSTER 9.3
- YORBA LINDA 1.9

ORANGE COUNTY: 8.3
CALIFORNIA: 13.6

Teen Birth Rate per 1,000 Females
- 11.5 - 25.2
- 5.6 - 11.4
- 1.6 - 5.5
- 0 - 1.5
- Unincorporated
- No data available

Note: N/A indicates no data are available. Source: Orange County Health Care Agency, Family Health Division
Population source: U.S. Census Bureau, American Community Survey, 5-Year Estimates
Why is this indicator important?

Human milk is the optimal source of nutrition and provides many benefits for healthy infant growth and development. Breastfeeding significantly reduces infant risks for infections, asthma or allergies compared to infants who are formula fed, resulting in fewer hospitalizations and trips to the doctor.¹ Evidence also demonstrates that breastfeeding reduces the risk for cardiovascular disease, asthma and diabetes later in life and can reduce the risk of childhood obesity.² These benefits increase greatly when a mother exclusively breastfeeds for the first six months of life.

Breastfeeding can provide protective health benefits for the mother who breastfeeds frequently enough for a sufficient duration. The breastfeeding mother may experience less postpartum bleeding (which conserves iron in the body), less risk for post-menopausal osteoporosis and hip fracture, an earlier return to pre-pregnancy weight and decreased risks of breast and ovarian cancers.

Breastfeeding also benefits the entire family and community. It improves household food security because families need not use income to buy formula, food and bottles. Health care related expenses decrease because breastfeeding protects the infant and mother.

Findings

- In 2018, 67.0% of Orange County women were exclusively breastfeeding at time of hospital discharge, lower than California at 70.4% of women.³

- Exclusive breastfeeding at time of discharge was highest among White women at 83.0%, followed by Multiracial (79.8%), Pacific Islander (78.4%), Black (70.7%), Hispanic (64.0%) and Asian (52.8%) women.³

- In 2017/18, 58.7% of Orange County women surveyed by MIHA were exclusively breastfeeding one week after delivery, a 15.1% increase since 2013/14, but lower than women in California at 59.1%.

- One month after delivery, 48.8% of Orange County women surveyed by MIHA in 2017/18 were exclusively breastfeeding, a 24.2% increase since 2013/14, and higher than women in California at 47.5%.

- Three months after delivery, 32.4% of Orange County women surveyed by MIHA in 2017/18 were exclusively breastfeeding, a 24.1% increase since 2013/14, but lower than women in California at 33.9%.

Hospital Discharge Breastfeeding Percentage, Orange County and California, 2012 to 2018

- Orange County Any Breastfeeding
- California Any Breastfeeding
- California Exclusive Breastfeeding
- Orange County Exclusive Breastfeeding


Hospital Discharge Breastfeeding Percentage, by Race/Ethnicity, 2018

- Any Breastfeeding
- Exclusive Breastfeeding
- Orange County Any Breastfeeding
- Orange County Exclusive Breastfeeding


Breastfeeding Percentages at One Week, One Month and Three Months After Delivery, Orange County, 2013/14 to 2017/18

- Any breastfeeding 1 week postpartum
- Any breastfeeding 1 month postpartum
- Any breastfeeding 3 months postpartum
- Exclusive breastfeeding 1 week postpartum
- Exclusive breastfeeding 1 month postpartum
- Exclusive breastfeeding 3 months postpartum

Note: Indicators for breastfeeding at three months postpartum are limited to women whose infant was at least three months old at the time of survey completion.

Note: MIHA is an annual population-based survey of California resident women with a live birth. Data from MIHA 2017-2018 were combined, resulting in a statewide sample size of 12,961. The sample size of Orange County was 510. MIHA participants were sampled from the California Automated Vital Statistics System. Prevalence (%), 95% confidence interval (95% CI), and population estimates (rounded to the nearest hundred) are weighted to represent all women with a live birth. Population estimate (N) is a two-year average. Indicators for breastfeeding at 3 months postpartum are limited to women whose infant was at least 3 months old at the time of survey completion. See the Technical Notes for information on weighting, comparability to prior years and technical definitions. Visit the MIHA website at www.cdph.ca.gov/MIHA

Prepared by: California Department of Public Health; Center for Family Health; Maternal, Child and Adolescent Health Program; Epidemiology, Surveillance and Federal Reporting Branch
IMMUNIZATIONS

IMMUNIZATIONS FOR CHILDREN ENTERING KINDERGARTEN REMAIN STEADY AROUND 95%.

DESCRIPTION OF INDICATOR
This indicator reports the percent of children who received all of the doses of specific vaccines recommended for attending child care facilities and required at kindergarten entry. Child care facilities include any private or public child care center, day nursery, nursery school, family day care home or development center.1

Why is this indicator important?
The widespread use of safe, effective childhood vaccinations has been one of the most successful and cost-effective public health interventions in the U.S. and globally. Many serious and once-common childhood infections have been dramatically reduced through routine immunizations. The success of immunization programs depends upon appropriate timing and on a high rate of vaccine acceptance, particularly among parents of young children.

Over the past decade, increasing numbers of children with delayed or refused vaccinations have led to reduced levels of vaccine coverage. Studies have found that children whose parents delay or refuse vaccines are more likely to be White and reside in well-educated, higher income areas.2 On the population level, success depends on a community achieving a threshold level of immunity, and many communities are below the protective level needed to prevent the spread of disease.3

Findings
• In 2018, 95.9% of Orange County children in child care centers had been adequately immunized (4:3:1 schedule) at their time of enrollment, higher than the low of 87.6% in 2013, and the same as California.4
• In 2019, 95.5% of Orange County kindergartners had up-to-date immunizations, a 7.7% increase from the 10-year low at 88.7% in 2013, and lower than 2018 at 95.7%.
• These percentages and trends are similar to those among kindergartners throughout California, who were immunized at a rate of 94.8% in 2018.5
• Laguna Beach Unified had the lowest percentage of kindergartners with up-to-date immunization levels at 90.4% in 2019. This correlates with higher percentages of permanent medical exemptions and conditional enrollments in this district.6

Effective July 1, 2016, California law now removes the personal belief exemption from statute and requires almost all schoolchildren to be fully vaccinated in order to attend public or private elementary, middle and high schools. For kindergarten entrance, children must be immunized against 10 diseases: Diphtheria, Haemophilus Influenza Type B (Bacterial meningitis), Measles, Mumps, Pertussis (whooping cough), Polio, Rubella, Tetanus, Hepatitis B and Varicella (chicken pox). Home school students or students who do not receive classroom-based instruction are not required to be vaccinated. Students who qualify for an Individualized Educational Program cannot be prevented from accessing any special education and related services required by their IEP. The medical exemption will remain in statute.

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3 Hussain, H. et al., 2011.
4 Adequately Immunized-4:3:1 or Better: In order to be considered adequately immunized by age two, children need to have at least the 4:3:1 immunization series, which includes: four or more doses of diphtheria/tetanus/pertussis (DTaP) vaccine, three or more doses of poliovirus vaccine, and one or more doses of measles/mumps/rubella (MMR) vaccine.5 California Department of Public Health, Immunization Branch. *A permanent medical exemption (PME) shall be granted upon the filing with the governing authority of a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated.
GOOD HEALTH

Percent of Adequately Immunized Children Enrolling in School, Orange County and California, 2010 to 2019

- Up-To-Date at Child Care Enrollment, Orange County
- Up-To-Date at Kindergarten Entry, California
- Up-To-Date at Kindergarten Entry, Orange County

Note: After 2010, California data is no longer being collected for percent of up-to-date immunized children after their 2nd birthday.

Note: 2010 Orange County data includes other Southern California counties (Imperial, Orange, Riverside, San Bernardino, and San Diego). 2011–2014 data include a small, random sample of schools only for Orange County. As of 2015, Orange County data is collected and tracked separately.

Sources: *Kindergarten Assessment Results, California Department of Health Services, Immunization Branch. ** Child Care Immunization Assessment Results, California Department of Health Services, Immunization Branch.

Percent of Adequately Immunized Children Enrolling in Child Care Centers by Vaccine Type, 2010 to 2018

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Children</th>
<th>DTaP (4+)</th>
<th>Polio (3+)</th>
<th>MMR (1+)</th>
<th>Hepatitis B (3+)</th>
<th>Varicella (1+)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>44,910</td>
<td>94.4%</td>
<td>95.8%</td>
<td>95.9%</td>
<td>94.8%</td>
<td>95.7%</td>
</tr>
<tr>
<td>2011</td>
<td>42,098</td>
<td>91.9%</td>
<td>92.0%</td>
<td>96.1%</td>
<td>95.4%</td>
<td>95.8%</td>
</tr>
<tr>
<td>2012</td>
<td>42,805</td>
<td>94.1%</td>
<td>95.4%</td>
<td>95.3%</td>
<td>93.3%</td>
<td>95.0%</td>
</tr>
<tr>
<td>2013</td>
<td>44,070</td>
<td>93.4%</td>
<td>95.1%</td>
<td>94.8%</td>
<td>92.4%</td>
<td>94.4%</td>
</tr>
<tr>
<td>2014</td>
<td>45,161</td>
<td>93.8%</td>
<td>95.4%</td>
<td>95.6%</td>
<td>93.4%</td>
<td>95.3%</td>
</tr>
<tr>
<td>2015</td>
<td>44,645</td>
<td>94.2%</td>
<td>95.7%</td>
<td>96.6%</td>
<td>94.0%</td>
<td>95.6%</td>
</tr>
<tr>
<td>2016</td>
<td>48,127</td>
<td>97.2%</td>
<td>97.5%</td>
<td>97.8%</td>
<td>96.7%</td>
<td>97.5%</td>
</tr>
<tr>
<td>2017</td>
<td>48,017</td>
<td>97.5%</td>
<td>97.9%</td>
<td>98.2%</td>
<td>97.3%</td>
<td>98.0%</td>
</tr>
<tr>
<td>2018</td>
<td>49,071</td>
<td>97.7%</td>
<td>98.0%</td>
<td>98.0%</td>
<td>97.5%</td>
<td>98.0%</td>
</tr>
</tbody>
</table>

Source: Child Care Immunization Assessment Results, California Department of Health Services, Immunization Branch.

Percent of Up-To-Date Immunizations at Kindergarten Enrollment, Public Schools within Each School District, 2019

<table>
<thead>
<tr>
<th>School District</th>
<th>Immunization Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANAHEIM</td>
<td>98.1%</td>
</tr>
<tr>
<td>BREA-OLINDA</td>
<td>97.0%</td>
</tr>
<tr>
<td>BUENA PARK</td>
<td>98.1%</td>
</tr>
<tr>
<td>CAPISTRANO</td>
<td>91.2%</td>
</tr>
<tr>
<td>CENTRALIA</td>
<td>97.2%</td>
</tr>
<tr>
<td>CYPRESS</td>
<td>97.0%</td>
</tr>
<tr>
<td>FOUNTAIN VALLEY</td>
<td>97.5%</td>
</tr>
<tr>
<td>FULLERTON</td>
<td>97.4%</td>
</tr>
<tr>
<td>GARDEN GROVE</td>
<td>97.6%</td>
</tr>
<tr>
<td>HUNTINGTON BEACH</td>
<td>94.1%</td>
</tr>
</tbody>
</table>

Notes: *Up-to-date immunizations for 2018 Kindergarten enrollment.
Sources: Kindergarten Assessment Results, California Department of Health Services, Immunization Branch.

% of Immunizations
- 97.6% - 99.2%
- 97.1% - 97.5%
- 96.3% - 97.0%
- 90.4% - 96.2%
OBESITY

ONE IN FOUR ECONOMICALLY DISADVANTAGED STUDENTS EXPERIENCE RISK OF OBESITY COMPARED TO ONE IN 10 ECONOMICALLY ADVANTAGED STUDENTS.

DESCRIPTION OF INDICATOR
This indicator reports data from the California Physical Fitness Test on the percent of 5th grade students who are classified as having health risk due to their body composition. Details about this indicator are provided in the box below.

Why is this indicator important?
Excess weight acquired during childhood and adolescence may persist into adulthood and increase the risk for chronic diseases, such as sleep apnea, diabetes, cardiovascular disease and hypertension. Obese adolescents have a 70% chance of becoming obese adults.1 Excess weight can be prevented and treated through proper nutrition and physical activity (reported on page 32-33 of this report), especially during the critical periods of infancy, two to four years of age and adolescence.

Findings
• During the 2018/19 school year, 18.3% (6,444) of Orange County 5th graders tested were classified as obese. This rate has remained steady since 2013/14 at approximately 18% and is lower than California at 21.9% of 5th graders.
• Among race and ethnic groups, Hispanic or Latino (27.2%) and Native Hawaiian or Pacific Islander (27.0%) 5th graders had the highest percentages of students classified at health risk due to their body composition, followed by Black or African American (16.6%), American Indian or Alaska Native (13.4%), Filipino (12.8%), Multiracial (11.4%), White (8.5%) and Asian (7.9%).
• Among 5th grade students who are not economically disadvantaged, one in 10 (10.2%) were classified at health risk due to their body composition, compared with one in four (25.7%) students who are economically disadvantaged.2
• As of 2013/14, “at health risk due to body composition” is equivalent to or greater than the 95th percentile of BMI, which is obesity.

California Physical Fitness Test uses the Cooper Institute’s FITNESSGRAM approach, which classifies 5th grade students at “Health Risk” due to body composition when they had a body fat percentage or a body mass index (BMI) that could result in health issues. “Health Risk” classifications for body composition are defined using criterion-referenced, age-specific standards. The definitions of FITNESSGRAM categories were recently modified to more closely approximate widely accepted CDC-defined BMI weight classification schemes and improve classification agreement between body fat and BMI based approaches. Because of these adjustments, California Physical Fitness Test data collected prior to the 2013/14 school year are not comparable to those collected under the current standards.

1 The Surgeon General, 2000. 2 CDE defines Socioeconomically Disadvantaged (SED) students as defined as students: (1) who are eligible for the free or reduced-price meal (FRPM) program (also known as the National School Lunch Program, or NSLP), or have a direct certification for FRPMs, or (2) who are migrant, homeless, or foster youth, or (3) where neither of the parents were a high school graduate.
Percent of 5th Grade Students Classified at Health Risk Due to Body Composition, by Race/Ethnicity, 2013/14 to 2018/19

- Native Hawaiian/Pacific Islander
- Filipino
- Multiracial
- Black/African American
- American Indian/Alaska Native
- Hispanic/Latino
- White
- Asian

Source: California Department of Education, DataQuest, 2018/19
Notes: Black/African American, Filipino, American Indian/Alaska Native and Native Hawaiian/Pacific Islander 5th grade student enrollment is less than 4.5% of all 5th grade student enrollment. Percent at risk for these groups may be unstable and should be interpreted with caution.

Percent of 5th Grade Students who are Obese, by Socioeconomic Status, 2013/14 to 2018/19
- Economically Disadvantaged
- Not Economically Disadvantaged

Source: California Department of Education, DataQuest, 2018/19

Percent of 5th Grade Students who are Obese, by School District, 2018/19

Source: California Department of Education, DataQuest, 2018/19
PHYSICAL FITNESS AND NUTRITION

ONE IN FOURTEEN 5TH GRADERS ARE AT HEALTH RISK DUE TO POOR PHYSICAL FITNESS.

DESCRIPTION OF INDICATOR

To assess physical fitness, this indicator reports data from the California Physical Fitness Test on the percent of 5th grade students who are classified as having health risk due to their aerobic capacity. For nutrition, this indicator reports the proportion of youth (ages two to 17) who consumed one soda the previous day and ate more than five servings of fruits/vegetables daily.

Why is this indicator important?

Both physical fitness and nutrition are essential to achieving and keeping a healthy weight.1 The habitual intake of too many calories, including the consumption of sugary beverages, without enough physical fitness, can result in obesity. Those who eat a nutritious diet rich in fruits and vegetables and/or incorporate aerobic physical activity and cardiorespiratory fitness into a daily routine are less likely to develop many types of disease, including heart disease, high blood pressure, Type 2 diabetes and oral disease.2,3 Additionally, these behaviors, when developed at a younger age, are associated with similar behaviors in adulthood.4

Findings

• During the 2018/19 school year, 6.4% (2,254) of 5th graders tested were classified “at health risk due to aerobic capacity,” up 10.3% since 2013/2014 (5.8% or 2,113), but lower than California at 7.2% of 5th graders.

• The percentage of 5th graders at health risk due to aerobic capacity was highest among Native Hawaiian or Pacific Islander 5th graders (10.3%), followed by Hispanic or Latino (9.7%), Black or African American (7.6%), Multiracial (6.0%), American Indian or Alaska Native (4.2%), Filipino (3.0%), White (2.9%) and Asian (1.8%).

• According to the 2017 California Health Interview Survey:
  – 14.0% of children (two to 17 years old) reported drinking one glass of soda during the previous day, a decrease of 50.0% from 28.0% in 2013.
  – 30.1% of teenagers (12 to 17 years old) reported eating five or more servings of fruits and vegetables daily, an increase of 52.0% from 19.8% in 2011.5

Note: California Physical Fitness Test uses the Cooper Institute’s FITNESSGRAM approach to classify 5th graders aerobic capacity at health risk when their VO2 max, a measure of maximum oxygen consumption, fell within certain limits after participation in structured aerobic exercises, such as the Progressive Aerobic Cardiovascular Endurance Run (PACER), one-mile run, or walk test, which deemed them at likely risk for future health problems. The definition of aerobic capacity categories was recently modified to improve classification agreement between the PACER and one-mile run approaches. Because of these adjustments, California Physical Fitness Test data collected prior to the 2013/14 school year are not comparable to those collected under the current standards.

GOOD HEALTH

Percent of 5th Grade Students Classified at Health Risk Due to Aerobic Capacity, by Race/Ethnicity, Orange County, 2013/14 to 2018/19

- Hispanic/Latino
- Native Hawaiian/Pacific Islander
- Black/African American
- American Indian/Alaska Native
- Filipino
- White
- Multiracial
- Asian

Source: California Department of Education, DataQuest, 2018/19
Note: Black, Filipino, American Indian and Pacific Islander 5th grade student enrollment is less than 4.5% of all 5th grade student enrollment. Percent at risk for these groups may be unstable and should be interpreted with caution.

Percent of Children who Consumed One Soda the Previous Day, by Age, 2013 to 2017

2-11 Years | 12-17 Years
---|---
2013 | 28.8 | 27.5
2014 | 23.9 | 11.5
2015 | 26.6 | 7.7
2016 | 31.1 | 8.1
2017 | 22.1 | 7.5

* Statistically unstable. Note: Previous reports presented children consumption of two or more sodas in the previous day. 2017 CHIS suppressed the results for 2 or more glasses a day of soda in the last CHIS due to small sample size.
Source: California Health Interview Survey, 2017

Percent of Children Ages 12 to 17 Years Old who Eat 5+ Servings of Fruits/Vegetables Daily, 2011 to 2017

---|---|---|---|---|---|---
19.8 | 22.2 | 21.5* | 16.8* | 25.1* | 24.8* | 30.1*

* Statistically unstable. Source: California Health Interview Survey, 2017

Percent of 5th Grade Students at Health Risk Due to Aerobic Capacity, by School District, 2018/19

<table>
<thead>
<tr>
<th>District</th>
<th>% of Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANAHEIM</td>
<td>2.6</td>
</tr>
<tr>
<td>BREA-OLINDA UNIFIED</td>
<td>8.3</td>
</tr>
<tr>
<td>BUENA PARK</td>
<td>3.2</td>
</tr>
<tr>
<td>CAPITANITO RANCH UNIFIED</td>
<td>9.5</td>
</tr>
<tr>
<td>CENTRALIA</td>
<td>2.6</td>
</tr>
<tr>
<td>CYPRESS</td>
<td>2.4</td>
</tr>
<tr>
<td>FOUNTAIN VALLEY</td>
<td>4.5</td>
</tr>
<tr>
<td>FULLERTON</td>
<td>5.8</td>
</tr>
<tr>
<td>GARDEN GROVE UNIFIED</td>
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<tr>
<td>HUNTINGTON BEACH</td>
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</tr>
<tr>
<td>IRVINE UNIFIED</td>
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<td>LA HABRA CITY</td>
<td>1.8</td>
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<td>LAGUNA BEACH UNIFIED</td>
<td>3.0</td>
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<tr>
<td>LOS ALAMITOS UNIFIED</td>
<td>9.8</td>
</tr>
<tr>
<td>MAGNOLIA</td>
<td>5.8</td>
</tr>
<tr>
<td>NEWPORT-MESA UNIFIED</td>
<td>3.4</td>
</tr>
<tr>
<td>OCEAN VIEW</td>
<td>6.7</td>
</tr>
<tr>
<td>ORANGE UNIFIED</td>
<td>5.8</td>
</tr>
</tbody>
</table>

Source: California Department of Education, DataQuest, 2018/19
BEHAVIORAL HEALTH

HOSPITALIZATION RATES DUE TO SERIOUS MENTAL ILLNESS AMONG YOUTH INCREASED BY 76% SINCE 2009.

DESCRIPTION OF INDICATOR
This indicator reports the number of inpatient hospitalizations in Orange County among children under age 18 related to serious mental health and substance use conditions. The data include rates of inpatient hospitalization for broad behavioral health conditions and rates of inpatient hospitalization per 10,000 children broken down by behavioral health diagnosis, race/ethnicity and city of residence.

Why is this indicator important?
The presence of behavioral health disorders can have a profound impact on individuals and families, as well as systems within the community, such as schools or the juvenile justice system. By tracking hospitalization rates related to behavioral health disorders, health officials can more readily identify trends and monitor the needs of the community while directing needed resources (e.g., training, education, counseling, outreach, substance abuse treatment) to areas in need. For example, increased hospitalization rates due to depression may signal a serious trend in a community and may inform resource allocation to counteract increased mood disorders and potential substance use.

Findings
• The combined hospitalization rate for serious mental illness and substance abuse conditions for children increased by 51%, from a low of 19.2 in 2009 to 29.0 per 10,000 children in 2018.
• The hospitalization rate for serious mental illness increased 76%, from a low of 14 in 2009 to 24.6 per 10,000 children in 2018.
• Major Depression and Mood Disorders accounted for 70% of all such hospitalizations, followed by Bipolar (10%), Schizophrenia/Psychoses (4%) and Schizoaffective Disorders (2%).
• Hospitalizations for substance-related diagnoses accounted for 2% of all such admissions for children in 2018. This proportion is a decrease of 56% over the past decade to 0.6 hospitalizations per 10,000 population.
• White children accounted for 41% of all mental illness and substance abuse-related hospitalizations, followed by Hispanic (37%), Asian/Pacific Islander (9%) and Black (4%) children.
• Females accounted for the majority (65%) of mental illness hospitalizations, a third (33.3%) of substance-related hospitalizations and 63% of all admissions.
• The majority (64%) of the 2,098 hospitalizations among Orange County children occurred at hospitals located in Orange County, while the rest were in Los Angeles (27%), San Bernardino (9%), San Diego (11%) and Alameda (0.1%) counties. Less than 1% of hospitalizations were not covered under either private insurance (46%) or Medi-Cal (53%).
• In 2018, 13.7% of adolescents aged 12 to 17 years had at least one major depressive episode in the past year in California and 14.4% in the U.S. Overall, both proportions were higher than previous years between 2009 to 2018 (ranging from 8.0 to 14.4%).

1 Substance Abuse and Mental Health Services Administration. 2017-2018 National Survey on Drug Use and Health: Model-Based Prevalence Estimates, Table 31. 2 Substance Abuse and Mental Health Services Administration. Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health: Figure 45.
Mental Health and Substance Abuse-Related Hospitalizations, Rate per 10,000 Children, 2009 to 2018

- **Total**
  - Mental Illness
  - Other
  - Substance Abuse

**Source:** Orange County Health Care Agency, Health Policy - Research

**Note:** Rates for Black children are not included due to unstable and unreliable estimates for small case numbers and populations. ‘Other’ includes disorders such as other unspecified mood disorders, conduct disorders and disorders related to sleep, eating, elimination and pain.

Mental Health Hospitalization Rates per 10,000 Children, by Race/Ethnicity, 2018

- White
- Hispanic

**Source:** Orange County Health Care Agency, Health Policy - Research

**Note:** Rates for Black children are not included due to unstable and unreliable estimates for small case numbers and populations. ‘Other’ includes disorders such as other unspecified mood disorders, conduct disorders and disorders related to sleep, eating, elimination and pain.

Rate of Orange County Hospitalizations for Mental Health and Substance Abuse per 10,000 Children, by City of Residence, 2018

**Sources:** OSHPD Patient Discharge Data (2018) Prepared by HCA Health Policy - Research

**Notes:**
- Rates for Black children are not included due to unstable and unreliable estimates for small case numbers and populations.
- ‘Other’ includes disorders such as other unspecified mood disorders, conduct disorders and disorders related to sleep, eating, elimination and pain.
# Economic Well-being Indicators

## Child Poverty

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2010/11</th>
<th>2019/20</th>
</tr>
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<tbody>
<tr>
<td>Percent of Students Eligible for Free and Reduced Price Lunch</td>
<td>45.6%</td>
<td>48.8%</td>
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## CalWORKs

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2009/10</th>
<th>2018/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of Children Receiving CalWORKs</td>
<td>5.4%</td>
<td>3.7%</td>
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## Housing

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2009/10</th>
<th>2018/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of Children Insecurely housed</td>
<td>4.4%</td>
<td>6.8%</td>
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## Child Support

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2010/11</th>
<th>2019/20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of Current Support Distributed</td>
<td>59.0%</td>
<td>68.2%</td>
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</table>

## Supplemental Nutrition

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2009/10</th>
<th>2018/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of Children Receiving CalFRESH</td>
<td>12.3%</td>
<td>14.2%</td>
</tr>
</tbody>
</table>

**Note:** Variation in data ranges are due to availability of data and frequency of data collection.
CHILD POVERTY

POVERTY AMONG CHILDREN IN ORANGE COUNTY INCREASED 11.8% SINCE 2010.

DESCRIPTION OF INDICATOR

This indicator reports the number and percent of students eligible for the National School Free and Reduced Price Lunch program, considered to be an indicator of children living in poverty or of working poor families. Eligibility is based on income of the child’s parent(s) or guardian(s), which must be below 185% of the Federal Poverty Level. This indicator also tracks the percent of children living in poverty according to the United States Census Bureau.

Why is this indicator important?

Research has demonstrated that living in poverty has a wide range of negative effects on the physical and mental health and well-being of children. Poverty is linked with negative conditions such as substandard housing, homelessness, inadequate nutrition, food insecurity, inadequate child care, lack of access to health care, unsafe neighborhoods and under-resourced schools. These conditions mean school districts face many challenges serving low-income families, particularly those school districts with more than 75% of students enrolled in the Free and Reduced Price Lunch program. The implications for children living in poverty include greater risk for poor academic achievement, school dropout, abuse and neglect, behavioral and social/emotional problems, physical health problems and developmental delays.

Findings

• In the 2019/20 school year, 48.8% (231,160) of students were eligible for the Free and Reduced Price Lunch program in Orange County, lower than California at 59.3% (3,654,943).

• Between 2011 and 2020, there was an increase (7.0%) among Orange County students eligible for the Free and Reduced Price Lunch program, more so than among students throughout California (4.6%).

• According to the U.S. Census Bureau, 15.2% of Orange County’s children were living in poverty in 2018. This is an 11.8% increase from 2010 (13.6%), while remaining lower than California (19.5%) and the United States (19.5%).

• When cost of living and a range of family needs and resources, including social safety net benefits, are factored in, poverty among Orange County’s children jumps to 24.2%, surpassing California at 19.3%, with a threshold income needed to maintain a basic standard of living for a family of four at $35,434 in 2017.

1 American Psychological Association, 2014. 2 The Institute for Education Sciences define high-poverty schools public schools where more than 75.0% of the students are eligible for the Free and Reduced Price Lunch program. 3 California Poverty by County, 2015-2017, calculated according to the California Poverty Measure (CPM). The California Poverty Measure (CPM) incorporates the changes in costs and standards of living since the official poverty measure was devised in the early 1960s – and accounts for geographic differences in the cost of living across the state. It also factors in tax credits and in-kind assistance that can augment family resources and subtracts medical, commuting and child care expenses. 2011 Census Bureau data is used to estimate the CPM.
ECONOMIC WELL-BEING

Percent of Students Eligible to Receive Free and Reduced Price Lunch, Orange County and California, 2011 to 2020

- Orange County
- California
- United States


Percent of Children Under 18 Years Old, Living in Poverty, Orange County, California and United States, 2010 to 2018

- United States
- California
- Orange County

Source: U.S. Census Bureau, American Community Survey, 5-Year Estimates

Percent of Children Under 18 Years Old Living in Poverty, by City, 2018

- ALISO VIEJO
- ANAHEIM
- BREA
- BUENA PARK
- COSTA MESA
- CYPRESS
- DANA POINT
- FOUNTAIN VALLEY
- FULLERTON
- GARDEN GROVE
- HUNTINGTON BEACH
- IRVINE

Source: U.S. Census Bureau, American Community Survey, 5-Year Estimates, Table S1701
CALWORKS

CHILDREN RECEIVING CALWORKS CONTINUES TO STEADILY DECLINE IN 2018/19, DOWN 14% FROM THE PRIOR YEAR.

DESCRIPTION OF INDICATOR

This indicator reports the average number and percent of children per month under the age of 18 years receiving financial assistance through California Work Opportunity and Responsibility to Kids (CalWORKs). The decline in the percentage of children receiving CalWORKs benefits may suggest decreased poverty or might be attributed in part to improvement in the economy or a decline in the number of children under 18 residing in Orange County.

Why is this indicator important?

The percent of children benefiting from CalWORKs is an indicator of Orange County’s capacity to help families struggling to make ends meet and at the same time, responsibly care for their children. This indicator also reflects a widespread need for financial support among families in need across Orange County as CalWORKs beneficiaries receive financial and employment assistance. The goals of the CalWORKs program include reduced welfare dependency, increased self-sufficiency and improved child well-being by encouraging parental responsibility through school attendance, child immunization requirements and assisting with paternity and child support enforcement activities.

Findings

- In 2018/19, 3.7% (26,545) of Orange County’s children received CalWORKs assistance, a 38.0% decrease from 5.4% (42,793) of children in 2009/10. Overall, Orange County’s rate is lower than California at 10.7% (956,952).

- Since 2011/12, the proportion of children receiving CalWORKs has been steadily declining, mirroring a nationwide trend.

- Young children (birth to five years of age) accounted for 28.6% of the youth population receiving CalWORKs assistance.

- The highest percentages of children receiving CalWORKs live in the cities of Anaheim at 6.7% (5,729), Santa Ana at 6.5% (5,890), Cypress at 5.0% (542), Stanton at 5.0% (494), Westminster at 4.9% (870), Garden Grove at 4.9% (1,840) and Buena Park at 4.5% (858).

- Cities with the lowest percentage of children receiving CalWORKs include Laguna Beach at 0.4% (15), Villa Park at 0.4% (5), Newport Beach at 0.5% (78), Rancho Santa Margarita at 0.6% (71), Aliso Viejo at 0.7% (87), Yorba Linda at 0.8% (122) and Seal Beach at 0.8% (25).
Number and Percent of Children Under 18 Years Old Receiving CalWORKs
2009/10 to 2018/19

- Number of Children
- Percent of Children

Source: Orange County Social Services Agency

Percent of Children Under 18 Years Old Receiving CalWORKs, by Age Group
2018/19

- Less than 5 Years
- 6-11 Years
- 12-17 Years

Source: Orange County Social Services Agency

Percent Receiving CalWORKs, by City
January 2020

SUPPLEMENTAL NUTRITION

NEARLY THREE IN FOUR CHILDREN RECEIVING CALFRESH ARE 12 OR YOUNGER.

DESCRIPTION OF INDICATOR

This indicator reports the number and percent of recipients of the CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP), and the number and percent of recipients in the Supplemental Nutrition Program for Women, Infants and Children (WIC).1

As an indicator of poverty, an increase in children receiving these benefits is one that needs improvement. However, an increase may also be viewed as an improvement because more eligible children are receiving these benefits.

Why is this indicator important?

Data shows that there is a relationship between a family’s food security and assurance of a healthy life. Households with food insecurity are more likely to experience reduced diet quality, anxiety about their food supply, increased use of emergency food sources or other coping behaviors and hunger. CalFresh and WIC programs provide nutrition assistance to people in low-income households by increasing their food buying power so they are able to purchase more nutritious foods, such as fruits, vegetables and other healthy foods. Income eligible children can receive both forms of nutrition assistance.

Findings

- In 2018/19, 14.2% (102,285) of children under 18 years old received CalFresh, a 15.4% increase in the percent of children since 2009/10 at 12.3%; yet lower than a peak at 19.9% in 2014/15. Orange County had a lower rate than California at 21.0% (1,947,113) of children receiving CalFresh.2
- In January 2020, the greatest proportion of CalFresh beneficiaries under 18 in Orange County were children aged six to 12 years old (43.0% or 36,871), followed by birth to five years old (29.8% or 25,503) and 13 to 17 years old (27.2% or 23,308).
- It is estimated that 59.0% of people in Orange County who are eligible for CalFresh are receiving that benefit, less than California at 71.0%.3
- WIC enrollment is steadily declining. In 2018/19, 27,666 participants were served by the WIC program, a decrease of 72.5% from 100,434 in 2009/10.
- In the average month of 2017, 51.1% of women and children eligible for WIC were receiving that benefit nationally, lower than California at 61.1%.4 Both rates have dropped from a high in 2011, when the national rate was 63.5% and California rate was 82.5%.

1 WIC provides nutrition services to pregnant and postpartum women, infants and children (ages 0 to 5 years). Participants must meet eligibility and income guidelines (at or below 185% of the federal poverty level). WIC participants are reported as the number of prenatal, breastfeeding and postpartum women, infants and children up to five years old who receive food vouchers in the month of September each year. The CalFresh Program, federally known as the Supplemental Nutrition Assistance Program (SNAP), helps income-eligible families put healthy and nutritious food on the table. The program issues monthly electronic benefits that can be used at grocery stores and participating farmers markets. The amount of the benefit is based on household size, income and housing expenses. Children under 18 years are reported annually through CalWIN. December figures are used to define the service population for a given federal fiscal year (Oct. 1, 2016 to Sept. 30, 2017).
2 California Department of Social Services, CalFresh County Data Dashboard, 2018.
3 California Department of Social Services, CalFresh County Data Dashboard, 2018.
4 USDA National and State-Level Estimates of WIC Eligibility and WIC Program Reach in 2017.
Percent of Children Receiving CalFresh, by Age Group, 2018/19

- Less than 5 Years
- 6-12 Years
- 13-17 Years

Source: Orange County Social Services Agency

Percent of Children Under 18 Years Old Receiving CalFresh, by City, 2018/19

Notes: *2010-2019 American Community Survey estimates no population under 18 in Laguna Woods. **California percentage from 2018.

Source: Orange County Social Services Agency, Family Health Division
ABOUT 1 IN 10 INSECURELY HOUSED STUDENTS LIVE IN SHELTERS, HOTELS OR MOTELS OR ARE UNSHELTERED.

DESCRIPTION OF INDICATOR
This indicator reports the number of insecurely housed students identified by school districts as homeless, meaning they are living unsheltered or in motels, shelters, parks and doubling- or tripling-up in a home, as defined by the McKinney-Vento Homeless Education Assistance Act.

Why is this indicator important?
The high mobility, trauma and poverty associated with homelessness and insecure housing create educational barriers, low school attendance, developmental, physical and emotional problems for students. Lacking a fixed, regular nighttime stay increases the chances that a student will require additional support services associated with their developmental and academic success. A homeless student or one living in a crowded environment may experience a greater tendency for stress and anxiety not knowing where they are going to sleep each night nor having a consistent, quiet, permanent place to study or do their homework. Lack of secure housing may be associated with lower standardized test scores in all areas.

Findings
• In 2018/19, 6.8% (29,840) of students in Orange County experienced insecure housing, which is 55.0% greater than in 2009/10, at 4.4% (26,029).1
• With regard to primary nighttime residence, in 2018/19:
  – 89.1% (26,600) of insecurely housed students were doubled or tripled-up in housing.
  – 4.6% (1,380) of insecurely housed students were in hotels or motels.
  – 4.7% (1,403) of insecurely housed students were housed in shelters.
  – 1.5% (457) of insecurely housed students were unsheltered.2
• Of those students with insecure housing in 2018/19, elementary age students (pre K-5th) represent the highest percentage at 43.2%, followed by high school age students (grades 9-12) at 33.4% and middle school students (grades 6-8) at 23.4%.

1 The data are collected from the Local Education Agency (school district) and reported to the California Department of Education (CDE) at the end of each academic year, by June 30. Beginning 2010-2011, CDE began collecting the data directly via California Longitudinal Pupil Achievement Data System. Data from 2016-2017 is lower due to a statewide data system error at the CDE that likely resulted in under-reported counts. 2 Due to the small population size, the data may be unstable.
Number and Percent of Students with Insecure Housing, Orange County and California, 2009/10 to 2018/19

Data from 2014-2015 is lower due to a statewide data system error at the CDE that likely resulted in under-reported counts.

Source: California Department of Education

Note: OCDE - ACCESS (Alternative, Community and Correctional Schools and Service) student population is unique in that it encompasses a wide range of youth, including students in group homes or incarcerated in institutions, students on probation or homeless, students who are parents or working full-time, students participating in a home schooling program and students who are referred by local school districts.

Source: California Department of Education. Data provided by districts on their LEA Reporting Consolidated Application and Reporting System (CARS)

Percent of Enrolled Students with Insecure Housing, by School District, 2018/19

1. ANAHEIM 11.4%
2. ANAHEIM UNION HIGH 11.6%
3. BREA-OLINDA UNIFIED 0.5%
4. BUENA PARK 7.6%
5. CAPISTRANO UNIFIED 6.9%
6. CENTRALIA 9.9%
7. CYPRESS 10.5%
8. FOUNTAIN VALLEY 0.8%
9. FULLERTON 1.7%
10. FULLERTON JOINT UNION HIGH 2.8%
11. GARDEN GROVE UNIFIED 2.4%
12. HUNTINGTON BEACH CITY 0.7%
13. HUNTINGTON BEACH UNION HIGH 3.5%
14. IRVINE UNIFIED 0.4%
15. LA HABRA CITY 1.1%
16. LAGUNA BEACH UNIFIED N/A
17. LOS ALAMITOS UNIFIED 0.3%
18. MAGNOLIA 31.2%
19. NEWPORT-MESA UNIFIED 0.7%
20. OCDE - ACCESS* 17.5%
21. OCEAN VIEW 8.2%
22. ORANGE UNIFIED 1.1%
23. OCDE - ACCESS 17.5%
24. ORANGE COUNTY: 6.8%
25. CALIFORNIA: Not yet updated

% Students with Insecure Housing
- 11.0% - 31.2%
- 6.0% - 10.9%
- 1.7% - 5.9%
- 0.3% - 1.6%
- No data available

Note: * OCDE - ACCESS (Alternative, Community and Correctional Schools and Service) student population is unique in that it encompasses a wide range of youth, including students in group homes or incarcerated in institutions, students on probation or homeless, students who are parents or working full-time, students participating in a home schooling program and students who are referred by local school districts.

Source: California Department of Education. Data provided by districts on their LEA Reporting Consolidated Application and Reporting System (CARS)
CHILD SUPPORT

CHILD SUPPORT COLLECTIONS AND SUPPORT DISTRIBUTION TO FAMILIES INCREASE.

DESCRIPTION OF INDICATOR

This indicator reports the Distributed Net Collections divided by the average monthly caseload for the Federal Fiscal Year. Improvements in collections per case reflects an increase in income to parents to provide for the basic needs of their children.

Findings

- Total Orange County child support cases decreased by 30.1% from 89,852 in 2010/11 to 62,851 in 2019/20.
- Over the same period, net collections increased by 12.2% from $177.4 million in 2010/11 to $199.1 million in 2019/20, with an average of $182.8 million annually.
- Most (93.6%) Orange County cases have a court order established, in comparison to California’s rate of 92.1%. Since 2009/10, the percentage of cases in Orange County with a court order has increased 23.0% (from 76.1%).
- The percent of current support distributed among Orange County cases during 2019/20 was 68.2% (which equates to $145.3 million distributed), which is higher than the California rate of 66.1% and represents a 15.6% increase from 2010/11 when the rate was 59.0%.

Why is this indicator important?

The number of Orange County children living in poverty has increased slightly since 2011 (presently 106,810). Research shows that child support payments help to lift more than one million Americans above the poverty line each year and assist families with incomes below the poverty line to make ends meet. Child Support Services (CSS) builds partnerships with parents, develops community linkages and cultivates existing relationships with other county agencies. Expected results are increased collections and improved performance, which yield increased financial support to meet the needs of children and families. Child support collections pay for essentials such as food, shelter, child care and medical support. CSS has implemented a family-centered approach that connects customers to local resources for family essentials (e.g., clothing and food), parental success (e.g., parenting classes and financial workshops) and individual services (e.g., adult education and job training). In the last 10 years, the number of Orange County CSS cases has decreased while services to customers have increased, along with the collections per case.

1. U.S. Census Bureau, American Community Survey, 5-Year Estimates, 2014 - 2018. Table S1701
Total Child Support Cases and Per Case Collections, 2010/11 to 2019/20

- Total Number of Cases
- Per Case Collection

Note: Total cases each year is a 12-month average from July to June.
Source: Orange County Department of Child Support Services

Percent of Child Support Distributed, Orange County and California
2010/11 to 2019/20

- Orange County
- California

Source: Orange County Department of Child Support Services

Number of Cases and Total Support Distributed, by Community of Residence, 2019/20

<table>
<thead>
<tr>
<th>Community of Residence</th>
<th>Total Cases 2019/20</th>
<th>Total Support (in Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA HABRA</td>
<td>943</td>
<td>$3,785,217</td>
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<tr>
<td>LA PALMA</td>
<td>132</td>
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<td>239</td>
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<td>96</td>
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<td>LOS ALAMITOS</td>
<td>175</td>
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<td>743</td>
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<td>NEWPORT BEACH</td>
<td>395</td>
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<td>ORANGE</td>
<td>1,678</td>
<td>$6,366,777</td>
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<td>PLACENTIA</td>
<td>650</td>
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</tr>
<tr>
<td>YORKA LINDA</td>
<td>52</td>
<td>$2,940,314</td>
</tr>
</tbody>
</table>

Total Support
- 5.0 - 23.0
- 3.0 - 4.9
- 2.0 - 2.9
- Under 2.0
- Unincorporated
- No data available

Source: Orange County Department of Child Support Services
EDUCATIONAL ACHIEVEMENT INDICATORS

KINDERGARTEN READINESS

PERCENT OF CHILDREN READY FOR KINDERGARTEN

- 51.9% in 2015
- 52.9% in 2019

THIRD GRADE ENGLISH LANGUAGE ARTS

PERCENT OF THIRD GRADE STUDENTS WHO MET OR EXCEEDED STATE STANDARDS FOR ENGLISH LANGUAGE ARTS

- 46.0% in 2014/15
- 56.0% in 2018/19

THIRD GRADE MATHEMATICS

PERCENT OF THIRD GRADE STUDENTS WHO MET OR EXCEEDED STATE STANDARDS FOR MATHEMATICS

- 51.0% in 2014/15
- 59.0% in 2018/19

HIGH SCHOOL DROPOUT RATES

PERCENT OF HIGH SCHOOL DROPOUTS FOR GRADES 9-12 COHORT

- 12.3% in 2009/10
- 5.1% in 2018/19

COLLEGE READINESS

PERCENT OF GRADUATES WITH UC/CSU ELIGIBLE REQUIREMENTS

- 38.3% in 2009/10
- 55.3% in 2018/19

CHRONIC ABSENTEEISM

PERCENT OF STUDENTS CHRONICALLY ABSENT FROM SCHOOL

- 7.7% in 2016/17
- 8.8% in 2018/19

NOTE: Variation in data ranges are due to availability of data and frequency of data collection.
KINDERGARTEN READINESS

3 IN 5 CHILDREN ENTERING SCHOOL ARE NOT FULLY READY IN THEIR COMMUNICATION SKILLS AND GENERAL KNOWLEDGE.

DESCRIPTION OF INDICATOR

Orange County uses the Early Development Index (EDI) to measure children’s readiness for school. The EDI – conducted during the kindergarten year – assesses children’s development by using a questionnaire filled out by kindergarten teachers for every child in their class. It tracks five areas of a child’s development: language and cognitive development; communication skills and general knowledge; social competence; emotional maturity; and physical health and well-being. In 2015, comprehensive EDI data was available for children enrolled in public school for the first time in Orange County and thus serves as a baseline to measure changes in incoming kindergarten class readiness over time.

Why is this indicator important?

Long-term, a child’s academic success is heavily dependent upon their readiness for kindergarten. Children who enter school with early skills, such as basic knowledge of math and reading concepts as well as communication, language, social competence and emotional maturity, are more likely than their peers without such skills to experience later academic success, attain higher levels of education and secure employment. Factors that influence kindergarten readiness include family and community supports and environments, as well as children’s early development opportunities and experiences. The EDI is one way to assess how well communities are preparing their children for school.

Findings

• In 2019, 52.9% of children in Orange County were developmentally ready for kindergarten, a 1.9% increase from 2015 at 51.9%. Children are considered developmentally ready for school if they are on track in all five areas assessed (or in all four areas if only four areas were assessed). Among kindergartners, the areas of greatest vulnerabilities are language and cognitive development (27% vulnerable or at-risk) and communication skills and general knowledge (26% vulnerable or at-risk). Smaller percentages of children are vulnerable or at risk in social competence (22%), physical health and well-being (20%) and emotional maturity (20%).

• The five developmental areas are made up of 16 sub areas which are measured by a child’s readiness (ready, somewhat ready or not ready). Within these sub areas, children are least ready in their communication skills and general knowledge (59% not ready or somewhat ready), prosocial and helping behavior (58%), overall social competence (53%) and gross and fine motor skills (49%).

• Communities with the highest percentage of students developmentally ready for school include Ladera Ranch at 75.9% (345 children), followed by North Tustin at 71.4% (49), Los Alamitos at 68.9% (286) and Coto de Caza at 67.3% (52).

• The lowest percentage of students ready for school are in the communities of Midway City at 41.2% (177 children) followed by Villa Park at 42.0% (69) and Stanton at 42.4% (425).

1 Duncan, G. J., Dowsett, C. J., and Claessens, A. (2007). School readiness and later achievement. Developmental Psychology, 43(6), 1428-1446. 2 Kindergarten Readiness is reprinted the 2019 indicator due to 2020 EDI data not being available. 3 EDI records indicates how many assessments were completed in each community and is provided to show sample size.
Percent of Children Not Ready for Kindergarten, by Sub Area, 2019

- **Communication Skills & General Knowledge**
  - Basic literacy skills
  - Interest in literacy/numeracy and memory
  - Advanced literary skills
  - Basic numeracy skills

- **Language & Cognitive Development**
  - Basic literacy skills
  - Interest in literacy/numeracy and memory
  - Advanced literary skills
  - Basic numeracy skills

- **Emotional Maturity**
  - Prosocial and helping behavior
  - Anxious and fearful behavior
  - Aggressive behavior
  - Hyperactive and inattentive behavior

- **Social Competence**
  - Overall social competence
  - Responsibility and respect
  - Approaches to learning
  - Readiness to explore new things

- **Physical Health & Well-being**
  - Physical readiness for school day
  - Physical independence
  - Gross and fine motor skills

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**Note:** Due to rounding, percentages may not add to 100. **Source:** Early Development Index, 2019

Percent of Children Ready for Kindergarten, by Community of Residence, 2019

<table>
<thead>
<tr>
<th>Location</th>
<th>% of Students</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ALISO VIEJO</strong></td>
<td>53.0%</td>
</tr>
<tr>
<td><strong>ANAHEIM</strong></td>
<td>47.5%</td>
</tr>
<tr>
<td><strong>BREA</strong></td>
<td>58.4%</td>
</tr>
<tr>
<td><strong>BUENA PARK</strong></td>
<td>48.0%</td>
</tr>
<tr>
<td><strong>COSTA MESA</strong></td>
<td>55.1%</td>
</tr>
<tr>
<td><strong>COTO DE CAZA</strong></td>
<td>67.3%</td>
</tr>
<tr>
<td><strong>CYPRESS</strong></td>
<td>68.7%</td>
</tr>
<tr>
<td><strong>DANA POINT</strong></td>
<td>62.0%</td>
</tr>
<tr>
<td><strong>FOUNTAIN VALLEY</strong></td>
<td>55.9%</td>
</tr>
<tr>
<td><strong>FULLERTON</strong></td>
<td>57.0%</td>
</tr>
<tr>
<td><strong>GARDEN GROVE</strong></td>
<td>48.7%</td>
</tr>
<tr>
<td><strong>HUNTINGTON BEACH</strong></td>
<td>58.7%</td>
</tr>
<tr>
<td><strong>IRVINE</strong></td>
<td>64.8%</td>
</tr>
<tr>
<td><strong>LA HABRA</strong></td>
<td>43.7%</td>
</tr>
<tr>
<td><strong>LA PALMA</strong></td>
<td>55.5%</td>
</tr>
<tr>
<td><strong>LADERA RANCH</strong></td>
<td>75.9%</td>
</tr>
<tr>
<td><strong>LAGUNA BEACH</strong></td>
<td>65.3%</td>
</tr>
<tr>
<td><strong>LAGUNA HILLS</strong></td>
<td>44.9%</td>
</tr>
<tr>
<td><strong>LAGUNA NIGUEL</strong></td>
<td>63.7%</td>
</tr>
<tr>
<td><strong>LAKE FOREST</strong></td>
<td>58.8%</td>
</tr>
<tr>
<td><strong>LOS ALAMITOS</strong></td>
<td>68.9%</td>
</tr>
<tr>
<td><strong>MIDWAY CITY</strong></td>
<td>41.2%</td>
</tr>
<tr>
<td><strong>MISSION VIEJO</strong></td>
<td>63.6%</td>
</tr>
<tr>
<td><strong>NEWPORT BEACH</strong></td>
<td>59.7%</td>
</tr>
<tr>
<td><strong>NORTH TUSTIN</strong></td>
<td>71.4%</td>
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<tr>
<td><strong>ORANGE</strong></td>
<td>44.5%</td>
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<tr>
<td><strong>PLACENTIA</strong></td>
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<tr>
<td><strong>RANCHO MISSION VIEJO</strong></td>
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<tr>
<td><strong>RANCHO SANTA MARGARITA</strong></td>
<td>53.9%</td>
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<tr>
<td><strong>SAN CLEMENTE</strong></td>
<td>69.8%</td>
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<tr>
<td><strong>SAN JUAN CAPISTRANO</strong></td>
<td>47.5%</td>
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<tr>
<td><strong>SANTA ANA</strong></td>
<td>44.8%</td>
</tr>
<tr>
<td><strong>SEAL BEACH</strong></td>
<td>55.8%</td>
</tr>
<tr>
<td><strong>STANTON</strong></td>
<td>42.4%</td>
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<tr>
<td><strong>TRABUCO CANYON</strong></td>
<td>64.7%</td>
</tr>
<tr>
<td><strong>TUSTIN</strong></td>
<td>51.1%</td>
</tr>
<tr>
<td><strong>VILLA PARK</strong></td>
<td>42.8%</td>
</tr>
<tr>
<td><strong>WESTMINSTER</strong></td>
<td>50.8%</td>
</tr>
<tr>
<td><strong>YORBA LINDA</strong></td>
<td>63.7%</td>
</tr>
</tbody>
</table>

**Orange County:** 52.9%

**California:** N/A

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**Source:** Early Development Index, 2019
THIRD GRADE ENGLISH LANGUAGE ARTS

THIRD GRADE STUDENTS SHOW GREATEST IMPROVEMENT IN READING AND LISTENING.

DESCRIPTION OF INDICATOR

This indicator presents the California Assessment of Student Performance and Progress (CAASPP) data for student academic performance in English Language Arts and Literacy (ELA) among third grade students. Starting in 2014/15 (2015), CAASPP reflects the Common Core State Standards and online testing system to measure the academic performance of students.

Why is this indicator important?

CAASPP is designed to demonstrate progress towards learning problem-solving and critical thinking skills needed for college and career readiness. It gives schools and communities data on the performance of students and significant student groups within a school. This information helps schools analyze academic progress and if resource re-allocation is needed to ensure all students succeed. ELA assesses a student’s performance in reading, writing, listening and research. Understanding performance at the completion of third grade is important because third grade is the year that the focus of reading instruction shifts from learning to read, to reading to learn. Third-graders who lack proficiency in reading are four times more likely to become high school dropouts.¹

Findings

• In 2019, over half (56%) of third grade students met or exceeded the statewide achievement standard for ELA, a 22% increase from 2015 (46%) and higher than California at 49%.

• Among third grade students who are not economically disadvantaged, 74% met or exceeded the achievement standards in ELA, substantially higher than those students who are economically disadvantaged at 39%.

• Between 2015 and 2019, the percentage of economically disadvantaged students who met or exceeded standards increased by 57% compared to a 9% increase among students who were not economically disadvantaged.

• The ELA assessments are subdivided by four academic focus areas. Thirty-three percent of third graders were above standards in the area of Reading, followed by 29% in Research/Inquiry, 27% in Writing and 26% in Listening.

• Across all focus areas, more third grade students were above standards in 2019 than 2015. The greatest improvement was in listening (46% increase), followed by Reading (43% increase), Research/Inquiry (28% increase) and Writing (17% increase).

• Asian students exceeded or met standards for ELA at 80%, followed by Multiacial (77%), Filipino (71%), White (71%), Native Hawaiian or Pacific Islander (48%), Black or African American (46%), American Indian or Alaska Native (41%) and Hispanic or Latino (39%) students. Since 2015, Hispanic or Latino students have shown the greatest improvement with a 55% increase in students who exceeded or met standards.

• The school districts with the highest percentage of third grade students exceeding or meeting standards for overall achievement in English Language Arts were Laguna Beach Unified (85%), Los Alamitos Unified (84%), Irvine Unified (75%) and Huntington Beach City (73%). The school districts with the lowest percentages were Santa Ana Unified (32%), Anaheim City (32%) and La Habra City (34%).

Overall Achievement in ELA Among Third Grade Students, by Socioeconomic Status, 2015 and 2019

Note: A student is defined as “economically disadvantaged” if the most educated parent of the student, as indicated in CALPADS, has not received a high school diploma or the student is eligible to participate in free or reduced-price lunch program also known as the National School Lunch Program.

Source: CAASPP, 2018/19 (2019)

Achievement in ELA Focus Areas Among Third Grade Students, 2019

Note: ELA results include information about the students’ performance in the areas of reading, writing, listening and research. The student’s performance in these key areas for each subject are reported using the following three indicators: below standard, at or near standard and above standard.

Source: CAASPP, 2018/19 (2019)

Percent of Third Grade Students Who Exceeded or Met Standards for ELA Overall Achievement, by School District, 2019

Note: District comparisons should be interpreted with caution as districts vary greatly in composition, with differing proportions of students who are English learners, special needs, low income, or homeless – all factors which can influence achievement.

Source: CAASPP, 2018/19 (2019)
THIRD GRADE MATHEMATICS

ECONOMICALLY DISADVANTAGED STUDENTS SHOW GREATEST IMPROVEMENT IN MATH, WHILE DISPARITY PERSISTS.

DESCRIPTION OF INDICATOR

This indicator presents the new California Assessment of Student Performance and Progress (CAASPP) data for student academic performance in mathematics. Starting in 2014/15 (2015), CAASPP reflects the Common Core State Standards and online testing system to measure the academic performance of students. This indicator reports on third grade students.

Why is this indicator important?

CAASPP is designed to demonstrate progress towards learning problem-solving and critical-thinking skills needed for college and a career. It gives schools and communities data on the performance of all students and significant subgroups within a school. This information helps schools analyze their academic progress and if resource reallocation is needed to ensure all students succeed. The mathematics component assesses a student’s performance in applying mathematical concepts and procedures, using appropriate tools and strategies to solve problems and demonstrating ability to support mathematical conclusions. It is known that math difficulties are cumulative and worsen with time.1 Understanding third grade performance is important because it is the year that students start utilizing the decimal system to do multi-digit number calculations, an important foundation for future success in mathematics.

Findings

• In 2019, over half (59%) of Orange County third grade students met or exceeded the statewide achievement standard in math, a 16% increase from 2015 (51%) and higher than California at 50%.
• Among third grade students who are not economically disadvantaged, 76% met or exceeded the achievement standards in math, substantially higher than those students who are economically disadvantaged at 42%.
• Between 2015 and 2019, the percentage of economically disadvantaged students who met or exceeded standards increased by 35% compared to a 5% increase among students who were not economically disadvantaged.
• The mathematics assessments are subdivided by three academic focus areas. Forty-three percent of third grade students were above the standard in Concepts and Procedures compared to Communicating Reasoning (36%) and Problem Solving and Modeling/Data Analysis (35%).
• Asian students exceeded or met standards in math at 86%, followed by Multiracial (78%), White (73%), Filipino (72%), Native Hawaiian or Pacific Islander (58%), Black or African American (45%), American Indian or Alaska Native (42%) and Hispanic or Latino (41%) students. Since 2015, Hispanic or Latino students showed the greatest improvement with a 32% increase.2
• The school districts with the highest percentage of third grade students exceeding or meeting standards for overall achievement in math were Los Alamitos Unified (90%), Laguna Beach Unified (87%), and Fountain Valley (83%). The school districts with the lowest percentage were Anaheim (33%), Santa Ana Unified (35%), and La Habra City (39%).

2 The percentage increase in Hispanic or Latino students who exceeded or met standards in math between 2015 and 2018 was misreported in the 25th Annual Conditions of Children’s report. The correct percentage increase was 30%, not 56%.
Overall Achievement Among Third Grade Students in Mathematics, by Socioeconomic Status, 2015 and 2019

Note: A student is defined as “economically disadvantaged” if the most educated parent of the student, as indicated in CALPADS, has not received a high school diploma or the student is eligible to participate in free or reduced-price lunch program also known as the National School Lunch Program.

Source: CAASPP, 2018/19 (2019)

Achievement in Mathematics Focus Areas Among Third Grade Students, 2019

Note: Math results include information about the students’ performance in the areas of concepts and procedures, problem solving & modeling/data analysis and communicating reasoning. The student’s performance in these key areas for each subject are reported using the following three indicators: below standard, at or near standard and above standard

Source: CAASPP, 2018/19 (2019)

Percent of Third Grade Students Who Exceeded or Met Standards for Mathematics Overall Achievement, by School District, 2019

Note: District comparisons should be interpreted with caution as districts vary greatly in composition, with differing proportions of students who are English learners, special needs, low income, or homeless – all factors which can influence achievement.

Source: CAASPP, 2018/19 (2019)
HIGH SCHOOL DROP OUT RATES

FOSTER YOUTH ARE HARDEST HIT BY DROP OUT RATES.

DESCRIPTION OF INDICATOR
This indicator measures high school dropout rates for Orange County school districts, including detail by race/ethnicity and by program. Beginning in 2007/08 (2008), a student is considered a dropout if they were enrolled in grades 9 to 12 during the previous year and left before completing the current school year, or did not attend the expected school or any other school by October of the following year. Students are not counted as dropouts if they received a diploma, General Education Diploma (GED), or California High School Proficiency Exam (CHSPE) certificate; are Special Education completers; transferred to a degree-granting college; passed away; had a school-recognized absence; or were known to have left the state.1

Why is this indicator important?
Education provides benefits to both individuals and society. Compared to high school graduates, dropouts earn lower wages, resulting in lower tax contributions and more utilization of welfare programs. They are also at higher risk for criminal involvement and health problems.2

Findings
• The Orange County cohort dropout rate for 2019 was 5.1%, lower than the California dropout rate of 9.0% and the United States dropout rate for public schools of 5.4% in 2017.3
• In 2019, there were 40,929 cohort students of which 36,700 graduated and 2,100 students dropped out. The remaining 2,129 students did not graduate because they were either considered still enrolled at the time of the cohort’s graduation (1,051 students), Special Education completers (423), CHSPE completers (218) or completed the GED (37) or adult education diploma (12). 388 students were “other transfers.”
• Dropout rates for the 2019 school year continued to be highest among Black or African American students (9.9%), followed by Hispanic or Latino (7.2%), American Indian or Alaska Native (6.1%), Multiracial (4.4%), White (3.5%), Pacific Islander (3.5%), Filipino (2.2%) and Asian (2.2%) students.
• By program, dropout rates were highest among students enrolled as foster youth (21.0%), followed by English Learners (13.2%), Homeless Youth (10.8%), Migrant Education (8.7%), Students with Disabilities (8.6%) and Socioeconomically Disadvantaged (7.4%) programs.4

1 California Department of Education, DataQuest, 2018/19 (2019) data. A cohort is a defined group of students that could potentially graduate during a 4-year time period (grade 9 through grade 12). Due to the changes in the methodology for calculating the 2016–17 Adjusted Cohort Graduation Rate (ACGR) and subsequent years, the 2016–17 ACGR data is not comparable with the cohort outcome data from prior years. Belfield, C. and Levin, H. (2007). The Economic Losses from High School Dropouts in California. National Center of Education Statistics, The Condition of Education 2019, Indicator 1.18. Socioeconomically Disadvantaged is a student whose parents have not received a high school diploma or is eligible for the free or reduced-price lunch program. English Learner is a student identified as English learner based on the results of the California English Language Development Test or is a reclassified fluent-English proficient student (RFEP) who has not scored at the proficient level on the California English Language Arts and Mathematics Standards Tests. Student with Disabilities is a student who receives special education services and has a valid disability code or was previously identified as special education but who is no longer receiving special education services for two years after exiting special education. Migrant is a student who changes schools during the year, often crossing school district and state lines, to follow work in agriculture, fishing, dairies, or the logging industry. Homeless Youth is a student who lacks a fixed, regular and adequate nighttime residence.
Percent of Grade 9-12 Cohort Dropouts, by Race/Ethnicity
2010 to 2019

Note: A cohort is a defined group of students that could potentially graduate during a 4-year time period (grade 9 through grade 12). Due to the changes in the methodology for calculating the 2016–17 Adjusted Cohort Graduation Rate (ACGR) and subsequent years, the 2016–17 ACGR data is not comparable with the cohort outcome data from prior years.

Note: Data may be unstable to do small cohort population sizes for Black or African American, Pacific Islander and American Indian or Alaska Native.

Source: California Department of Education, DataQuest, 2018/19 (2019)

Percent of Grade 9-12 Cohort Dropouts by Race/Ethnicity

- Hispanic or Latino
- Black or African American
- Pacific Islander
- American Indian or Alaska Native
- Asian
- White
- Multiracial
- Filipino

Overall Orange County

Number of Students Who Did Not Graduate by Cohort, by Reason, 2019

- Cohort Student Dropouts
- Still Enrolled at Time of Cohort Graduation
- Special Ed Completers
- Other Transfers
- CHSPE Completers
- Completed the GED
- Adult Education Diploma Completers

Source: California Department of Education, DataQuest, 2018/19 (2019)

Percent of Grade 9-12 Cohort Dropouts by Program, 2010 to 2019

- English Learners
- Migrant Education
- Socioeconomically Disadvantaged
- Special Education/Students with Disabilities
  - Foster Youth
  - Homeless Youth

Source: California Department of Education, DataQuest, 2018/19 (2019)

Percent of Grade 9-12 Cohort High School Dropouts, by School District, 2019

<table>
<thead>
<tr>
<th>School District</th>
<th>Percent of Grade 9-12 Cohort High School Dropouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANAHEIM UNION HIGH</td>
<td>5.1%</td>
</tr>
<tr>
<td>BREA-OLINDA UNIFIED</td>
<td>6.4%</td>
</tr>
<tr>
<td>CAPISTRANO UNIFIED</td>
<td>2.0%</td>
</tr>
<tr>
<td>FULLERTON JOINT UNION HIGH</td>
<td>7.1%</td>
</tr>
<tr>
<td>GARDEN GROVE UNIFIED</td>
<td>4.4%</td>
</tr>
<tr>
<td>HUNTINGTON BEACH UNION HIGH</td>
<td>2.3%</td>
</tr>
<tr>
<td>IRVINE UNIFIED</td>
<td>1.4%</td>
</tr>
<tr>
<td>LAGUNA BEACH UNIFIED</td>
<td>0.0%</td>
</tr>
<tr>
<td>LOS ALAMITOS UNIFIED</td>
<td>0.9%</td>
</tr>
<tr>
<td>NEWPORT-MESA UNIFIED</td>
<td>6.2%</td>
</tr>
<tr>
<td>ORANGE COUNTY:</td>
<td>Overall Orange County: 5.1%</td>
</tr>
<tr>
<td>CALIFORNIA:</td>
<td>California: 9.0%</td>
</tr>
</tbody>
</table>

Source: California Department of Education, DataQuest, 2018/19 (2019)
COLLEGE READINESS

MORE THAN HALF OF ORANGE COUNTY STUDENTS ARE COLLEGE-READY.

DESCRIPTION OF INDICATOR
This indicator tracks the number and percent of students who graduate from high school having completed the course requirements to be eligible to apply to a University of California (UC) or California State University (CSU). The UC/CSU eligibility requirements are presented below.¹

Why is this indicator important?
The UC/CSU minimum course requirements are centered on a well-rounded curriculum that fosters content mastery and ensures that students are ready to take college courses without remediation. Courses include an applied learning component to help students improve comprehension and practice critical thinking skills. The more students master the content in conjunction with these skills, the more likely they are to pursue and succeed in college, as well as in the workforce.²

Findings
• In 2018/19 (2019), Orange County had 36,700 high school graduates, of which 55.3% were UC/CSU eligible, higher than California’s eligibility rate of 50.5%.

• At 79.3%, Asian students had the greatest proportion of graduates who were UC/CSU eligible, followed by Filipino (68.0%), White (61.7%), Multiracial (60.7%), Pacific Islander (47.2%), Black or African American (41.7%), Hispanic or Latino (41.3%) and American Indian or Alaska Native (40.4%) graduates.

• Hispanic or Latino graduates comprise the largest group of total graduates (45.1%), while only 41.3% of those were UC/CSU eligible. This percentage is lower than Asian (17.9% of total graduates, of which 79.3% were UC/CSU eligible) and White (29.4% of graduates, of which 61.7% were UC/CSU eligible) graduates.

• By program, the UC/CSU eligibility rates were highest among students in the Socioeconomically Disadvantaged program (43.8%), followed by students in the Migrant Education program (34.2%) and English Learner program (23.7%).³

UC/CSU Requirements
• 4 years of English
• 3 years of Math, including Algebra, Geometry and Intermediate Algebra
• 2 years of History/Social Studies, including one year of U.S. History or one-half year of U.S. History and one-half year of Civics or American Government; and one year of World History, Cultures and Geography
• 2 years of Science with lab required chosen from Biology, Chemistry and Physics
• 2 years of Foreign Language and must be the same language for those two years
• 1 year of Visual and Performing Arts chosen from Dance, Drama/Theater, Music or Visual Art
• 1 year of Electives

¹ California Department of Education, DataQuest, 2018/19 (2019) data. A cohort is a defined group of students that could potentially graduate during a 4-year time period (grade 9 through grade 12). Due to the changes in the methodology for calculating the 2016–17 Adjusted Cohort Graduation Rate (ACGR) and subsequent years, the 2016–17 ACGR data is not comparable with the cohort outcome data from prior years.² University of California, Office of the President.³ See footnotes on page 56 for program descriptions.
Percent of Graduates in Orange County and California Meeting UC/CSU Entrance Requirements, 2010 to 2019

- Orange County
- California

Note: A cohort is a defined group of students that could potentially graduate during a 4-year time period (grade 9 through grade 12). Due to the changes in the methodology for calculating the 2016–17 Adjusted Cohort Graduation Rate (ACGR) and subsequent years, the 2016–17 ACGR data is not comparable with the cohort outcome data from prior years.

Source: California Department of Education, DataQuest, 2018/19 (2019)

### Percent of Graduates Meeting UC/CSU Entrance Requirements, 2010 to 2019

- Socioeconomically Disadvantaged
- English Learners
- Migrant Education

Source: California Department of Education, DataQuest, 2018/19 (2019)

### Number of Graduates and Percent of Graduates Meeting UC/CSU Entrance Requirements, 2019

- Total Graduates
- Percent of UC/CSU Eligible Graduates within each Race/Ethnicity

Note: American Indian or Alaska Native total graduates (57), percent of UC/CSU eligible graduates (40.4%).

Source: California Department of Education, DataQuest, 2018/19 (2019)

### Percent of Graduates Meeting UC/CSU Entrance Requirements, by School District, 2019

1. ANAHEIM UNION HIGH 50.2%
2. BREA-OLINDA UNIFIED 65.7%
3. CAPISTRANO UNIFIED 62.7%
4. FULLERTON JOINT UNION HIGH 54.4%
5. GARDEN GROVE UNIFIED 65.4%
6. HUNTINGTON BEACH UNION HIGH 50.0%
7. IRVINE UNIFIED 69.8%
8. LAGUNA BEACH UNIFIED 77.5%
9. LOS ALAMITOS UNIFIED 74.0%
10. NEWPORT-MESA UNIFIED 50.2%
11. ORANGE UNIFIED 49.9%
12. PLACENTIA-YORBA LINDA UNIFIED 52.4%
13. SADDLEBACK VALLEY UNIFIED 53.3%
14. SANTA ANA UNIFIED 43.5%
15. TUSTIN UNIFIED 67.1%

ORANGE COUNTY: 55.3%
CALIFORNIA: 50.5%

Source: California Department of Education, DataQuest, 2018/19 (2019)
Why is this indicator important?
School attendance is an influential factor in academic achievement. Chronic absenteeism is associated with a number of negative consequences for students, including lower academic achievement and increased risk of dropping out due to the number of days missed. Achievement gaps in elementary, middle and high school levels are increased by chronic absenteeism. In particular, research has shown that chronic absenteeism in kindergarten is associated with lower achievement in reading and math in later grades, even when controlling for a child’s socioeconomic status, kindergarten readiness and age entering kindergarten.

Findings
• In 2018/19 (2019), Orange County students including kindergarten through high school had a chronic absenteeism rate of 8.8%. While this rate is an increase from 2017 (7.7%), it remains lower than California at 12.1%.
• In 2019, Pacific Islander students had the highest chronic absenteeism rate (15.9%), followed by American Indian or Alaska Native (15.3%), Black or African American (15.1%) and Hispanic or Latino (10.7%) students. Asian students reported the lowest rate of chronic absenteeism (3.2%).
• By program, chronic absenteeism rates were highest among students enrolled as Foster Youth (27.6%), followed by Homeless Youth (18.2%), Students with Disabilities (15.7%), Socioeconomically Disadvantaged (11.6%), Migrant Education (11.6%) and English Learners (9.8%) programs.
• Foster youth students consistently have among the highest chronic absenteeism rates from kindergarten (24.9%) to high school (48.1%). However, all student groups are seeing increasing rates of chronic absenteeism throughout their school experience.
• High school students have the highest rates of chronic absenteeism (13.1%), followed by kindergarten (11.7%), middle school (7.1%) and elementary school (6.4%) students. This trend is similar to California.

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3 See footnotes on page 56 for program descriptions.
EDUCATION

Chronic Absenteeism, by Grade, 2019

- California
- Orange County

Source: California Department of Education, DataQuest, 2018/19 (2019)

Chronic Absenteeism Among All Students, by Race and Ethnicity, 2017 and 2019

- 2017
- 2019
- California 2019
- Orange County 2019

Source: California Department of Education, DataQuest, 2018/19 (2019)

Chronic Absenteeism Among All Students, by Program, 2017 and 2019

- 2017
- 2019
- California 2019
- Orange County 2019

Source: California Department of Education, DataQuest, 2018/19 (2019)

Chronic Absenteeism, by School District, 2019

Source: California Department of Education, DataQuest, 2018/19 (2019)
## SAFE HOMES AND COMMUNITIES INDICATORS

### Preventable Child and Youth Deaths

<table>
<thead>
<tr>
<th>metric</th>
<th>2008/09</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unintentional Injury Death Rate</td>
<td>42.4%</td>
<td>33.0%</td>
</tr>
<tr>
<td>per 100,000 youth one to 19 years old</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Juvenile Arrests

<table>
<thead>
<tr>
<th>metric</th>
<th>2009</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile Arrest Rate</td>
<td>5.1</td>
<td>5.0</td>
</tr>
<tr>
<td>per 100,000 youth 10 to 17 years old</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Substantiated Child Abuse

<table>
<thead>
<tr>
<th>metric</th>
<th>2010</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantiated Child Abuse Allegations</td>
<td>10.0</td>
<td>6.7</td>
</tr>
<tr>
<td>rate per 1,000 children 0 to 17 years old</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Juvenile Sustained Petitions

<table>
<thead>
<tr>
<th>metric</th>
<th>2013</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sustained Petitions</td>
<td>800</td>
<td>393</td>
</tr>
<tr>
<td>per 100,000 youth 10 to 17 years old</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Child Welfare

<table>
<thead>
<tr>
<th>metric</th>
<th>2008/09</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of children entering foster care placed in permanent homes within 12 months</td>
<td>42.4%</td>
<td>33.0%</td>
</tr>
</tbody>
</table>

### Gang Activity Among Youth

<table>
<thead>
<tr>
<th>metric</th>
<th>2010</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of gang-related juvenile prosecutions</td>
<td>13.6%</td>
<td>4.7%</td>
</tr>
</tbody>
</table>

**NOTE:** Variation in data ranges are due to availability of data and frequency of data collection.
PREVENTABLE CHILD AND YOUTH DEATHS

UNINTENTIONAL INJURIES CONTINUE TO REPRESENT THE LEADING CAUSE OF PREVENTABLE DEATH IN CHILDREN AND YOUTH.

DESCRIPTION OF INDICATOR
This indicator reports the number of deaths from unintentional and intentional injuries, including suicide and homicide. Leading causes of death by age group are also identified.

Why is this indicator important?
The death of every child is a tragedy for family and friends and a loss to the community. Along with the direct impact of a child’s death, the child death rate in a community can be an important indicator for public health advocates and policymakers. A high rate can point to underlying problems such as violent neighborhoods or inadequate child supervision.1 Unintentional childhood mortality due to injury is strongly inversely related to median income and thus, a solid indicator of poverty. It can also point to health and social inequalities such as access to health care or safe places to play.2 Since children are much more likely to die during the first year of life (infancy) than they are at older ages, trends in infant mortality are discussed separately (page 18).

Findings
• There were 127 deaths for children ages 1 to 19 years in Orange County in 2018.
• Orange County’s overall injury death rate for children decreased 7.3% from a rate of 9.6 per 100,000 children ages one to 19 years in 2009 to 8.9 per 100,000 children in 2018, which is lower than California’s rate of 10.4 in 2018.
• The unintentional injury death rate (e.g., accidental poisoning, motor vehicle accident, or drowning) decreased 2.0% from a rate of 5.1 per 100,000 children in 2009 to 5.0 per 100,000 children in 2018.
• Despite this decrease, unintentional injuries accounted for the highest average number (38 per year) and rate (5.0 per 100,000) of all injury deaths to children between 2016 and 2018, followed by cancer (23 per year) and suicide (16 per year).
• Over half, or 58.3%, of all child and youth deaths were among the older teen age group (ages 15 to 19).
• Male mortality rate increased 9.3% from 21.4 per 100,000 in 2017 to 23.4 per 100,000 in 2018. A decreasing trend was seen among the female mortality rate declining 4.6% between 2017 and 2018 (10.9 vs 10.4 per 100,000).
• Non-Hispanic White and Hispanic youth had lower mortality rates in 2018 when compared to 2017 (19.6 vs 20.2 and 15.0 vs 15.8, respectively).
• Asian/Pacific Islander youth had a higher mortality rate in 2018 when compared to 2017 (17.3 vs 12.6).
• The percent of overall youth deaths related to injury by race/ethnicity in 2018 was Non-Hispanic White (58.1%), Asian/Pacific Islander (54.5%) and Hispanic (43.4%). The rate for Black youth is unstable due to the small number of deaths.
• The cities with the highest rate of mortality due to unintentional injury were Laguna Beach (16.5 per 100,000), Dana Point (11.0 per 100,000) and Seal Beach (10.5 per 100,000).

Injury, Unintentional Injury, Suicide and Homicide, Rate Per 100,000 Children, One to 19 Years Old, 2009 to 2018

- Unintentional Injury
- Homicide
- Suicide
- Other

Death Due to Injury, Rate per 100,000 Children, One to 19 Years Old, by Race/Ethnicity, 2014 to 2018

- Hispanic
- White
- Asian/Pacific Islander

Leading Causes of Death for Children One to 19 Years Old, by Age Group and Number of Deaths, 2016-2018

<table>
<thead>
<tr>
<th>1-4 Years</th>
<th>5-9 Years</th>
<th>10-14 Years</th>
<th>15-19 Years</th>
<th>1-19 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FIRST LEADING CAUSE</strong></td>
<td><strong>SECOND LEADING CAUSE</strong></td>
<td><strong>THIRD LEADING CAUSE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unintentional Injuries (22)</td>
<td>Cancer (20)</td>
<td>Unintentional Injuries (11)</td>
<td>Cancer (11)</td>
<td>Cancer (69)</td>
</tr>
<tr>
<td>Cancer (15)</td>
<td>Unintentional Injuries (11)</td>
<td>Unintentional Injuries (8)</td>
<td>Suicide (42)</td>
<td></td>
</tr>
<tr>
<td>Unintentional Injuries (72)</td>
<td>Suicide (7)</td>
<td>Homicide (30)</td>
<td></td>
<td>Suicide (49)</td>
</tr>
</tbody>
</table>

Notes: Three-year total number of deaths.
Source: Orange County Health Care Agency
SUBSTANTIATED CHILD ABUSE

SUBSTANTIATED CHILD ABUSE RATES LOWER THAN 10 YEARS AGO.

DESCRIPTION OF INDICATOR

This indicator reports the unduplicated count of children with substantiated child abuse allegations. Allegations refer to the nature of abuse or neglect that a child is experiencing (e.g., sexual or physical). A substantiated child abuse allegation is determined by the investigator based upon evidence that makes it more likely than not that child abuse or neglect occurred as defined in California Penal Code (PC) 1165.6. A substantiated allegation does not include a report where the investigator later found the report to be false, inherently improbable, to involve accidental injury or to not constitute child abuse or neglect as defined in PC 1165.6.

Why is this indicator important?

Studies indicate that victims of child abuse are more likely to use drugs and alcohol, become homeless as adults, engage in violence against others and be incarcerated. The identification of a family in which a substantiated incident of abuse or neglect has occurred is important because it provides an opportunity for intervention to assure child safety. Once a child abuse referral is substantiated by the investigating social worker, safety threats for the child(ren) are identified and a social worker works with the family to develop a safety plan.

Findings

- In 2019, 30,676 children were the subject of one or more child abuse allegations in Orange County. Of these, 15.7% (4,823) of children had substantiated allegations of child abuse, higher than California in 2019, at 14.2%. Since 2015, the proportion of child abuse petitions among substantiated allegations filed in court has increased, from 21% (1,204) to 35% (1,707).

- In 2019, substantiated allegations occurred at a rate of 6.7 per 1,000 children, a 33.0% decrease from 10.0 in 2010 and lower than California (7.4), with a 22.9% decrease from 9.6 in 2010. In 2018, there were approximately 678,000 maltreated children with substantiated allegations in the United States, a rate of 9.2 per 1,000 children, higher than Orange County and California.

- Children under six made up the greatest proportion of substantiated allegations: children less than one year of age comprised 14.0% of substantiated child abuse allegations and children one to five years old made up 29.9% of substantiated allegations, totaling 43.9%. Children six to 10 years old made up 26.5%; 11 to 15 years old, 22.8%; and 16 to 17 years old, 6.8%.

- In 2019, most (73.6%) substantiated child abuse allegations were due to general neglect, followed by at-risk/sibling abuse (8.9%), severe neglect (6.7%) and physical abuse (3.7%). Sexual abuse (3.5%), caretaker absence (2.6%), exploitation (0.5%) and emotional abuse (0.5%) made up the remaining types.
Substantiated Child Abuse Allegations, Rate per 1,000 Children, by City, 2019

<table>
<thead>
<tr>
<th>City</th>
<th>Rate per 1,000 Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA PALMA</td>
<td>6.6</td>
</tr>
<tr>
<td>LAGUNA BEACH</td>
<td>4.3</td>
</tr>
<tr>
<td>LAGUNA HILLS</td>
<td>4.9</td>
</tr>
<tr>
<td>LAGUNA NIGUEL</td>
<td>2.8</td>
</tr>
<tr>
<td>LAGUNA WOODS N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>LAKE FOREST</td>
<td>7.6</td>
</tr>
<tr>
<td>MISSION VIEJO</td>
<td>5.8</td>
</tr>
<tr>
<td>LAGUNA BEACH</td>
<td>4.9</td>
</tr>
<tr>
<td>SEAL BEACH</td>
<td>4.9</td>
</tr>
<tr>
<td>STANTON</td>
<td>7.7</td>
</tr>
<tr>
<td>TUSTIN</td>
<td>9.2</td>
</tr>
<tr>
<td>VILLA PARK</td>
<td>1.8</td>
</tr>
<tr>
<td>WESTMINSTER</td>
<td>7.1</td>
</tr>
<tr>
<td>YORBA LINDA</td>
<td>3.3</td>
</tr>
</tbody>
</table>

Note: N/A indicates data are not available due to the small number of children living in Laguna Woods.
Source: Orange County Social Services Agency, 2019
CHILD WELFARE

PERMANENT HOME PLACEMENT IS TAKING LONGER AMONG FOSTER YOUTH.

DESCRIPTION OF INDICATOR

This indicator reports on three measures of permanency following the placement of a child into foster care. “Permanency within 12 months” reports the percent of children placed in homes through reunification with the family, adoption or guardianship within 12 months of removal. “Reentry Following Reunification” tracks those children who reentered foster care within 12 months of reunification with the family or guardianship. “Exits to Permanency” is a measure of children who were in foster care for 24 months or longer, who were then transitioned to a permanent home, including reunified with the family, placed with a legal guardian or adopted.¹

Why is this indicator important?
The placement of children in foster care occurs when a child cannot remain safely with his or her family.² Child abuse and neglect is a problem that crosses socioeconomic and racial/ethnic boundaries with profound effect on the well-being of the children. The number of children growing to maturity in foster care has gained considerable national, state and local attention. Too often these children experience many placements, which can lead to the inability to reunify with their families or attach to a new permanent family. Permanent placement of children helps prevent placement instability, which can be related to attachment disorders, poor educational outcomes, mental health and behavioral problems and negative adult outcomes.

Findings
• In 2017/18, 33.0% of Orange County foster children were placed in permanent homes within 12 months of entering foster care, which is lower than California at 33.7% and a decrease of 25.2% from the high of 44.1% of children placed in 2009/10. The national goal is greater than or equal to 40.5%.
• Of the 33.0% of children who were placed in permanent homes within 12 months of entering foster care in 2017/18, reunification was the most common type of permanency (31.7%), followed by adoption (0.9%) and guardianship (0.4%).
• In 2016/17, the rate of reentry was 8.1%, an 88.4% increase since 2007/08. California was higher at 10.7%. The national goal is less than or equal to 8.3%.³
• In 2018/19, 30.1% of children who were in foster care for two years or more were placed in a permanent home, 14.9% higher than in 2009/10 (26.2%). California is higher at 32.7%. The national goal is greater than or equal to 30.3%.

¹ Exists to permanency measures children who were in foster care for 24 months or longer on the first day of the year, who were then transitioned to a permanency within 12 months. ² University of California, Berkley, Center for Social Services Research, 2013. ³ Federal evaluation of statewide child welfare systems, Child and Family Services Review (CFSR), recently released the third round of Federal Outcomes measures (CFSR3). The new focus is on timeliness to any type of permanency achieved—a combination of reunification, adoption and guardianship. Methodology has changed from exit cohort (in which all who reunified within study period are observed), to an entry cohort (of those who were removed within the same study period and reunified within 12 months are observed).
Percent of Children Entering Foster Care and Placed in a Permanent Home within 12 months, Orange County and California, 2008/09 to 2017/18

- California
- Orange County

Percent of Children Reentering Foster Care within 12 months of Reunification or Guardianship, Orange County and California, 2007/08 to 2016/17

- California
- Orange County

Percent of Children Entering Foster Care and Placed in a Permanent Home within 12 months, by Type of Permanency, 2008/09 to 2017/18

- Reunification
- Adoption
- Guardianship

Percent of Children in Foster Care, 24+ Months, Placed in a Permanent Home, Orange County and California, 2009/10 to 2018/19

- California
- Orange County

Note: Due to methodological differences, the reporting period for no reentry following reunification will always be one year behind what is reported for the other measures.

Note: Data should be interpreted with caution. Every effort is made to provide supportive services so children can remain safely at home with their parents whenever possible. For children brought into protective custody, this most commonly occurs in the context of extremely complex family issues. Additionally, given these complex issues coupled with regulated reunification timelines and possible court delays, transitioning children into permanent homes within 12 months can be a challenge in Orange County.

Source: CWS/CMS 2019 Quarter 4 Extract, UC Berkley Center for Social Services Research

Note: Permanency is defined as achieved when the child is reunified with the family, placed with a legal guardian, or adopted.

Source: CWS/CMS 2019 Quarter 4 Extract, UC Berkley, Center for Social Services Research
JUVENILE ARRESTS

JUVENILE ARREST RATE IN ORANGE COUNTY IS SIGNIFICANTLY LOWER THAN CALIFORNIA.

DESCRIPTION OF INDICATOR

This indicator tracks youth 10-17 years old who have been taken into custody in a manner authorized by law. An arrest may be made by a peace officer or by a private person. It may for be a felony, misdemeanor, status or infraction. Felonies generally include violent crimes (such as murder, assault and rape), some property and drug-related offenses, plus other serious offenses. Misdemeanor offenses include crimes such as assault and battery, petty theft, other drug and alcohol-related offenses and many less serious offenses. Status offenses are acts that are considered offenses only when committed by a juvenile, such as truancy or curfew violations.¹

Why is this indicator important?

An arrest is usually the first formal encounter a youth has with the juvenile justice system. It is particularly important that at this onset of criminal activity, a pattern of juvenile delinquency does not continue into adulthood. More importantly, the flow of youthful offenders into the justice system should be prevented. Research shows that early intervention in children’s lives can effectively reduce later crime.² Prevention programs positively impact the general public because they stop crime from happening in the first place.³ Various cost-benefit analyses show that early prevention programs are a worthwhile investment of government resources compared with prison and other criminal justice responses.⁴

Findings

- In 2018, there were 2,729 juvenile arrests in Orange County.
- Between 2009 and 2018, there was an 81.0% decrease in the total number of juvenile arrests in Orange County, dropping from 14,341 arrests to 2,729 arrests.
- Orange County’s juvenile arrest rate in 2018 was 823 per 100,000 youth 10 to 17 years old, a decrease of 79.5% from 2009, compared to California at 1,121 per 100,000 youth, a similar decrease of 75.1% from 2009.
- In Orange County, misdemeanors accounted for 50.1% (1,367) of juvenile arrests in 2018, which is down 16.3% from 2009 when misdemeanors accounted for 59.9% of juvenile arrests.
- In contrast, felonies among youth accounted for 30.2% (825) of arrests in 2018, up 4.9% since 2009 when felonies accounted for 28.8% of juvenile arrests.
- Status offenses accounted for 19.7% (537) of arrests among youth ages 17 years and under in 2018, an increase of 74.5% in 10 years when status offenses accounted for 11.3% of juvenile arrests.
- Among 18 to 20 year olds, DUI Convictions have decreased 59.3% since 2019 from a high of 1,226 convictions in 2010. Among youth under 18 years, there was a 67.1% decrease since 2010, from a high of 73 convictions in 2010 to 24 convictions in 2019.

¹ This indicator does not include statistics for youths contacted, but not arrested, by law enforcement for new law violations. As a result of reductions of penalties pursuant to Prop. 47, these youths may be processed through rehabilitative endeavors such as community programming, law enforcement diversion programs, and efforts by the District Attorney’s Office utilizing collaborative programming including STAT “School Threat Assessment Team” and GRIP “Gang Reduction and Intervention Partnership” in lieu of formal handling. ²Zagar, R.J., Busch, K.G., and Hughes, J.R., 2009. ³Saminsky, A., 2010. ⁴Welsh, B.C. and Farrington, D.P., 2009.
Juvenile Arrest Rate per 100,000 Youth 10 to 17 Years Old, Orange County and California, 2009 to 2018

- California
- Orange County

Note: 2009 to 2012 figures are based on population projections as of 2007 while 2013 and 2014 figures are based on revised projections as of December 2014. 2015 figures are based on revised projections as of February 2017.

Sources: Criminal Justice Statistics Center, California Department of Justice Demographic Research Unit, California State Department of Finance

Percent of Juvenile Arrests, by Crime Type, 2009 to 2018

- Felony Arrests
- Misdemeanor Arrests
- Status Offense Arrests

Source: Criminal Justice Statistics Center, California Department of Justice Demographic Research Unit, California State Department of Finance

DUI Convictions in Orange County, by Age 2010 to 2019

- 18-20
- Under 18

Note: The number of DUI convictions per year are based on data from two years prior.

Sources: Annual Reports of the California DUI Management Information System 2019

Percent of Juvenile Arrests, by City, Youth 10 to 17 Years Old, 2018

Note: 0.8% represents the percentage of 10 – 17 year olds arrested in Orange County.

Sources: Criminal Justice Statistics Center, California Department of Justice Demographic Research Unit, California State Department of Finance
JUVENILE SUSTAINED PETITIONS

YOUTH AGES 15-17 MAKE UP THE MAJORITY OF SUSTAINED PETITIONS.

DESCRIPTION OF INDICATOR

This indicator reports the number and percent of juvenile petitions that are sustained. After a juvenile arrest, a referral is typically made by the arresting officer to the Probation Department for further processing. The probation officer decides whether a referral is dismissed, the juvenile is placed on informal probation or a petition will be sought for a formal court hearing. When a petition is sustained by the court, the juvenile becomes a ward of the court. A ward is either allowed to go home under the supervision of a probation officer or ordered for detention in a juvenile institution.

Why is this indicator important?

Sustained juvenile petitions are similar to an adult criminal conviction. They indicate where and what types of crimes are occurring among youth. Many agencies have a role to play in helping to meet California’s goal of rehabilitation for youth who have a sustained petition, including schools, social services agencies and community-based organizations. Knowledge about sustained juvenile petitions can help provide strategic direction to prevention, early intervention and rehabilitation efforts in Orange County.

Findings

- In 2018, there were 3,324 total juvenile petitions.¹ Of these, 1,302 were sustained petitions (39.2%), a 51.0% decrease from 2013 (2,657).
- The rate of sustained petitions was 393 per 100,000 youth ages 10 to 17 years old in 2018, a 50.9% decrease from 2013 (800 per 100,000 youth).
- Sustained petitions were highest among youth 15 to 17 years old who received 84.9% of sustained petition decisions, followed by youth 12 to 14 years old (15.1%). There were no sustained petitions for youth 10 to 11 years old in 2018.
- When assessed by race/ethnicity, Hispanic youth (78.9%) had the most sustained petitions, followed by White (12.2%), Other/Unknown (3.7%), Black (3.4%) and Asian/Pacific Islander (1.8%) youth in 2018.
- Across genders, the vast majority of sustained petitions were for juvenile males (82.4%), with juvenile females accounting for 17.6% of sustained petitions in 2018.

¹ Juvenile Court and Probation Statistical System.
Juvenile Sustained Petitions, Rate per 100,000 Youth 10 to 17 Years Old, Orange County, 2013 to 2018

Source: Orange County Probation, Research Division

Percent of Total Juvenile Sustained Petitions, Youth 10 to 17 Years Old, 2018

By Race/Ethnicity
- Hispanic
- White
- Other/Unknown
- Black
- Asian/Pacific Islander

By Years of Age
- 15 to 17
- 12 to 14
- 10 to 11

Juvenile Sustained Petitions, Rate per 100,000 Youth, 10 to 17 years old, by City, 2018

Source: Orange County Probation, Research Division

Rate of Sustained Petitions
- 339.0 - 829.0
- 194.0 - 338.0
- 82.0 - 193.0
- 0.0 - 81.0
- Unincorporated
- No data available

Source: U.S. Census Bureau, American Community Survey, 5-Year Population Estimates
GANG ACTIVITY AMONG YOUTH

NUMBER OF GANG-RELATED PROSECUTIONS SIGNIFICANTLY LOWER THAN 10 YEARS AGO.

DESCRIPTION OF INDICATOR

This indicator reports the number and rate of gang-related prosecutions of juveniles under the age of 18. Gang-related prosecutions involve charges related to active gang membership or committing a crime at the direction of a criminal street gang, with other gang members and/or for the benefit of a gang.

Why is this indicator important?

Data consistently shows that gang members are responsible for a disproportionately high number of crimes committed by youthful offenders. Compared to other delinquent youth, gang members are more extensively involved in serious and violent criminal behavior. Juvenile gang members commit serious and violent offenses at a rate several times higher than non-gang adolescents. Gang crime often involves offenses such as weapons possession, drug trafficking, carjacking, assault and murder. According to the 2015 National Gang Report, neighborhood street gangs continue to be a significant threat to local jurisdictions across the country. From a societal standpoint, the issue of juvenile gangs is one that requires swift action for both the well-being and safety of communities and the youth who get caught up in gang life. The Orange County District Attorney’s Office seeks to reduce juvenile gang crime both by prosecuting those crimes and collaborating with other agencies to prevent juveniles from joining gangs via the Orange County Gang Reduction and Intervention Partnership (OC GRIP). OC GRIP focuses its work on reducing truancy and providing gang prevention and resiliency building curricula. As a result of OC GRIP, 81% of students receiving its curricula decreased truancy and about 60% of students reported increased well-being and resiliency in 2018-19. 62% of parents who had children receiving services reported an increase in family functioning.

Findings

- In 2019, 4.7% of juvenile prosecutions were gang-related, down 65.4% from 13.6% in 2010 but up from 2018 (4.1%).
- Between 2010 and 2019, the total number of juvenile gang-related prosecutions in Orange County decreased 84.5%, from 786 in 2010 to 122 in 2019.
- The rate of juvenile gang-related prosecutions declined 81% from 113.4 per 100,000 youth aged 10 to 17 in 2010 to 28.7 per 100,000 in 2019.
- Also, the number of unique juveniles prosecuted for gang-related offenses in Orange County dropped 80.4% from 491 in 2010 to 96 in 2019.
- Older teens accounted for the majority of gang-related prosecutions, with teens ages 15-17 comprising 91.7% of the total number of juveniles who were prosecuted for gang-related offenses.
- In 2019, Hispanic youth represented the highest percentage of juvenile gang-related prosecutions (93.8%), followed by Black (2.1%), Other/Unspecified (2.1%), White (1.0%) and Asian (1%).
- The communities most impacted by juvenile gang-related prosecutions in 2019 were Santa Ana (29.2%) and Anaheim (20.2%), as 50% of the juvenile gang-related filings originated in these cities.

1 Prior Conditions of Children reports tracked the number of gang members countywide, using data from local law enforcement agencies. This data became unavailable in 2017. Therefore, youth gang activity is reported using data from the Orange County District Attorney’s office (OCDA). 2 Gang-related prosecutions are defined as those prosecutions that involve charges of Penal Code § 186.22(a) which prohibits active gang membership and/or Penal Code § 186.22(b) which prohibits committing a crime at the direction of a criminal street gang. 3 National Gang Intelligence Center, “National Gang Report.” 2015, page 12. 4 National Gang Intelligence Center, “National Gang Report.” 2015, page 9. 5 Prosecutorial data was sourced from OCDA records.
### Number of Juvenile Gang-Related Prosecutions and Number of Unique Juveniles Prosecuted for Gang-Related Offenses 10 to 17 Years Old, 2010 to 2019

- **Number of Gang-Related Prosecutions**
- **Number of Unduplicated Juveniles Prosecuted**

**Source:** Orange County District Attorney’s Office

### Number of Unique Juveniles with Gang-Related Prosecutions and Rate Per 100,000 Youth 10 to 17 Years Old with Gang-Related Prosecutions, by Age, 2010 to 2019

- **10-14 Years**
- **15-17 Years**
- **Rate per 100,000 10-17 Years**

**Note:** Rate is calculated using two data sources. The Orange County District Attorney’s Office provided gang-related prosecution data. The U.S. Census provided data for the total 10-17 year-old population in 2018.

**Source:** Orange County District Attorney’s Office

**Source:** U.S. Census Bureau, American Community Survey 1-Year Estimates, Table S0101

### Percent of Unique Juveniles with Gang-Related Prosecutions, by Race/Ethnicity, 10 to 17 Years Old 2010 and 2019

- **Hispanic**
- **Vietnamese**
- **White**
- **Other/Unknown**
- **Asian**
- **Black**

**Note:** 0% of juveniles with gang-related prosecutions identified as Vietnamese in 2019.

**Source:** Orange County District Attorney’s Office
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<thead>
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<th>Topic</th>
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<tbody>
<tr>
<td><strong>Number and Percent of Placement Type, April 2011 to April 2020</strong></td>
<td>180</td>
</tr>
<tr>
<td><strong>Number of Gang Related Prosecutions, by Crime Type, 2010 to 2019</strong></td>
<td>186</td>
</tr>
<tr>
<td><strong>Juvenile Sustained Petitions Youth 10 to 17 Years Old, by Sex, 2018</strong></td>
<td>197</td>
</tr>
<tr>
<td><strong>Juvenile Sustained Petitions Youth 10 to 17 Years Old, by Race, 2018</strong></td>
<td>197</td>
</tr>
<tr>
<td><strong>Gang Related Prosecutions by Crime Type, 2010 to 2019</strong></td>
<td>198</td>
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<tr>
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CONTRIBUTORS TO THE REPORT

Orange County District Attorney
Debra J. Baetz, MBA
Anne Bloxom, LCSW
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Patrice Rogers
Department of Motor Vehicles
Steven Villafranca, MA
Department of Motor Vehicles
Gurwinder K. Rakkar
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Children’s Home Society of California
Patrice Rogers
Department of Motor Vehicles
Steven Villafranca, MA
Department of Motor Vehicles
Gurwinder K. Rakkar
California Highway Patrol
Support Services Section
Michelle Ramos
California State University Fullerton
Patrick Ruppe, MA
Regional Center of Orange County
Leanne Wheeler
California Department of Education

SPONSORED BY:

Orange County Board of Supervisors
Andrew Do, First District
Michelle Steel, Second District
Donald P. Wagner, Third District
Doug Chaffee, Fourth District
Lisa A. Bartlett, Fifth District

Orange County Social Services Agency

First 5 Orange County
Lisa Burke, MS
Kimberly Goll, MURP

Orange County Probation Department
Naomi Nguyen
Bryan Prieto
Lisa Sato

California Department of Education
To: Clerk of the Board

From: Supervisor Lisa Bartlett, 5th District

Subject: Appointment to Orange County Mental Health Board

October 22, 2020

Please add the following item to the supplemental calendar for the November 3, 2020 Board meeting agenda. The title of the item should read:

Supervisor Bartlett:
Orange County Mental Health Board – Appoint Denis James Taylor, San Juan Capistrano, as Public Interest/Mental Health for Term of Office ending 12/11/22.

[Signature]
Supervisor Lisa Bartlett
APPLICATION FOR COUNTY OF ORANGE BOARD, COMMISSION OR COMMITTEE

Return to:
Clerk of the Board of Supervisors
333 West Santa Ana Blvd., Suite 465
Santa Ana, California 92701
Website: www.ocgov.com/gov/cob/

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP (SEE LIST AT HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT):

BHAB/MHB

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: ☐ First ☐ Second ☐ Third ☐ Fourth ☐ Fifth

APPLICANT NAME AND RESIDENCE ADDRESS:

Denis James Taylor

First Name Middle Name Last Name

Street Address City State Zip

Home Phone Number Cell Phone Number

Email Address

CURRENT EMPLOYER: Harmonic Energetic Technologies

OCCUPATION/JOB TITLE: Software Designer

BUSINESS ADDRESS:

BUSINESS PHONE NUMBER:

EMPLOYMENT HISTORY: Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

ARE YOU A CITIZEN OF THE UNITED STATES: ☐ YES ☐ NO

IF NO, NAME OF COUNTRY OF CITIZENSHIP: Canada

ARE YOU A REGISTERED VOTER? ☐ YES ☐ NO

IF YES, NAME COUNTY YOU ARE REGISTERED IN:
LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

<table>
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<th>ORGANIZATION/SOCIETY</th>
<th>FROM (MO./YR.)</th>
<th>TO (MO./YR.)</th>
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<td>AFSP - Orange County</td>
<td>10/2014</td>
<td>Date</td>
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<tr>
<td>SJC Fiesta Association</td>
<td>1/2015</td>
<td>Date</td>
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<tr>
<td>Laguna Niguel Holiday Parade</td>
<td>1/2016</td>
<td>Date</td>
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</table>

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)? □YES □NO

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST? □YES □NO

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETentions THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICiALLY DISMISSED, ExpUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFiERAL TO AND Participation IN ANY PRETRIAL OR POSTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)? □YES □NO

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

________________________

________________________

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

I have been active for 6 years in Suicide Prevention in OC

as an advocate, spokesperson and group facilitator.

DATE: 10/16/2020

APPLICANTS SIGNATURE: [Signature]

[Box for Clerk of the Board of Supervisors use only – Do not write below this line]

Date Received: ___________________________ Received by: ___________________________

Date referred: ___________________________

To: □ BOS District 1 □ BCS District 2 □ BOS District 3 □ BOS District 4 □ BOS District 5

□ All BOS □ BCC Contact Person Name

Revised Date 02/07/19
Volunteer Resume
Jim Taylor

I have been active in my communities for almost 30 years as a volunteer and advocate. This document serves to detail what I consider to be the highlights of my service. None of these positions are paid. In addition, I have participated free of charge in fundraisers as a comedian, DJ, MC and/or auctioneer for many organizations from CHOC, CHP, LA City and County Fire, Huntington Beach Fire, Women’s Shelters, Homeless Shelters, and numerous others, Pre-COVID. I have no difficulty speaking in front of thousands of people and embrace my position as a passionate layman in world of experts.

In my professional life I am a software designer/programmer and a professional comedian.

1991-1992 – Board Member – Samadana
- Samadana was formed to provide a safe environment for sexually abused disabled children with normal or higher than normal intelligence. At the time, placement for these children in protective facilities or foster care was exceedingly difficult.
- I was approached by Dr. Jim Colbert to serve on the board of directors. At the time I was a comedy radio host (KORG-AM 1190) and produced a comedy fundraiser for his organization.
- The Board consisted of physicians, administrators, and clinicians. My position was a public voice and a layman.
- I left in 1992 once the first home was opened and we began to receive children.

1995-2005 – Parents Without Partners Chapter #306
- I joined this organization in 1995 as a single parent and was soon invited to join the board as Director of Parent Education.
- My role was to organize educational events related to single parenting in the form of discussions, panel speakers and forums.
- I was elected President in 1998 and was annually re-elected for another 6 years.
- I left the organization after becoming engaged to my wife.

2014-2019 – American Foundation for Suicide Prevention – Orange County
- I served as the MC for the 2014 Out of the Darkness Walk to prevent suicide.
- I was invited to join the Board in 2014 and appointed Chairman, serving 5 years.
- My primary role was administration, but I also hosted many events.
- I interfaced with the National organization, attended suicide prevention trainings, and spoke to many groups regarding suicide prevention.
- I have worked with NAMI OC, Didi Hirsch and OC Links on suicide prevention efforts in Orange County.
- I co-hosted International Survivors of Suicide Loss Day events with Saddleback Church.
- My objectives were to help reduce the stigma associated with suicide and encourage open and frank discussions. I was able to secure exhibitor space for our booth at events where a mental health organization was not expected, and the results were heartening. We were invited into concerts in the park, gun shows and festivals.
- We participated in parades and have a booth at the annual Swallows Day Parade and Mercado.
- I am a staunch advocate for suicide prevention.

2015 to date – San Juan Capistrano Fiesta Association

- Fiesta is tasked with producing and funding the annual Swallows Day Parade and Mercado Street Faire, as well as all the related events.
- I had been announcing the parade for years and was approached to join Fiesta and accept a Board position.
- I served in many positions before being elected President in the spring of 2017 and still serve in this position.
- The organization has expanded its role in the community especially during the COVID crisis. We partnered with other nonprofits and operated 32 free prepared food events serving as many as 5,000 people per day. We also participated in 7 free grocery distributions and dispensed over 245 tons of free groceries. Fiesta also assists the City of San Juan Capistrano with volunteers for their events whenever asked.
- In the early days of the shutdown, Fiesta purchased thousands of masks and distributed them free of charge throughout the community, including nursing homes and hospital nurses.

2015 to date – Laguna Niguel Holiday Parade Committee

- This committee is tasked with producing the annual Laguna Niguel Holiday Parade.
- I had also been announcing for this parade for years and I asked to join the committee to coordinate announcers and scripts.
- Was appointed Chairman in 2018 and still serve in this position.
MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Vice Chairman Andrew Do

Date: 10/22/2020

RE: Add Supplemental Item on the calendar for 11/3/2020 Agenda – Add to the Master Event Calendar the Orange County Civic Center Japanese Garden and Tea House Anniversary in the month of November

Please add the following supplemental item for the calendar for the 11/3/20 Board of Supervisors meeting:

- Add to the Master Event Calendar the Orange County Civic Center Japanese Garden and Tea House Anniversary in the month of November, findings per Government Code Section 26227.

Thank you.

cc: Valerie Sanchez, Chief Deputy Clerk of the Board
October 29, 2020

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 3, 2020, Board Hearing.

Agency: John Wayne Airport  
Subject: Approve John Wayne Airport Airline Agreements  
Districts: 2

Reason for supplemental: This Supplemental ASR needs to be heard at the November 3, 2020, Board meeting so that approval of the Certificated Passenger Airline Leases, Airline Licenses and Cargo Leases will allow the various Commercial Airlines and Cargo Carriers to continue operations at John Wayne Airport after the current lease expiration of December 31, 2020. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

Michelle Steel, Chairwoman of the Board of Supervisors

cc: Board of Supervisors  
    County Executive Office  
    County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/3/2020
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport
DEPARTMENT HEAD REVIEW: Barry A. Rondinella (949) 252-5183
DEPARTMENT CONTACT PERSON(S): Dave Pfeiffer (949) 252-5291

SUBJECT: Approve John Wayne Airport Airline Agreements

CEO CONCUR

COUNTY COUNSEL REVIEW
Approved as to Form

CLERK OF THE BOARD
Discussion
4/5 Vote

Budgeted: Yes
Current Year Cost: N/A
Annual Cost: N/A

Staffing Impact: N/A
# of Positions: N/A
Sole Source: N/A

Current Fiscal Year Revenue: $24,867,872
Funding Source: Airport Operating Fund 280:100%
County Audit in last 3 years: No

Prior Board Action: 12/13/2016 #39

RECOMMENDED ACTION(S)

1. Find that Final Environmental Impact Report No. 617, previously certified by the Board of Supervisors on September 30, 2014, reflects the independent judgment of the County of Orange and satisfies the requirements of the California Environmental Quality Act for the approval of the Certificated Passenger Airline Leases, Commuter Airline Operating License and Cargo Leases, which are necessarily included elements contemplated as part of the whole of the action.

   a. The circumstances of the project are substantially the same as described in Environmental Impact Report No. 617, which adequately addressed the effects of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred with respect to the circumstances under which the project is being undertaken and no new information of substantial importance to the project that was not known or could not have been known when the previous Environmental Impact Report No. 617 was certified, has become known and no further environmental review is required.
b. Environmental Impact Report No. 617 is adequate to satisfy the requirements of California Environmental Quality Act for the approval of the Certificated Passenger Airline Leases, Commuter Airline Operating License and Cargo Leases.

c. All mitigation measures are fully enforceable pursuant to California Environmental Quality Act (Public Resources Code Section 21081.6(b)) and have either been adopted as conditions, incorporated as part of the project design or included in the procedures of project implementation.


3. Authorize the Airport Director or designee to make minor modifications and amendments to the leases and licenses that do not materially alter the terms or financial obligations to the County and perform all activities specified under the terms of the agreements.

SUMMARY:

Approval of the Certificated Passenger Airline Leases, Airline Licenses and Cargo Leases will allow the various Commercial Airlines and Cargo Carriers to continue operations at John Wayne Airport.

BACKGROUND INFORMATION:

On December 13, 2016, the Board of Supervisors (Board) approved the Certificated Passenger Airline Leases, Certificated Passenger Airline Operating License, Cargo Leases and Commuter Airline Operating License (collectively, Agreements). The current Agreements with the various Commercial Airlines and Cargo Carriers will expire on December 31, 2020.

John Wayne Airport (JWA) seeks Board approval of new Agreements for a term of five years, expiring on December 31, 2025.

The Agreements include new provisions such as Article VI regarding Information Technology and Common Use Equipment relating to the County’s certification of information systems and technological applications for such equipment as self-service kiosks and baggage handling systems, and updates to Article VII regarding Environmental Compliance. The Agreements also include a new provision regarding the marketing fund fee requirement for JWA to conduct sales promotions and advertising for tenants, updated civil rights and nondiscrimination language, language requiring boarding assistance for passengers with mobility impairment, compliance with the Americans with Disabilities Act and a provision regarding airline assistance to JWA in the event of an emergency.

Compliance with CEQA: This project is a necessarily included element of the project considered in Final EIR No. 617, certified by the Board of Supervisors on September 30, 2014, which adequately addressed the effects of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken, and no new information of substantial importance to the project that was not known or could not have been known when the Final EIR No. 617 was certified has become known; therefore no further environmental review is required.
FINANCIAL IMPACT:

Revenues for these Agreements are included in the FY 2020-21 Budget for Airport Operating Fund 280 and will be included in the budgeting process for future years. The projected revenues are calculated based on the airline rates and charges allocation.

Annual Lease Projected Revenues:
FY 2020-21 $24,867,872
FY 2021-22 $52,513,131
FY 2022-23 $63,661,036
FY 2023-24 $67,816,164
FY 2024-25 $67,828,325
FY 2025-26 $33,912,683

The Agreements contain a Termination for Convenience clause that states that the Agreements may be terminated for convenience by either party for any reason and without cause upon 90 days written notice.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Alaska Airlines, Inc. Lease (PM 1121-0300-0080)
Attachment B - American Airlines, Inc. Lease (PM 1121-0300-0081)
Attachment C - Delta Air Lines Lease (PM 1121-0300-0082)
Attachment D - Frontier Airlines, Inc. Lease (PM 1121-0300-0083)
Attachment E - Southwest Airlines Co. Lease (PM 1121-0300-0084)
Attachment F - United Airlines, Inc. Lease (PM 1121-0300-0085)
Attachment G – WestJet, an Alberta Partnership Lease (PM 1121-0300-0086)
Attachment H – Federal Express Corporation Lease (PM 1121-0330-0029)
Attachment I – United Parcel Service Co. Lease (PM 1121-0330-0030)
Attachment J – SkyWest Airlines, Inc. Commercial License (PM 1121-0300-0088)
Attachment K – SkyWest Airlines, Inc. Commuter License (PM 1121-0310-0028)
Attachment L – Horizon Air Industries, Inc. Commercial License (PM 1121-0300-0089)
CERTIFICATED PASSENGER AIRLINE LEASE

Dated ______________

Between

County of Orange

and

Alaska Airlines, Inc.
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EXHIBIT D  MAP – COMMON USE AREAS

EXHIBIT E  AIRLINE MAINTENANCE OBLIGATIONS
THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this ___
day of __________, 2021, by and between the COUNTY OF ORANGE, a political subdivision
of the State of California ("the COUNTY"), and ALASKA AIRLINES, INC. ("the AIRLINE").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor
of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of
California, and operates and maintains the Airport as a governmental function for the primary
purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of
persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise
authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises,
facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the
residents who live under the Airport's approach and departure corridors, the COUNTY has
developed one of the most stringent access and noise abatement programs in the country. The
Airport monitors all aircraft operations, both commercial and private, for compliance with the
program. These noise abatement and access restrictions derive from the 1985 Settlement
Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented
through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-
1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and
Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties,
to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to
implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE
AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy
decisions of the Board of Supervisors regarding the appropriate point of balance between the
competing interests of the air transportation and aviation community and local residents living in
the vicinity of the Airport. These policy decisions address, among other issues, nighttime
operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the AIRLINE mutually desire to enter into a LEASE in
order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the
Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and
WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the JWA – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving JWA.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving JWA.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07  AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08  APRON AREA

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09  AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10  BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’s governing body.

SECTION 1.11  CBP


SECTION 1.12  CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13  COMMON USE AREA

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

SECTION 1.14  COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15  CUPPS

"CUPPS" shall mean the Airport's Common Use Passenger Processing System.

SECTION 1.16  CUSS

"CUSS" shall mean Common Use Self Service.
SECTION 1.17  EMV

"EMV" shall mean Europay, Mastercard, or Visa.

SECTION 1.18  DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.19  ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20 EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.21 FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT OF 1958, or such successor agency as may have similar jurisdiction over the AIRLINE or its business, and the Airport.

SECTION 1.22 GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.23 HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.24 IAF

"IAF" shall mean the International Arrival Facility and include the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.25 NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant
Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.26 PFC

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

SECTION 1.27 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);

b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);

c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;

d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);

e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;

f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;

g. Materials which contain base/neutral or acid extractable organic compounds;

h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;

i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and

j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28 RON

"RON" shall mean the remain overnight positions where the AIRLINE's aircraft are required to park when they "remain overnight" at JWA.
SECTION 1.29 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.30 TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at JWA, as may be modified at any time during the term of this LEASE.

SECTION 1.31 TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02 HOLDING OVER

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03 TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01 LEASED PREMISES

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."

Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:
A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 9.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area."

B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:

1. Baggage Claim and Baggage Make-up Areas;
2. Hold-rooms (departure lounges);
3. Airside Concourses;
4. Landside Concourses;
5. Baggage and Passenger Screening Areas;

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

**SECTION 3.02 NATURE OF AIRLINE'S ESTATE**

The AIRLINE acknowledges and agrees:

A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.
SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director and/or designee prior to installation.

ARTICLE IV - RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The AIRLINE shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1) **Exclusive Use Areas**

(a) **Terminal Building.** Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

   Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, and operations/ramp office.

   For the purpose of calculating terminal building rent, the AIRLINE's Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b) **Terminal Apron.** Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contain the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c) **Airport Tenant Improvement Amortization Schedule.** The AIRLINE shall reimburse the COUNTY for tenant improvement by the COUNTY based on the amortization schedule established by the Airport Director.
(2) Common Use Areas

(a) **Arrival Level.** The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.

(b) **Departure Level.** The COUNTY shall establish fees for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

(c) **IAF.** Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carriers operating international flights according to the carrier’s ratio of international deplaned passengers and the schedule established by the COUNTY.
(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

(1) The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

(2) In the event AIRLINE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by AIRLINE customers and AIRLINE shall indemnify the COUNTY pursuant to Section 13.02 of this LEASE for such transactions.

(3) **Additional Fees**

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the cost to
be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges, and may require the AIRLINE to submit future monthly report electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that allows AIRLINE to efficiently report of information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE’s use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

C. Based upon prior written agreement between the AIRLINE and the COUNTY, the AIRLINE may pay for facilities repairs or modifications that would normally be the responsibility of the COUNTY. Costs for such repairs or modifications shall be deducted from the AIRLINE rent by the COUNTY upon submittal to the COUNTY of invoices, receipts, statements, or other documentation acceptable to the COUNTY for said repairs or modifications. All invoices, receipts, statements or other documentation shall include a detailed description of the nature of the work performed and the associated costs. Upon completion of all repairs or modifications, the AIRLINE shall submit to the COUNTY a written request for rent credit and all documentation for the repairs or modifications.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01, 4.08 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the AIRLINE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY’s right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to AIRLINE plus a twenty-five dollar ($25.00) processing fee.

C. **Penalty for NSF Check** In the event a check submitted by AIRLINE is returned for non-sufficient funds (“NSF”), the AIRLINE agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. AIRLINE may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

**SECTION 4.04 PASSENGER FACILITY CHARGE**

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article XI hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 4.03 of this LEASE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.
SECTION 4.05    PROVISION AGAINST SET-OFFS

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.06    SECURITY DEPOSIT

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder. PFCs shall be excluded from the rents, fees and charges used to determine the AIRLINE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE's full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE’s performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of...
expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article XI of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

SECTION 4.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned to the new entrant AIRLINE after six (6) months of continuous operation.

SECTION 4.08 MARKETING FUND FEE

The COUNTY has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, AIRLINE shall be required to make an annual marketing fund payment in the amount of ten thousand dollars ($10,000.00). AIRLINE agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants’ promotions and directly related expenses. In the event any year of this LEASE contains less than 12 months, AIRLINE shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commenced on November 1, AIRLINE would pay the monthly pro-rata portion ($833.33 per month) of the annual marketing fund amount for November and...
December (totaling $1,666.66). Then, commencing on January 1, AIRLINE would make the full annual marketing fund payment of $10,000.00. Should the LEASE expire on September 15, AIRLINE would pay a pro-rata portion of the annual amount for the months of January through September.

ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01 USE

The AIRLINE's use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 9.01 in this LEASE, this operation is subject to the following authorized uses:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.

F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the AIRLINE's employees at the Airport and in-flight catering services in support of the AIRLINE's air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
I. Handling of other airlines' operations and ticketing pursuant to Section 9.01 in this LEASE.

J. Employee training incidental to the other uses permitted under this Section.

K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.

L. Other uses as authorized by the Airport Director.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and AIRLINE’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the AIRLINE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the AIRLINE.

The AIRLINE’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE’s use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The AIRLINE agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the term of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.

C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this
Section shall prevent the AIRLINE from making any argument or asserting any position to
the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or
modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article XI in this LEASE are subject to the terms,
provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The AIRLINE agrees to abide by the following operational conditions and requirements:

A. Flight Operations and Reallocations. The number of allocated ADDs, including
"regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number
of departures authorized and allocated to the AIRLINE under the Access Plan. In addition
to any and all remedies available to the COUNTY under this LEASE and all provisions of
the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted
to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate
at JWA unless it conducts its operations with ADDs, allocated seat capacity or other
Authorized Departures directly and formally allocated to the AIRLINE by action of the
Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have
been certified for operation at the Airport consistent with Access Plan requirements;
and, the AIRLINE has met all other applicable COUNTY requirements.

B. Hours of Operation. Except as expressly authorized, the AIRLINE's aircraft shall not
depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on
Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m.
(8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown
are Pacific Time.

The AIRLINE acknowledges that the COUNTY may, by regulation, permit some
operations by general aviation (nonscheduled, noncommercial) users of the Airport during
the nighttime hours with certain specific aircraft types that have noise characteristics
similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that
term is defined in the Access Plan. The AIRLINE does now, or may during the term of
this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that
the limitations on hours of operations contained in this Section shall be applicable to all of
its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to
distinguish between general aviation operations and regularly scheduled operations by
Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction
does not constitute unlawful or unjustly discriminatory action by the COUNTY in its
operation and management of the Airport. The COUNTY agrees that this provision is, and
during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** AIRLINE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by AIRLINE. AIRPORT will make reasonable efforts to develop a gate management software that allows for efficient uploading and maintaining of current daily arrival and departure information by AIRLINE.

E. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or Common Use Area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE's activity for the month.
The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., Pacific Time) of the following day.

C. **Audits.** All the AIRLINE's records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or

2. The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A above. The adequacy of records shall be determined at the sole discretion of the COUNTY's Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE's use of the Leased Premises.
D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY’s option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.

2. Require that the AIRLINE pay rents and fees based on the COUNTY's best good faith estimate of the AIRLINE's activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY's employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits, and the COUNTY's overhead; or, at the Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.

**SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES AND EXCLUSIVE USE AREAS**

The AIRLINE agrees to maintain Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Exclusive Use Areas and improvements in good condition. All repairs and improvements made by the AIRLINE to the Exclusive Use Areas shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Exclusive Use Areas. Any additions, alterations, repairs and changes of use or occupancy in the Exclusive Use Areas shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed. Maintenance obligations of the AIRLINE are shown on Exhibit E, which exhibit is attached hereto and by reference made a part hereof.
The AIRLINE shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The AIRLINE further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE's Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering AIRLINE’s leased premises.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.
SECTION 5.08  APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE’s gate loading positions.

The AIRLINE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. AIRLINE shall promptly remove all oil and grease spillage attributable to the AIRLINE’s aircraft or equipment.

If the AIRLINE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 5.09  ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 5.10  VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used
upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 5.11 AIRCRAFT PARKING

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 3.01 in this LEASE.

If in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The AIRLINE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE VI - INFORMATION TECHNOLOGY AND COMMON USE EQUIPMENT

SECTION 6.01 COMMON USE EQUIPMENT

The COUNTY agrees to supply and maintain all equipment for the CUPPS/CUSS, which shall be situated in areas such as, but not limited to ticket counters, ticket lobbies, skycap, and gate podiums. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably as possible to technical difficulties with the equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s service desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with CUPPS. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport including but not limited to gate assignment, scheduling and implementation of any software updates.

SECTION 6.02 COMMON USE EQUIPMENT STOCK

The AIRLINE may be asked to supply its own ticket (kiosk) stock in the use of the CUPPS at Common Use Space positions from time to time as it pertains to Radio Frequency Identification (RFID) or specialty stock not provided by the COUNTY. In the event that multiple airlines share kiosk space, all airlines will be required to remove their own stock and allow the other airlines to use the COUNTY supplied stock, as further outlined herein. When utilizing the COUNTY Common Use Space, the AIRLINE may use either its own stock or the COUNTY’s common stock. If the AIRLINE elects to use its own stock, it shall be responsible to remove all stock from the COUNTY’s equipment at the end of the usage period. AIRLINE stock shall be subject to approval by the COUNTY. In the event that the COUNTY deems the AIRLINE stock to be injurious to CUPPS, the AIRLINE will immediately cease usage of the offending stock upon such notice by the COUNTY.
SECTION 6.03 RADIO FREQUENCY IDENTIFICATION BAG TAG STOCK

The COUNTY will not supply RFID bag tag stock for use in as part of the Baggage Handling System unless RFID becomes standard common use stock at all locations within the airport. AIRLINE shall be required to meet the IATA / ATA standards for the twenty-one inch (21") bag tag (or as the standard may be amended by IATA / ATA), prior to the start-up of operations at the Airport. In the event that RFID is deployed airport wide, the AIRLINE shall provide to the COUNTY the necessary Baggage Service Messages (BSMs) that will be required to facilitate the AIRLINE's baggage through the Baggage Handling System that utilizes RFID technology to track and route baggage to the appropriate baggage carousel. The COUNTY makes no express warranty as to the operability of the technology and/or baggage handling system equipment and the sole extent of liability of the COUNTY with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably possible to technical difficulties with the BHS equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with the RFID, BHS, and BSMs systems. The AIRLINE will not be allowed to use its own bag tag stock, unless specifically permitted to do so in writing by the COUNTY, which must at the time meet any and all standards that may be set forth by the COUNTY for such stock. The COUNTY reserves the right to sell and collect applicable advertising revenues that may be generated from the reverse side of any the COUNTY-supplied bag tag stock.

SECTION 6.04 COMMON USE SELF-SERVICE KIOSK (CUSS) EQUIPMENT

The AIRLINE will not install, deploy, or otherwise engage in the use of any proprietary self-service check-in kiosks and/or device, applications, and/or technologies on its Leased Premises, any portion of the Airport with the expectation to screen any checked bags at the Airport without prior approval from the Airport Director. At the request of the Airport Director, the AIRLINE will work with the COUNTY and other related parties in the development of a Common Use Self Service (CUSS) compliant kiosk application, or other similar applications, and/or devices as may be required to have the AIRLINE operational on all CUSS kiosks at the Airport. The COUNTY reserves the right to establish the locations for implementation of such CUSS kiosks to meet the needs of its customers and the Air Transportation Companies, as well as the operational needs of the Airport. The COUNTY agrees to supply and maintain, with its personnel and at its expense, all common-use self-service kiosk equipment, which shall be situated at designated ticket counters, at various areas of the terminal lobby and customer service areas, and other such locations, and using such passenger processing models as determined by the Airport Director to be most beneficial to meet the operational needs of the Airport. The COUNTY will supply all of the boarding pass stock necessary for the use of the CUSS equipment. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as
expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE’s vendor issues relating to the AIRLINE’s applications that run in conjunction with the CUSS systems. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport.

SECTION 6.05 NO MODIFICATIONS TO COUNTY’S EQUIPMENT

The AIRLINE shall not install at any gate holdroom, gate counter, skycap, ticket counter, or kiosk, any AIRLINE owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment without the prior express written permission of Airport Director. The AIRLINE shall not make any modification to the COUNTY’s Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by the AIRLINE shall be remedied by the AIRLINE, to the sole satisfaction of the COUNTY, at the sole cost of the AIRLINE. In the event that the damage is repaired by the COUNTY, the AIRLINE will reimburse the COUNTY for both the fully-allocated cost of time and materials pertaining to the repairs plus twenty percent (20%) administrative fees.

SECTION 6.06 NETWORK USAGE

The AIRLINE will not install any proprietary cabling and/or similar infrastructure at the Airport without prior written approval of the COUNTY. As such, AIRLINE shall make use of the COUNTY’s data communications backbone at the Airport for its communications needs to connect separate operating locations within the Airport campus, (i.e. ticketing, baggage service, operations, maintenance, etc.). The AIRLINE shall be fully integrated into the COUNTY’s infrastructure backbone prior to startup of operations and thereafter shall be responsible to remove all proprietary cabling and/or other similar infrastructure, back to point of origin, at the AIRLINE’s sole cost. Where authorized, at the discretion of the Airport Director, any and all data communication cabling installed by the AIRLINE shall be in accordance with the COUNTY’s Airport Tenant Design Guidelines, and upon installation shall become the property of the COUNTY. Such improvements shall not be subject to any reimbursement or useful life clauses under Section 8.01 of this LEASE. The COUNTY may impose reasonable fees to AIRLINE for the use of such network, including but not limited to, any fees for unusual and/or excessive or non-standard usage, as reasonably determined by Director.

A. The AIRLINE will assign a representative(s), hereinafter "Authorized Network Representative," to work with the COUNTY to determine user access and network connectivity information. The AIRLINE shall be solely responsible for ensuring that Authorized Network Representatives are not security risks, and upon the COUNTY’s request, provide the COUNTY with any information reasonably necessary for the
COUNTY to evaluate any security event or incident relating to any Authorized
Network Representative or use of the COUNTY’s network.

B. The AIRLINE shall be solely responsible for the selection, implementation, and
maintenance of security procedures and policies that are sufficient to ensure that (i)
the AIRLINE's use of the COUNTY's network is secure and is used only for
authorized purposes stated herein, and (ii) the AIRLINE's business information and data
are protected against improper access, use, loss, disclosure, alteration, or destruction. The
AIRLINE agrees that it will not abuse or misuse the Network Connection, or any of the
components thereof, or any of the capabilities provided thereby. Unless otherwise
explicitly provided herein, in no event shall the AIRLINE use the Network Connection as
its internet service provider.

(1) The AIRLINE shall notify the COUNTY's Information Systems as soon as
possible upon the discovery of any security breach or potential security breach that
may affect the AIRLINE or the COUNTY’s confidential information or the security
of the Network or any Network Connection.

(2) The AIRLINE shall ensure adequate security protection for the COUNTY from
any third-party connections established on the AIRLINE's network. Adequate
security protection means (i) protection to preserve confidentiality, integrity, and
availability of the Network and information of the COUNTY, and (ii) protection from malicious codes and/or unauthorized intrusions.

(3) The AIRLINE and the COUNTY shall be responsible for maintaining the
highest industry standards for security best practices on computing devices that
could affect the availability and health of the Network connection, the Network,
systems, applications or data of the AIRLINE and the COUNTY, respectively,
specifically including, but not limited to, use of up-to-date antivirus protection,
anti-SPAM, and establishment and use of a timely security patch management
process.

SECTION 6.07 WIRELESS APPLICATIONS AND SIMILAR TECHNOLOGIES

The AIRLINE acknowledges that the COUNTY provides wireless capabilities for the
AIRLINE’s operational use, in accordance with applicable Federal Communications Commission
(FCC) regulations, rulings, and/or guidelines. The AIRLINE agrees that it will not install, deploy,
or otherwise engage in the use of any transmitting wireless device, applications, and/or
technologies on its Exclusive Use Areas, any portion of the Airport or within the airport system
(regardless of any Exclusive Use, Preferential Use, Common Use, and/or Joint Use assignments)
without having first obtained the express written permission of the Airport Director. Such wireless
applications shall only be for the AIRLINE’s operational use. Use by any others or for the benefit
of any other parties is specifically prohibited. At the request of the Airport Director, the AIRLINE
will cease operation of a particular device due to interference with another transmitting
device that is deemed necessary for operational and/or life-safety purposes.
SECTION 6.08 IN-LINE BAGGAGE HANDLING SYSTEM OBLIGATIONS, DUTIES, AND RESPONSIBILITIES

A. The AIRLINE will have use of the In-Line Baggage Handling Systems (BHS) in a location as designated by the Director to meet the operational needs of the Airport. The AIRLINE will be responsible to verify that it has a certified CUTE, CUSS, and Baggage Service Messages (BSM) applications to operate the BHS, and RFID where applicable, prior to the start-up of service at the Airport. The AIRLINE will actively work with the COUNTY staff and the AIRLINE's system provider(s) to expedite all information systems and/or technologies work that may be required to ensure such applications are properly certified by the COUNTY and its system provider(s), if applicable. The COUNTY shall have the right to charge the AIRLINE for any expenses incurred by the COUNTY, including staffing to manage passenger lines and/or additional maintenance staff, if the AIRLINE fails to adhere to BHS system procedures and/or properly staff the baggage make-up areas to meet the demand and such failure results in an operational impact to the Airport and/or the BHS equipment.

B. Following the COUNTY's BHS training, provided by the COUNTY to the AIRLINE, the AIRLINE will be solely responsible for the proper operations, training, and supervision of its staff for its portion of the operational responsibilities of the BHS system. The AIRLINE shall ensure that it maintains staffing levels during all operational hours, including irregular operations, that are sufficient to retrieve baggage from the baggage make-up carrousels and/or piers in order to prevent the inefficient use of the in-line baggage handling system in a fully automated mode and to prevent the system from initiating a “die-back” situation, which may require the COUNTY to intercede manually and/or cause additional staffing by the COUNTY, its contractors, or TSA staff to initiate baggage screening mitigation procedures as a result of baggage stacking up on the make-up carrousels and/or piers. The AIRLINE shall not initiate any procedures or work rules that, as determined by the Director, will negatively impact the in-line BHS without the prior written approval of the COUNTY and without concurrence from TSA. The COUNTY reserves the right to recover any costs from the AIRLINE that may result from the AIRLINE’s failure to comply with this Section of the LEASE.

C. The AIRLINE will designate a representative as a Ground Security Coordinator (GSC) to handle issues that may arise from time to time with the BHS. The GSC will be the point of contact with the TSA and the COUNTY for all issues concerning checked passenger baggage and/or BHS performance. The GSC must be available during the AIRLINE’s operational hours.

D. The AIRLINE acknowledges that all oversized checked baggage must be delivered to a designated oversized area for screening.

E. The AIRLINE acknowledges it may have a more stringent screening requirement for checked passenger baggage than that of TSA. As such, the AIRLINE will be responsible to provide these additional screening services and associated staffing to meet such
requirements, including, but not limited to, X-Ray screening, and any additional training for additional services, and/or any additional services at no additional cost to the COUNTY. The AIRLINE must provide evidence of proper training for such additional measures to the Director upon request. The COUNTY may, at its sole discretion provide and maintain the X-Ray screening device.

F. The AIRLINE shall be responsible to order, pick-up and maintain an appropriate level of any and all consumables related to the Common Use Equipment and/or BHS, including, but not limited to, RFID embedded bag tag stock, boarding pass stock, toner cartridges for laser printers, or other similar items, in accordance with policies and procedures established by the COUNTY in the event AIRLINE uses propriety consumables.

ARTICLE VII - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 7.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The AIRLINE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The AIRLINE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the AIRLINE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The AIRLINE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws. Hazardous waste generated by the AIRLINE or its contractors shall be disposed properly and under the AIRLINE’s EPA ID number.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water...
drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport’s Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The AIRLINE shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Saf. Code § 25249 et seq. The AIRLINE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the AIRLINE.

SECTION 7.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

- a) Response team organization, members, and responsibilities;
- b) Spill response procedures (including notifications);
- c) Personnel training;
- d) Personal protective equipment; and
- e) Spill kit inventory and management

The AIRLINE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The AIRLINE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the AIRLINE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the AIRLINE shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines...
or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

SECTION 7.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the AIRLINE, the AIRLINE’s operations at the Airport or any action arising from and which involve the AIRLINE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

1. The AIRLINE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE’s release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.

2. The AIRLINE’s release of Hazardous Substances upon or within the Airport.

3. The AIRLINE’s violation of any applicable Environmental Law, except that the AIRLINE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.

4. The AIRLINE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 7.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 7.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 7.05 ENVIRONMENTAL STEWARDSHIP

A. All AIRLINE facilities and improvements shall meet the Airport’s Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the AIRLINE installs any new infrastructure, the AIRLINE is required to use the Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The AIRLINE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

(1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

(2) Climate Action Plan.

(3) Waste Management Plan.

(4) Storm Water Pollution Prevention Plan.
C. The AIRLINE shall implement the following conservation measures and policies:

(1) Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

(2) Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.

(3) Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

(4) Install energy-efficient heating and cooling equipment when replacing or upgrading.

(5) Use energy-efficient computers and servers when replacing this equipment.

(6) Select equipment with variable speed motors and fan drives, when possible.

(7) Utilize paperless ticket technology, when possible.

D. The AIRLINE shall implement and support the following environmental policies:

(1) Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The AIRLINE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

(2) The AIRLINE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

(3) The AIRLINE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the AIRLINE’s procurement of goods and services as applicable.

(4) The AIRLINE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.
(5) Upon request, the AIRLINE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 7.06 ANTI-IDLING POLICY

Within six months of LEASE execution, AIRLINE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. AIRLINE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the AIRLINE.

ARTICLE VIII – CONSTRUCTION AND IMPROVEMENTS

SECTION 8.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE's Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall make every reasonable effort to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE's operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE's unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 8.02 IMPROVEMENTS BY THE AIRLINE

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE’s expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred seventy five thousand
dollars ($175,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The AIRLINE's Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE's sole cost and expense. The AIRLINE
shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 8.03 AIRLINE REIMBURSEMENT

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE's Leased Premises from this LEASE or terminates the LEASE for convenience pursuant to Section 2.03, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

\[
\text{COMPENSATION} = A \times \frac{B}{C}
\]

A = The AIRLINE’s actual leasehold improvement construction costs submitted in accordance with Section 8.07 in this LEASE.

B = Number of full months remaining in Lease Term.

C = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with “As-Built Documents” and “Record Documents” as required by Section 8.07 of this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.
SECTION 8.04  EXCLUSIVE REMEDY

The compensation provided pursuant to Section 8.03 in this LEASE shall be the AIRLINE’s sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 et seq.), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 et seq.), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE’s rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

SECTION 8.05  AIRLINE’S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A.  Completion Bond issued to the COUNTY as obligee.

B.  Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.

C.  Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 8.06  MECHANICS LIENS OR STOP-NOTICES

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys’ fees and costs.
In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the AIRLINE shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two (2) optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 8.07 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents”, which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance
(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 8.08 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to
the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 8.09 HEALTH AND SAFETY

The AIRLINE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE IX - ACCOMMODATION

SECTION 9.01 JOINT USE REQUIREMENT

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the
availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE's Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE's reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE's Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airlines' operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE agrees that, in the event it subleases its Leased Premises to another airline, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE's actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two (2) times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE X - ASSIGNMENT AND SUBLEASE

SECTION 10.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. **Transfers.** The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30)
days prior written notice of all proposed Transfers. The AIRLINE shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the AIRLINE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 11.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The AIRLINE, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of the AIRLINE as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.
(7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

(8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY’s regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and/or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
(3) In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

(4) The AIRLINE fails to comply with Paragraph C, of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. Bankruptcy Transaction. If the AIRLINE assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. Non-Transferable Privileges. Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are
non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

SECTION 10.02 SUCCESSORS IN INTEREST

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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE XI - TERMINATION AND DEFAULT

SECTION 11.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.

SECTION 11.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder with prior written notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;

D. The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;

E. The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;

F. If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE’s business;
G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the AIRLINE shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 11.03 CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE'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 expiration.

SECTION 11.04 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 11.05 THE COUNTY'S RIGHT TO RE-ENTER

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the LEASE terms and shall not constitute an acceptance or surrender.
The AIRLINE 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

**ARTICLE XII - SECURITY**

**SECTION 12.01 AIRPORT SECURITY**

The AIRLINE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The AIRLINE is responsible for fines imposed by any regulatory agency as a result of the AIRLINE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The AIRLINE employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LEASE. The AIRLINE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed AIRLINE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The AIRLINE employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The AIRLINE employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The AIRLINE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. **Local Security.** The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE’s constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the AIRLINE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. **Federal Security.** As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated AIRLINE Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the AIRLINE shall pay the applicable fees. Upon successful completion of the background checks, the AIRLINE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated AIRLINE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The AIRLINE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The AIRLINE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The AIRLINE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The AIRLINE and all AIRLINE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. AIRLINE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must
immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of AIRLINE personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff’s Department – Airport Police Services by calling (949) 252-5000. The AIRLINE or AIRLINE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the AIRLINE’s employee’s or contractor’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of AIRLINE personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the AIRLINE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The AIRLINE’s security deposit may be applied to cover the cost of the fine.

ARTICLE XIII - INSURANCE AND INDEMNITY

SECTION 13.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE’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.

The AIRLINE agrees that the AIRLINE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.
If the AIRLINE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE 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 the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE’S employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the 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.

The AIRLINE may occupy the Airport Premises only upon providing to the COUNTY, the required insurance stated herein and maintain such insurance for the entire term of this LEASE. The COUNTY reserves the right to terminate this LEASE at any time the AIRLINE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. The AIRLINE shall pay the COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. The AIRLINE shall provide to the COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE; excluding General Aviation Liability. All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE 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 Airport Premises. Such proof of insurance must be maintained by the AIRLINE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of AIRLINE’s current audited financial report. If the AIRLINE’s SIR is approved, AIRLINE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from the AIRLINE’s, its agents, employee’s or
subcontractor’s performance of this Agreement, the AIRLINE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) The AIRLINE’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 the AIRLINE’s SIR provision shall be interpreted as though the AIRLINE was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td>(Including but not limited to General Liability, Passenger Legal Liability, Personal Injury, Contractual Liability, Premises, Products and Completed Operations, Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td>$250,000,000 aggregate</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims made or per occurrence</td>
</tr>
<tr>
<td>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.</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**

The Aviation General 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, agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’s insurance is primary and any insurance or self-insurance maintained by 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.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’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 policy 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 insurance policies required by this LEASE shall waive all rights of subrogation against 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 COUNTY’s financial interest when applicable.

If the AIRLINE’s Pollution Liability policy is a claims-made policy, the AIRLINE 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 (NOTICES) below or to an address provided by Airport Director. AIRLINE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require AIRLINE 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 the COUNTY of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE’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.

SECTION 13.02 INDEMNITY

The AIRLINE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the AIRLINE pursuant to this LEASE. If judgment is entered against the AIRLINE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the AIRLINE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIV - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 14.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. AIRLINE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If AIRLINE transfers its obligation to another, the transferee is obligated in the same manner as AIRLINE.

B. AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) AIRLINE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) AIRLINE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by AIRLINE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by AIRLINE of the AIRLINE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
AIRLINE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, AIRLINE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

In the event of the AIRLINE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the AIRLINE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

The AIRLINE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The AIRLINE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if AIRLINE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the AIRLINE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the AIRLINE may request the United States to enter into the litigation to protect the interests of the United States.

AIRLINE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, AIRLINE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) AIRLINE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. AIRLINE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. AIRLINE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

(prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 14.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

SECTION 14.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 14.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The AIRLINE agrees that the AIRLINE’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The AIRLINE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 14.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the AIRLINE in this LEASE, or any local authorities shall not apply to the AIRLINE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 14.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 14.07 RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 14.08 HEIGHT LIMITATION OF STRUCTURES

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 14.09 NONINTERFERENCE WITH AIRCRAFT

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

SECTION 14.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 14.11 AFFIRMATIVE ACTION REQUIREMENTS

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 14.12 AMERICANS WITH DISABILITIES ACT

The AIRLINE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the AIRLINE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the AIRLINE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The AIRLINE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The AIRLINE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the AIRLINE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The AIRLINE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the AIRLINE’s failure to comply with the ADA.
SECTION 14.13 BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the AIRLINE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The AIRLINE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the AIRLINE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The AIRLINE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the AIRLINE owns and operates additional ramps, the AIRLINE shall maintain those ramps in proper working condition. The AIRLINE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XV - MISCELLANEOUS PROVISIONS

SECTION 15.01 TIME

Time is of the essence in this LEASE.

SECTION 15.02 LEASE ORGANIZATION

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.

SECTION 15.03 AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 15.04 SIGNS

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. The AIRLINE shall submit for approval all new signage to be placed in the ticketing lobby including baggage sizers, and pylon signs. Illustrative drawings and design dimensions must accompany all requests for approval. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the AIRLINE.

The AIRLINE will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of temporary promotional signs for the AIRLINE shall be accompanied by illustrative drawings and design dimensions along with information about the
type of signs proposed, and proposed locations. All approved promotional signs shall be allowed to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage must be removed, or the AIRLINE may resubmit a request to COUNTY to extend past the ninety (90) days.

The AIRLINE shall keep all ticket counter space used by the AIRLINE and any associated ticket lifts and podiums free of all signs, advertising materials, credit card application dispensing units, posters and banners. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the AIRLINE’s expense; the COUNTY may dispose of items if they are not promptly claimed by the AIRLINE after notice from the COUNTY.

SECTION 15.05 PERMITS AND LICENSES

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

SECTION 15.06 RESERVED

SECTION 15.07 TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid promptly.

SECTION 15.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental or other charge required of the AIRLINE except as may be expressly provided elsewhere in this LEASE.
SECTION 15.09  PARTIAL INVALIDITY

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.

SECTION 15.10  WAIVER OF RIGHTS

The failure of the COUNTY or the AIRLINE 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 the COUNTY or the AIRLINE 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 15.11  RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE's operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the AIRLINE's use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

SECTION 15.12  AUTHORITY OF THE AIRLINE

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.
SECTION 15.13  PUBLIC RECORDS

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 15.14  RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 15.15  GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 15.16  ATTORNEYS’ FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 15.17  EMERGENCY SERVICES

Airport Director has the right to request that the AIRLINE’S employees aid in and use AIRLINE’S inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The AIRLINE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 15.18   NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:    COUNTY

John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO:    AIRLINE

Alaska Airlines, Inc.
19300 International Boulevard
Seattle, WA 98188

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
JOHN WAYNE AIRPORT
CERTIFICATED PASSENGER AIRLINE LEASE

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

ALASKA AIRLINES, INC.
By: ____________________________
By: ____________________________

APPROVED AS TO FORM:
County Counsel
By: ____________________________

APPROVED AS TO AUDIT AND ACCOUNTING:
Auditor-Controller
By: ____________________________

RECOMMENDED FOR APPROVAL:
John Wayne Airport
By: ____________________________
    Barry Rondinella
    Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

______________________________
Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California

COUNTY OF ORANGE
Chairwoman, Board of Supervisors
LEASED PREMISES

Parcel Numbers: PM 1121-300-80; 80.1; 80.2; 80.3

Project Name: John Wayne Airport

Second Party: Alaska Airlines, Inc.

The Leased Premises referred to in this Lease shall mean all the premises shown on a floor plan marked "Exhibit B", attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 300-80: Airport Ticket Counter Office and Ticket Counter containing 1,684 square feet and 428 square feet located on the Terminal B concourse of the departure level.

Parcel 300-80.1 Baggage Service Office containing 311 square feet located on the Terminal B concourse of the arrival level.

Parcel 300-80.2 Operations Office containing 454 square feet of space located on the Terminal A concourse of the arrival level.

Parcel 300-80.3 Operations Office containing 206 square feet of space located on the Terminal B concourse of the arrival level.

Said Exclusive Use Areas shall also include the premises shown on a plot plan marked "Exhibit C", attached hereto and made a part hereof, being Apron Equipment Storage Area designated as Parcel 300-80.4 containing the square footage as specified herein. Said "Exhibit C" may be revised at any time by Airport Director.

The Leased Premises shall also include the premises shown on a floor plan marked "Exhibit D", being those certain Common Use Areas designated as Baggage Claim/Baggage Make-up Areas, Holdrooms, Airside Concourses, Security Areas, and Loading Bridges.

Said Exclusive Use and Common Use Areas are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

EXHIBIT A
09/16/2020
SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT INTERIOR ROOM DIMENSIONS. THICKNESS OF INTERIOR WALLS ADDED TO TOTAL AREA.
(WHERE APPLICABLE)

ALASKA
ATO
1684 SQ FT

ALASKA
TICKETING
535 SQ FT

NO SCALE

Approximate Location

17
18
19
SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT INTERIOR ROOM DIMENSIONS, THICKNESS OF INTERIOR WALLS ADDED TO TOTAL AREA. (WHERE APPLICABLE)

ALASKA

BAGGAGE SERVICE
OFFICE

ALASKA
311 SQ FT

25

NO SCALE

APPROXIMATE LOCATION
ALASKA

RAMP OFFICE

206 SQ FT

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT INTERIOR ROOM DIMENSIONS; THICKNESS OF INTERIOR WALLS ADDED TO TOTAL AREA. (WHERE APPLICABLE)

NO SCALE
ALASKA

RAMP OFFICE

454 SQ FT

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT INTERIOR ROOM DIMENSIONS. THICKNESS OF INTERIOR WALLS ADDED TO TOTAL AREA. (WHERE APPLICABLE)

NO SCALE
## JOHN WAYNE AIRPORT
### SUMMARY OF OPERATION AND MAINTENANCE RESPONSIBILITIES

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**Key:**
- **A = Airline**
- **C = County**

1. Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.
2. Airline is responsible for routine maintenance, including relamping and ballast replacement.
3. Airline is responsible for cleaning ramp areas of trash and spills (from building to VSR).

If Airline fails to perform its maintenance and repair obligations as stated in the Lease, the County may perform the work after providing the Airline written notice and recover its entire cost plus a 15% charge from Airline as additional costs. Said costs shall be due and payable by the Airline to the County as stated in Article V, Section 5.07 of the Lease.

In the event the Airline makes any repairs or modifications to an area or equipment, at the request of the County, as per Section 4.01 subsection C of this Lease, and those areas or equipment are currently maintained by the County, the County will continue the maintenance responsibilities for those areas or equipment.

**EXHIBIT E**
CERTIFICATED PASSENGER AIRLINE LEASE

Dated ________________

Between

County of Orange

and

American Airlines, Inc.
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EXHIBIT B  FLOOR PLAN OF LEASED PREMISES – TERMINAL EXCLUSIVE USE AREA

EXHIBIT C  MAP OF RAMP EQUIPMENT STORAGE AREA

EXHIBIT D  MAP – COMMON USE AREAS

EXHIBIT E  AIRLINE MAINTENANCE OBLIGATIONS
THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this ___ day of ____________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("the COUNTY"), and AMERICAN AIRLINES, INC. ("the AIRLINE").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties, to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the AIRLINE mutually desire to enter into a LEASE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and
WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the JWA – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving JWA.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving JWA.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08 APRON AREA

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’s governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

SECTION 1.14 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

"CUPPS" shall mean the Airport's Common Use Passenger Processing System.

SECTION 1.16 CUSS

"CUSS" shall mean Common Use Self Service.
SECTION 1.17  EMV

"EMV" shall mean Europay, Mastercard, or Visa.

SECTION 1.18  DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.19  ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§ 25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20 EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.21 FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT OF 1958, or such successor agency as may have similar jurisdiction over the AIRLINE or its business, and the Airport.

SECTION 1.22 GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.23 HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.24 IAF

"IAF" shall mean the International Arrival Facility and include the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.25 NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant
Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.26 PFC

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

SECTION 1.27 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28 RON

"RON" shall mean the remain overnight positions where the AIRLINE’s aircraft are required to park when they "remain overnight" at JWA.
SECTION 1.29 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.30 TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at JWA, as may be modified at any time during the term of this LEASE.

SECTION 1.31 TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02 HOLDING OVER

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03 TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01 LEASED PREMISES

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."

Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:
A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 9.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area."

B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:

1. Baggage Claim and Baggage Make-up Areas;
2. Hold-rooms (departure lounges);
3. Airside Concourses;
4. Landside Concourses;
5. Baggage and Passenger Screening Areas;

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

**SECTION 3.02 NATURE OF AIRLINE'S ESTATE**

The AIRLINE acknowledges and agrees:

A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.
SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director and/or designee prior to installation.

ARTICLE IV - RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The AIRLINE shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1) Exclusive Use Areas

(a) Terminal Building. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, and operations/ramp office.

For the purpose of calculating terminal building rent, the AIRLINE’s Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b) Terminal Apron. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contains the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c) Airport Tenant Improvement Amortization Schedule. The AIRLINE shall reimburse the COUNTY for tenant improvement by the COUNTY based on the amortization schedule established by the Airport Director.
(2) Common Use Areas

(a) Arrival Level. The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.

(b) Departure Level. The COUNTY shall establish fees for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

(c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carriers operating international flights according to the carrier’s ratio of international deplaned passengers and the schedule established by the COUNTY.
(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airlines percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

1. The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

2. In the event AIRLINE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by AIRLINE customers and AIRLINE shall indemnify the COUNTY pursuant to Section 13.02 of this LEASE for such transactions.

3. **Additional Fees**

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the cost to
be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges, and may require the AIRLINE to submit future monthly report electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that that allows AIRLINE to efficiently report of information requested.

   (1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

   (2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

   (3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

C. Based upon prior written agreement between the AIRLINE and the COUNTY, the AIRLINE may pay for facilities repairs or modifications that would normally be the responsibility of the COUNTY. Costs for such repairs or modifications shall be deducted from the AIRLINE rent by the COUNTY upon submittal to the COUNTY of invoices, receipts, statements, or other documentation acceptable to the COUNTY for said repairs or modifications. All invoices, receipts, statements or other documentation shall include a detailed description of the nature of the work performed and the associated costs. Upon completion of all repairs or modifications, the AIRLINE shall submit to the COUNTY a written request for rent credit and all documentation for the repairs or modifications.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. Bankruptcy Code, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. Place of Payment and Filing. Payments and statements required by Sections 4.01, 4.08 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the AIRLINE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.

B. Form of Payment. All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to AIRLINE plus a twenty-five dollar ($25.00) processing fee.

C. Penalty for NSF Check. In the event a check submitted by AIRLINE is returned for non-sufficient funds (“NSF”), the AIRLINE agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. AIRLINE may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.04 PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article XI hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 4.03 of this LEASE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.
SECTION 4.05       PROVISION AGAINST SET-OFFS

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.06       SECURITY DEPOSIT

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder. PFCs shall be excluded from the rents, fees and charges used to determine the AIRLINE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE's full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of
expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article XI of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

SECTION 4.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned to the new entrant AIRLINE after six (6) months of continuous operation.

SECTION 4.08 MARKETING FUND FEE

The COUNTY has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, AIRLINE shall be required to make an annual marketing fund payment in the amount of ten thousand dollars ($10,000.00). AIRLINE agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants’ promotions and directly related expenses. In the event any year of this LEASE contains less than 12 months, AIRLINE shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commenced on November 1, AIRLINE would pay the monthly pro-rata portion ($833.33 per month) of the annual marketing fund amount for November and
December (totaling $1,666.66). Then, commencing on January 1, AIRLINE would make the full annual marketing fund payment of $10,000.00. Should the LEASE expire on September 15, AIRLINE would pay a pro-rata portion of the annual amount for the months of January through September.

**ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES**

**SECTION 5.01 USE**

The AIRLINE's use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 9.01 in this LEASE, this operation is subject to the following authorized uses:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.

F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:
   1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or
   2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the AIRLINE's employees at the Airport and in-flight catering services in support of the AIRLINE's air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
I. Handling of other airlines' operations and ticketing pursuant to Section 9.01 in thisLEASE.

J. Employee training incidental to the other uses permitted under this Section.

K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.

L. Other uses as authorized by the Airport Director.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and AIRLINE’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the AIRLINE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the AIRLINE.

The AIRLINE’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE’s use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The AIRLINE agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the term of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.

C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the AIRLINE from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article XI in this LEASE are subject to the terms, provisions and limitations of this Section.

**SECTION 5.05 OPERATIONAL REQUIREMENTS**

The AIRLINE agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the AIRLINE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the AIRLINE by action of the Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and, the AIRLINE has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the AIRLINE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown are Pacific Time.

The AIRLINE acknowledges that the COUNTY may, by regulation, permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The AIRLINE does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** AIRLINE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by AIRLINE. AIRPORT will make reasonable efforts to develop a gate management software that allows for efficient uploading and maintaining of current daily arrival and departure information by AIRLINE.

E. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY’s and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or Common Use Area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE’s operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE’s activity for the month.
The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE’s flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., Pacific Time) of the following day.

C. **Audits.** All the AIRLINE’s records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or

2. The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE’s use of the Leased Premises.
D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY’s option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.

2. Require that the AIRLINE pay rents and fees based on the COUNTY’s best good faith estimate of the AIRLINE’s activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits, and the COUNTY’s overhead; or, at the Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.

**SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES AND EXCLUSIVE USE AREAS**

The AIRLINE agrees to maintain Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Exclusive Use Areas and improvements in good condition. All repairs and improvements made by the AIRLINE to the Exclusive Use Areas shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Exclusive Use Areas. Any additions, alterations, repairs and changes of use or occupancy in the Exclusive Use Areas shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed. Maintenance obligations of the AIRLINE are shown on Exhibit E, which exhibit is attached hereto and by reference made a part hereof.
The AIRLINE shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The AIRLINE further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE’s Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering AIRLINE’s leased premises.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE’s property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY’s negligence or willful misconduct.
SECTION 5.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE’s gate loading positions.

The AIRLINE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. AIRLINE shall promptly remove all oil and grease spillage attributable to the AIRLINE’s aircraft or equipment.

If the AIRLINE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 5.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 5.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used
upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 5.11 AIRCRAFT PARKING

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 3.01 in this LEASE.

If in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The AIRLINE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE VI - INFORMATION TECHNOLOGY AND COMMON USE EQUIPMENT

SECTION 6.01 COMMON USE EQUIPMENT

The COUNTY agrees to supply and maintain all equipment for the CUPPS/CUSS, which shall be situated in areas such as, but not limited to ticket counters, ticket lobbies, skycap, and gate podiums. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably as possible to technical difficulties with the equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s service desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with CUPPS. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport including but not limited to gate assignment, scheduling and implementation of any software updates.

SECTION 6.02 COMMON USE EQUIPMENT STOCK

The AIRLINE may be asked to supply its own ticket (kiosk) stock in the use of the CUPPS at Common Use Space positions from time to time as it pertains to Radio Frequency Identification (RFID) or specialty stock not provided by the COUNTY. In the event that multiple airlines share kiosk space, all airlines will be required to remove their own stock and allow the other airlines to use the COUNTY supplied stock, as further outlined herein. When utilizing the COUNTY Common Use Space, the AIRLINE may use either its own stock or the COUNTY’s common stock. If the AIRLINE elects to use its own stock, it shall be responsible to remove all stock from the COUNTY’s equipment at the end of the usage period. AIRLINE stock shall be subject to approval by the COUNTY. In the event that the COUNTY deems the AIRLINE stock to be injurious to CUPPS, the AIRLINE will immediately cease usage of the offending stock upon such notice by the COUNTY.
SECTION 6.03 RADIO FREQUENCY IDENTIFICATION BAG TAG STOCK

The COUNTY will not supply RFID bag tag stock for use in as part of the Baggage Handling System unless RFID becomes standard common use stock at all locations within the airport. AIRLINE shall be required to meet the IATA / ATA standards for the twenty-one inch (21") bag tag (or as the standard may be amended by IATA / ATA), prior to the start-up of operations at the Airport. In the event that RFID is deployed airport wide, the AIRLINE shall provide to the COUNTY the necessary Baggage Service Messages (BSMs) that will be required to facilitate the AIRLINE's baggage through the Baggage Handling System that utilizes RFID technology to track and route baggage to the appropriate baggage carousel. The COUNTY makes no express warranty as to the operability of the technology and/or baggage handling system equipment and the sole extent of liability of the COUNTY with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably possible to technical difficulties with the BHS equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with the RFID, BHS, and BSMs systems. The AIRLINE will not be allowed to use its own bag tag stock, unless specifically permitted to do so in writing by the COUNTY, which must at the time meet any and all standards that may be set forth by the COUNTY for such stock. The COUNTY reserves the right to sell and collect applicable advertising revenues that may be generated from the reverse side of any the COUNTY-supplied bag tag stock.

SECTION 6.04 COMMON USE SELF-SERVICE KIOSK (CUSS) EQUIPMENT

The AIRLINE will not install, deploy, or otherwise engage in the use of any proprietary self-service check-in kiosks and/or device, applications, and/or technologies on its Leased Premises, any portion of the Airport with the expectation to screen any checked bags at the Airport without prior approval from the Airport Director. At the request of the Airport Director, the AIRLINE will work with the COUNTY and other related parties in the development of a Common Use Self Service (CUSS) compliant kiosk application, or other similar applications, and/or devices as may be required to have the AIRLINE operational on all CUSS kiosks at the Airport. The COUNTY reserves the right to establish the locations for implementation of such CUSS kiosks to meet the needs of its customers and the Air Transportation Companies, as well as the operational needs of the Airport. The COUNTY agrees to supply and maintain, with its personnel and at its expense, all common-use self-service kiosk equipment, which shall be situated at designated ticket counters, at various areas of the terminal lobby and customer service areas, and other such locations, and using such passenger processing models as determined by the Airport Director to be most beneficial to meet the operational needs of the Airport. The COUNTY will supply all of the boarding pass stock necessary for the use of the CUSS equipment. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as
expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE’s vendor issues relating to the AIRLINE’s applications that run in conjunction with the CUSS systems. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport.

SECTION 6.05  NO MODIFICATIONS TO COUNTY’S EQUIPMENT

The AIRLINE shall not install at any gate holdroom, gate counter, skycap, ticket counter, or kiosk, any AIRLINE owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment without the prior express written permission of Airport Director. The AIRLINE shall not make any modification to the COUNTY’s Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by the AIRLINE shall be remedied by the AIRLINE, to the sole satisfaction of the COUNTY, at the sole cost of the AIRLINE. In the event that the damage is repaired by the COUNTY, the AIRLINE will reimburse the COUNTY for both the fully-allocated cost of time and materials pertaining to the repairs plus twenty percent (20%) administrative fees.

SECTION 6.06  NETWORK USAGE

The AIRLINE will not install any proprietary cabling and/or similar infrastructure at the Airport without prior written approval of the COUNTY. As such, AIRLINE shall make use of the COUNTY’s data communications backbone at the Airport for its communications needs to connect separate operating locations within the Airport campus, (i.e. ticketing, baggage service, operations, maintenance, etc.). The AIRLINE shall be fully integrated into the COUNTY’s infrastructure backbone prior to startup of operations and thereafter shall be responsible to remove all proprietary cabling and/or other similar infrastructure, back to point of origin, at the AIRLINE’s sole cost. Where authorized, at the discretion of the Airport Director, any and all data communication cabling installed by the AIRLINE shall be in accordance with the COUNTY’s Airport Tenant Design Guidelines, and upon installation shall become the property of the COUNTY. Such improvements shall not be subject to any reimbursement or useful life clauses under Section 8.01 of this LEASE. The COUNTY may impose reasonable fees to AIRLINE for the use of such network, including but not limited to, any fees for unusual and/or excessive or non-standard usage, as reasonably determined by Director.

A. The AIRLINE will assign a representative(s), hereinafter "Authorized Network Representative," to work with the COUNTY to determine user access and network connectivity information. The AIRLINE shall be solely responsible for ensuring that Authorized Network Representatives are not security risks, and upon the COUNTY’s request, provide the COUNTY with any information reasonably necessary for the
COUNTY to evaluate any security event or incident relating to any Authorized Network Representative or use of the COUNTY’s network.

B. The AIRLINE shall be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (i) the AIRLINE's use of the COUNTY's network is secure and is used only for authorized purposes stated herein, and (ii) the AIRLINE's business information and data are protected against improper access, use, loss, disclosure, alternation, or destruction. The AIRLINE agrees that it will not abuse or misuse the Network Connection, or any of the components thereof, or any of the capabilities provided thereby. Unless otherwise explicitly provided herein, in no event shall the AIRLINE use the Network Connection as its internet service provider.

(1) The AIRLINE shall notify the COUNTY’s Information Systems as soon as possible upon the discovery of any security breach or potential security breach that may affect the AIRLINE or the COUNTY’s confidential information or the security of the Network or any Network Connection.

(2) The AIRLINE shall ensure adequate security protection for the COUNTY from any third-party connections established on the AIRLINE's network. Adequate security protection means (i) protection to preserve confidentiality, integrity, and availability of the Network and information of the COUNTY, and (ii) protection from malicious codes and/or unauthorized intrusions.

(3) The AIRLINE and the COUNTY shall be responsible for maintaining the highest industry standards for security best practices on computing devices that could affect the availability and health of the Network connection, the Network, systems, applications or data of the AIRLINE and the COUNTY, respectively, specifically including, but not limited to, use of up-to-date antivirus protection, anti-SPAM, and establishment and use of a timely security patch management process.

SECTION 6.07 WIRELESS APPLICATIONS AND SIMILAR TECHNOLOGIES

The AIRLINE acknowledges that the COUNTY provides wireless capabilities for the AIRLINE’s operational use, in accordance with applicable Federal Communications Commission (FCC) regulations, rulings, and/or guidelines. The AIRLINE agrees that it will not install, deploy, or otherwise engage in the use of any transmitting wireless device, applications, and/or technologies on its Exclusive Use Areas, any portion of the Airport or within the airport system (regardless of any Exclusive Use, Preferential Use, Common Use, and/or Joint Use assignments) without having first obtained the express written permission of the Airport Director. Such wireless applications shall only be for the AIRLINE’s operational use. Use by any others or for the benefit of any other parties is specifically prohibited. At the request of the Airport Director, the AIRLINE will cease operation of a particular device due to interference with another transmitting device that is deemed necessary for operational and/or life-safety purposes.
SECTION 6.08 IN-LINE BAGGAGE HANDLING SYSTEM OBLIGATIONS, DUTIES, AND RESPONSIBILITIES

A. The AIRLINE will have use of the In-Line Baggage Handling Systems (BHS) in a location as designated by the Director to meet the operational needs of the Airport. The AIRLINE will be responsible to verify that it has a certified CUTE, CUSS, and Baggage Service Messages (BSM) applications to operate the BHS, and RFID where applicable, prior to the start-up of service at the Airport. The AIRLINE will actively work with the COUNTY staff and the AIRLINE's system provider(s) to expedite all information systems and/or technologies work that may be required to ensure such applications are properly certified by the COUNTY and its system provider(s), if applicable. The COUNTY shall have the right to charge the AIRLINE for any expenses incurred by the COUNTY, including staffing to manage passenger lines and/or additional maintenance staff, if the AIRLINE fails to adhere to BHS system procedures and/or properly staff the baggage make-up areas to meet the demand and such failure results in an operational impact to the Airport and/or the BHS equipment.

B. Following the COUNTY's BHS training, provided by the COUNTY to the AIRLINE, the AIRLINE will be solely responsible for the proper operations, training, and supervision of its staff for its portion of the operational responsibilities of the BHS system. The AIRLINE shall ensure that it maintains staffing levels during all operational hours, including irregular operations, that are sufficient to retrieve baggage from the baggage make-up carrousels and/or piers in order to prevent the inefficient use of the in-line baggage handling system in a fully automated mode and to prevent the system from initiating a "die-back" situation, which may require the COUNTY to intercede manually and/or cause additional staffing by the COUNTY, its contractors, or TSA staff to initiate baggage screening mitigation procedures as a result of baggage stacking up on the make-up carrousels and/or piers. The AIRLINE shall not initiate any procedures or work rules that, as determined by the Director, will negatively impact the in-line BHS without the prior written approval of the COUNTY and without concurrence from TSA. The COUNTY reserves the right to recover any costs from the AIRLINE that may result from the AIRLINE's failure to comply with this Section of the LEASE.

C. The AIRLINE will designate a representative as a Ground Security Coordinator (GSC) to handle issues that may arise from time to time with the BHS. The GSC will be the point of contact with the TSA and the COUNTY for all issues concerning checked passenger baggage and/or BHS performance. The GSC must be available during the AIRLINE’s operational hours.

D. The AIRLINE acknowledges that all oversized checked baggage must be delivered to a designated oversized area for screening.

E. The AIRLINE acknowledges it may have a more stringent screening requirement for checked passenger baggage than that of TSA. As such, the AIRLINE will be responsible to provide these additional screening services and associated staffing to meet such
requirements, including, but not limited to, X-Ray screening, and any additional training for additional services, and/or any additional services at no additional cost to the COUNTY. The AIRLINE must provide evidence of proper training for such additional measures to the Director upon request. The COUNTY may, at its sole discretion provide and maintain the X-Ray screening device.

F. The AIRLINE shall be responsible to order, pick-up and maintain an appropriate level of any and all consumables related to the Common Use Equipment and/or BHS, including, but not limited to, RFID embedded bag tag stock, boarding pass stock, toner cartridges for laser printers, or other similar items, in accordance with policies and procedures established by the COUNTY in the event AIRLINE uses propriety consumables.

ARTICLE VII - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 7.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The AIRLINE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The AIRLINE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the AIRLINE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The AIRLINE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws. Hazardous waste generated by the AIRLINE or its contractors shall be disposed properly and under the AIRLINE’s EPA ID number.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water...
drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The AIRLINE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The AIRLINE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the AIRLINE.

SECTION 7.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The AIRLINE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The AIRLINE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the AIRLINE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the AIRLINE shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines
or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

SECTION 7.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the AIRLINE, the AIRLINE’s operations at the Airport or any action arising from and which involve the AIRLINE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

1. The AIRLINE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE’s release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.

2. The AIRLINE’s release of Hazardous Substances upon or within the Airport.

3. The AIRLINE’s violation of any applicable Environmental Law, except that the AIRLINE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.

4. The AIRLINE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 7.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 7.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 7.05 ENVIRONMENTAL STEWARDSHIP

A. All AIRLINE facilities and improvements shall meet the Airport's Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the AIRLINE installs any new infrastructure, the AIRLINE is required to use the Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The AIRLINE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

(1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

(2) Climate Action Plan.

(3) Waste Management Plan.

(4) Storm Water Pollution Prevention Plan.
C. The AIRLINE shall implement the following conservation measures and policies:

   (1) Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

   (2) Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.

   (3) Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

   (4) Install energy-efficient heating and cooling equipment when replacing or upgrading.

   (5) Use energy-efficient computers and servers when replacing this equipment.

   (6) Select equipment with variable speed motors and fan drives, when possible.

   (7) Utilize paperless ticket technology, when possible.

D. The AIRLINE shall implement and support the following environmental policies:

   (1) Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The AIRLINE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

   (2) The AIRLINE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

   (3) The AIRLINE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the AIRLINE’s procurement of goods and services as applicable.

   (4) The AIRLINE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.
(5) Upon request, the AIRLINE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 7.06  ANTI-IDLING POLICY

Within six months of LEASE execution, AIRLINE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. AIRLINE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the AIRLINE.

ARTICLE VIII – CONSTRUCTION AND IMPROVEMENTS

SECTION 8.01  CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE’s Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall make every reasonable effort to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE’s operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE's unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 8.02  IMPROVEMENTS BY THE AIRLINE

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE’s expense.

A.  Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred seventy five thousand
dollars ($175,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The AIRLINE's Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE's sole cost and expense. The AIRLINE
shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

**SECTION 8.03 AIRLINE REIMBURSEMENT**

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE's Leased Premises from this LEASE or terminates the LEASE for convenience pursuant to Section 2.03, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

\[
\text{COMPENSATION} = A \times \frac{B}{C}
\]

- **A** = The AIRLINE’s actual leasehold improvement construction costs submitted in accordance with Section 8.07 in this LEASE.
- **B** = Number of full months remaining in Lease Term.
- **C** = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with “As-Built Documents” and “Record Documents” as required by Section 8.07 of this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.
SECTION 8.04  EXCLUSIVE REMEDY

The compensation provided pursuant to Section 8.03 in this LEASE shall be the AIRLINE's sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 et seq.), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 et seq.), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE's rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

SECTION 8.05  AIRLINE'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.

B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.

C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 8.06  MECHANICS LIENS OR STOP-NOTICES

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys' fees and costs.
In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the AIRLINE shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two (2) optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 8.07 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance
(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 8.08 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to
the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 8.09 HEALTH AND SAFETY

The AIRLINE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE IX - ACCOMMODATION

SECTION 9.01 JOINT USE REQUIREMENT

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the
availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE’s Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE's reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE’s Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airlines’ operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE agrees that, in the event it subleases its Leased Premises to another airline, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE’s actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two (2) times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE X - ASSIGNMENT AND SUBLEASE

SECTION 10.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. Transfers. The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30)
days prior written notice of all proposed Transfers. The AIRLINE shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the AIRLINE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 11.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The AIRLINE, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of the AIRLINE as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.
(7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

(8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and/or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

(4) The AIRLINE fails to comply with Paragraph C, of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the AIRLINE assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

1. The name and address of proposed assignee;
2. All of the terms and conditions of such offer; and
3. Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are
non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

SECTION 10.02      SUCCESSORS IN INTEREST

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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE XI - TERMINATION AND DEFAULT

SECTION 11.01      TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.

SECTION 11.02      TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder with prior written notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;

D. The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;

E. The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;

F. If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE’s business;
G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the AIRLINE shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 11.03 CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE'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 expiration.

SECTION 11.04 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 11.05 THE COUNTY'S RIGHT TO RE-ENTER

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the LEASE terms and shall not constitute an acceptance or surrender.
ARTICLE XII - SECURITY

SECTION 12.01 AIRPORT SECURITY

The AIRLINE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The AIRLINE is responsible for fines imposed by any regulatory agency as a result of the AIRLINE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The AIRLINE employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LEASE. The AIRLINE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed AIRLINE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The AIRLINE employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The AIRLINE employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The AIRLINE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. Local Security. The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE’s constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the AIRLINE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. Federal Security. As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated AIRLINE Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the AIRLINE shall pay the applicable fees. Upon successful completion of the background checks, the AIRLINE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated AIRLINE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The AIRLINE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The AIRLINE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The AIRLINE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The AIRLINE and all AIRLINE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. AIRLINE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must
immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of AIRLINE personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff’s Department – Airport Police Services by calling (949) 252-5000. The AIRLINE or AIRLINE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the AIRLINE’s employee’s or contractor’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of AIRLINE personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the AIRLINE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The AIRLINE’s security deposit may be applied to cover the cost of the fine.

ARTICLE XIII - INSURANCE AND INDEMNITY

SECTION 13.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE’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.

The AIRLINE agrees that the AIRLINE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.
If the AIRLINE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE 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 the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE’S employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the 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.

The AIRLINE may occupy the Airport Premises only upon providing to the COUNTY, the required insurance stated herein and maintain such insurance for the entire term of this LEASE. The COUNTY reserves the right to terminate this LEASE at any time the AIRLINE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. The AIRLINE shall pay the COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. The AIRLINE shall provide to the COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE; excluding General Aviation Liability. All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits:
- Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate;
- Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE 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 Airport Premises. Such proof of insurance must be maintained by the AIRLINE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of AIRLINE’s current audited financial report. If the AIRLINE’s SIR is approved, AIRLINE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from the AIRLINE’s, its agents, employee’s or
John Wayne Airport
Certificated Passenger Airline Lease

subcontractor’s performance of this Agreement, the AIRLINE shall defend the COUNTY
at its sole cost and expense with counsel approved by Board of Supervisors against same;
and
2) The AIRLINE’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 the AIRLINE’s SIR provision shall be
interpreted as though the AIRLINE was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
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<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td>(Including but not limited to General</td>
<td>$250,000,000 aggregate</td>
</tr>
<tr>
<td>Liability, Passenger Legal Liability,</td>
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<tr>
<td>Personal Injury, Contractual Liability,</td>
<td></td>
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<tr>
<td>Premises, Products and Completed Operations,</td>
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<tr>
<td>Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td></td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims made or per occurrence</td>
</tr>
<tr>
<td>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.</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**

The Aviation General 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, agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’s insurance is primary and any insurance or self-insurance maintained by 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.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’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 policy 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 insurance policies required by this LEASE shall waive all rights of subrogation against 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 COUNTY’s financial interest when applicable.

If the AIRLINE’s Pollution Liability policy is a claims-made policy, the AIRLINE 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 (NOTICES) below or to an address provided by Airport Director. AIRLINE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require AIRLINE 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 the COUNTY of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE’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.

SECTION 13.02 INDEMNITY

The AIRLINE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the AIRLINE pursuant to this LEASE. If judgment is entered against the AIRLINE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the AIRLINE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIV - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 14.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. AIRLINE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If AIRLINE transfers its obligation to another, the transferee is obligated in the same manner as AIRLINE.

B. AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) AIRLINE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) AIRLINE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by AIRLINE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by AIRLINE of the AIRLINE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4) AIRLINE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, AIRLINE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the AIRLINE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the AIRLINE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The AIRLINE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The AIRLINE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if AIRLINE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the AIRLINE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the AIRLINE may request the United States to enter into the litigation to protect the interests of the United States.

C. AIRLINE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, AIRLINE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) AIRLINE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. AIRLINE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. AIRLINE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

(prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 14.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

SECTION 14.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 14.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The AIRLINE agrees that the AIRLINE’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The AIRLINE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 14.05  FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the AIRLINE in this LEASE, or any local authorities shall not apply to the AIRLINE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 14.06  NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 14.07  RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 14.08  HEIGHT LIMITATION OF STRUCTURES

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 14.09 NONINTERFERENCE WITH AIRCRAFT

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

SECTION 14.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 14.11 AFFIRMATIVE ACTION REQUIREMENTS

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 14.12 AMERICANS WITH DISABILITIES ACT

The AIRLINE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the AIRLINE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the AIRLINE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The AIRLINE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The AIRLINE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the AIRLINE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The AIRLINE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the AIRLINE’s failure to comply with the ADA.
SECTION 14.13 BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the AIRLINE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The AIRLINE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the AIRLINE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The AIRLINE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the AIRLINE owns and operates additional ramps, the AIRLINE shall maintain those ramps in proper working condition. The AIRLINE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XV - MISCELLANEOUS PROVISIONS

SECTION 15.01 TIME

Time is of the essence in this LEASE.

SECTION 15.02 LEASE ORGANIZATION

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.

SECTION 15.03 AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 15.04 SIGNS

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. The AIRLINE shall submit for approval all new signage to be placed in the ticketing lobby including baggage sizers, and pylon signs. Illustrative drawings and design dimensions must accompany all requests for approval. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the AIRLINE.

The AIRLINE will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of temporary promotional signs for the AIRLINE shall be accompanied by illustrative drawings and design dimensions along with information about the
type of signs proposed, and proposed locations. All approved promotional signs shall be allowed
to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage
must be removed, or the AIRLINE may resubmit a request to COUNTY to extend past the ninety
(90) days.

The AIRLINE shall keep all ticket counter space used by the AIRLINE and any associated ticket
lifts and podiums free of all signs, advertising materials, credit card application dispensing units,
posters and banners. The COUNTY may without notice remove any unauthorized signs or
advertising materials, and may store them at the AIRLINE's expense; the COUNTY may dispose
of items if they are not promptly claimed by the AIRLINE after notice from the COUNTY.

SECTION 15.05 PERMITS AND LICENSES

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

SECTION 15.06 RESERVED

SECTION 15.07 TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon
fixtures, equipment or other property installed or constructed thereon, shall be the full
responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid
promptly.

SECTION 15.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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.
However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental
or other charge required of the AIRLINE except as may be expressly provided elsewhere in this
LEASE.
SECTION 15.09  PARTIAL INVALIDITY

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.

SECTION 15.10  WAIVER OF RIGHTS

The failure of the COUNTY or the AIRLINE 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 the COUNTY or the AIRLINE 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 15.11  RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE’s operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the AIRLINE’s use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

SECTION 15.12  AUTHORITY OF THE AIRLINE

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.
SECTION 15.13  PUBLIC RECORDS

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 15.14  RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 15.15  GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 15.16  ATTORNEYS’ FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 15.17  EMERGENCY SERVICES

Airport Director has the right to request that the AIRLINE’S employees aid in and use AIRLINE’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The AIRLINE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 15.18 NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO: AIRLINE

American Airlines, Inc.
PO Box 619616
Mail Drop 5317
DFW Airport, TX 75261

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
JOHN WAYNE AIRPORT
CERTIFICATED PASSENGER AIRLINE LEASE

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

AMERICAN AIRLINES, INC.
By: [Signature]
By: Lenore Diamond

APPROVED AS TO FORM:
County Counsel
By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:
Auditor-Controller
By: [Signature] 10/21/90

RECOMMENDED FOR APPROVAL:
John Wayne Airport
By: Barry Rondinella
    Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY
COUNTY OF ORANGE
By: Chairwoman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California
LEASED PREMISES

Parcel Numbers: PM 1121-300-81; 81.1; 81.2

Project Name: John Wayne Airport

Second Party: American Airlines, Inc.

The Leased Premises referred to in this Lease shall mean all the premises shown on a floor plan marked "Exhibit B", attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 300-81: Airport Ticket Counter Office and Ticket Counter containing 2,704 square feet and 642 square feet respectively, located on the Terminal A concourse of the departure level.

Parcel 300-81.1 Operations Office containing 3,848 square feet of space located on the Terminal A concourse of the arrival level.

Parcel 300-81.2 Baggage Service Office containing 526 square feet of space located on the Terminal A concourse of the Arrival Level.

Said Exclusive Use Areas shall also include the premises shown on a plot plan marked "Exhibit C", attached hereto and made a part hereof, being Apron Equipment Storage Area designated as Parcel 300-81.3 containing the square footage as specified herein. Said "Exhibit C" may be revised at any time by Airport Director.

The Leased Premises shall also include the premises shown on a floor plan marked "Exhibit D", being those certain Common Use Areas designated as Baggage Claim/Baggage Make-up Areas, Holdrooms, Airside Concourses, Security Areas, and Loading Bridges,

Said Exclusive Use and Common Use Areas are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

EXHIBIT A
9/16/2020
AMERICAN

ATO
2704 SQ FT

TICKETING
642 SQ FT

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT INTERIOR ROOM DIMENSIONS. THICKNESS OF INTERIOR WALLS ADDED TO TOTAL AREA. (WHERE APPLICABLE)

APPROXIMATE LOCATION

NO SCALE
AMERICAN

BAGGAGE SERVICE

OFFICE

526 SQ FT

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS- BUILT INTERIOR ROOM DIMENSIONS. THICKNESS OF INTERIOR WALLS ADDED TO TOTAL AREA. (WHERE APPLICABLE)

NO SCALE

APPROXIMATE LOCATION
JOHN WAYNE AIRPORT  
SUMMARY OF OPERATION AND MAINTENANCE RESPONSIBILITIES

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Key:  
A = Airline  
C = County

1 Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.  
2 Airline is responsible for routine maintenance, including relamping and ballast replacement.  
3 Airline is responsible for cleaning ramp areas of trash and spills (from building to VSR).

If Airline fails to perform its maintenance and repair obligations as stated in the Lease, the County may perform the work after providing the Airline written notice and recover its entire cost plus a 15% charge from Airline as additional costs. Said costs shall be due and payable by the Airline to the County as stated in Article V, Section 5.07 of the Lease.

In the event the Airline makes any repairs or modifications to an area or equipment, at the request of the County, as per Section 4.01 subsection C of this Lease, and those areas or equipment are currently maintained by the County, the County will continue the maintenance responsibilities for those areas or equipment.

EXHIBIT E
CERTIFICATED PASSENGER AIRLINE LEASE

Dated ______________

Between

County of Orange

and

Delta Air Lines
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THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this ___ day of __________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("the COUNTY"), and Delta Air Lines ("the AIRLINE").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties, to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the AIRLINE mutually desire to enter into a LEASE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and
WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the JWA – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving JWA.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving JWA.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08 APRON AREA

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’s governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

SECTION 1.14 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

"CUPPS" shall mean the Airport's Common Use Passenger Processing System.

SECTION 1.16 CUSS

"CUSS" shall mean Common Use Self Service.
SECTION 1.17  EMV

"EMV" shall mean Europay, Mastercard, or Visa.

SECTION 1.18  DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.19  ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20    EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.21    FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT of 1958, or such successor agency as may have similar jurisdiction over the AIRLINE or its business, and the Airport.

SECTION 1.22    GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.23    HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.24    IAF

"IAF" shall mean the International Arrival Facility and include the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.25    NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant
Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.26 PFC

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

SECTION 1.27 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28 RON

"RON" shall mean the remain overnight positions where the AIRLINE’s aircraft are required to park when they "remain overnight" at JWA.
SECTION 1.29   STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.30   TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at JWA, as may be modified at any time during the term of this LEASE.

SECTION 1.31   TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LEASE

SECTION 2.01   TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02   HOLDING OVER

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03   TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01   LEASED PREMISES

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."

Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:
A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 9.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area."

B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:

1. Baggage Claim and Baggage Make-up Areas;
2. Hold-rooms (departure lounges);
3. Airside Concourses;
4. Landside Concourses;
5. Baggage and Passenger Screening Areas;

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

**SECTION 3.02 NATURE OF AIRLINE'S ESTATE**

The AIRLINE acknowledges and agrees:

A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.
SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director and/or designee prior to installation.

ARTICLE IV - RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The AIRLINE shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1) Exclusive Use Areas

(a) Terminal Building. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, and operations/ramp office.

For the purpose of calculating terminal building rent, the AIRLINE's Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b) Terminal Apron. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contains the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c) Airport Tenant Improvement Amortization Schedule. The AIRLINE shall reimburse the COUNTY for tenant improvement by the COUNTY based on the amortization schedule established by the Airport Director.
(2) Common Use Areas

(a) Arrival Level. The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.

(b) Departure Level. The COUNTY shall establish fees for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

(c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carriers operating international flights according to the carrier's ratio of international deplaned passengers and the schedule established by the COUNTY.
(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

(1) The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

(2) In the event AIRLINE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by AIRLINE customers and AIRLINE shall indemnify the COUNTY pursuant to Section 13.02 of this LEASE for such transactions.

(3) **Additional Fees**

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty five percent (45%) of the cost to
be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges, and may require the AIRLINE to submit future monthly report electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that that allows AIRLINE to efficiently report of information requested.

1. Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

2. Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

3. Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

C. Based upon prior written agreement between the AIRLINE and the COUNTY, the AIRLINE may pay for facilities repairs or modifications that would normally be the responsibility of the COUNTY. Costs for such repairs or modifications shall be deducted from the AIRLINE rent by the COUNTY upon submittal to the COUNTY of invoices, receipts, statements, or other documentation acceptable to the COUNTY for said repairs or modifications. All invoices, receipts, statements or other documentation shall include a detailed description of the nature of the work performed and the associated costs. Upon completion of all repairs or modifications, the AIRLINE shall submit to the COUNTY a written request for rent credit and all documentation for the repairs or modifications.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01, 4.08 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the AIRLINE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY’s right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to AIRLINE plus a twenty-five dollar ($25.00) processing fee.

C. **Penalty for NSF Check** In the event a check submitted by AIRLINE is returned for non-sufficient funds (“NSF”), the AIRLINE agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. AIRLINE may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE’s late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE’s default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.04 PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the “PFC Regulations”).

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article XI hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 4.03 of this LEASE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.
SECTION 4.05    PROVISION AGAINST SET-OFFS

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.06    SECURITY DEPOSIT

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder. PFCs shall be excluded from the rents, fees and charges used to determine the AIRLINE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE’s full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE’s performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of
expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article XI of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

SECTION 4.07   NEW ENTRANT DEPOSIT

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned to the new entrant AIRLINE after six (6) months of continuous operation.

SECTION 4.08   MARKETING FUND FEE

The COUNTY has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, AIRLINE shall be required to make an annual marketing fund payment in the amount of ten thousand dollars ($10,000.00). AIRLINE agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants’ promotions and directly related expenses. In the event any year of this LEASE contains less than 12 months, AIRLINE shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commenced on November 1, AIRLINE would pay the monthly pro-rata portion ($833.33 per month) of the annual marketing fund amount for November and
December (totaling $1,666.66). Then, commencing on January 1, AIRLINE would make the full annual marketing fund payment of $10,000.00. Should the LEASE expire on September 15, AIRLINE would pay a pro-rata portion of the annual amount for the months of January through September.

ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01 USE

The AIRLINE's use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 9.01 in this LEASE, this operation is subject to the following authorized uses:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.

F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the AIRLINE's employees at the Airport and in-flight catering services in support of the AIRLINE's air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
I. Handling of other airlines' operations and ticketing pursuant to Section 9.01 in this LEASE.

J. Employee training incidental to the other uses permitted under this Section.

K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.

L. Other uses as authorized by the Airport Director.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and AIRLINE’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the AIRLINE’s operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the AIRLINE.

The AIRLINE’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE’s use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The AIRLINE agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the term of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.

C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the AIRLINE from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article XI in this LEASE are subject to the terms, provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The AIRLINE agrees to abide by the following operational conditions and requirements:

A. Flight Operations and Reallocations. The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the AIRLINE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the AIRLINE by action of the Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and, the AIRLINE has met all other applicable COUNTY requirements.

B. Hours of Operation. Except as expressly authorized, the AIRLINE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown are Pacific Time.

The AIRLINE acknowledges that the COUNTY may, by regulation, permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The AIRLINE does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** AIRLINE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by AIRLINE. AIRPORT will make reasonable efforts to develop a gate management software that allows for efficient uploading and maintaining of current daily arrival and departure information by AIRLINE.

E. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or Common Use Area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE's activity for the month.
The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE’s flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., Pacific Time) of the following day.

C. **Audits.** All the AIRLINE’s records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or

2. The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE’s use of the Leased Premises.
D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY’s option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.

2. Require that the AIRLINE pay rents and fees based on the COUNTY’s best good faith estimate of the AIRLINE’s activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits, and the COUNTY’s overhead; or, at the Auditor-Controller’s option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.

**SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES AND EXCLUSIVE USE AREAS**

The AIRLINE agrees to maintain Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Exclusive Use Areas and improvements in good condition. All repairs and improvements made by the AIRLINE to the Exclusive Use Areas shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Exclusive Use Areas. Any additions, alterations, repairs and changes of use or occupancy in the Exclusive Use Areas shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed. Maintenance obligations of the AIRLINE are shown on Exhibit E, which exhibit is attached hereto and by reference made a part hereof.
The AIRLINE shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The AIRLINE further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE’s Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering AIRLINE’s leased premises.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE’s property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY’s negligence or willful misconduct.
SECTION 5.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE’s gate loading positions.

The AIRLINE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. AIRLINE shall promptly remove all oil and grease spillage attributable to the AIRLINE’s aircraft or equipment.

If the AIRLINE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 5.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 5.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used...
upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 5.11 AIRCRAFT PARKING

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 3.01 in this LEASE.

If in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The AIRLINE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE VI - INFORMATION TECHNOLOGY AND COMMON USE EQUIPMENT

SECTION 6.01 COMMON USE EQUIPMENT

The COUNTY agrees to supply and maintain all equipment for the CUPPS/CUSS, which shall be situated in areas such as, but not limited to ticket counters, ticket lobbies, skycap, and gate podiums. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably as possible to technical difficulties with the equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s service desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with CUPPS. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport including but not limited to gate assignment, scheduling and implementation of any software updates.

SECTION 6.02 COMMON USE EQUIPMENT STOCK

The AIRLINE may be asked to supply its own ticket (kiosk) stock in the use of the CUPPS at Common Use Space positions from time to time as it pertains to Radio Frequency Identification (RFID) or specialty stock not provided by the COUNTY. In the event that multiple airlines share kiosk space, all airlines will be required to remove their own stock and allow the other airlines to use the COUNTY supplied stock, as further outlined herein. When utilizing the COUNTY Common Use Space, the AIRLINE may use either its own stock or the COUNTY’s common stock. If the AIRLINE elects to use its own stock, it shall be responsible to remove all stock from the COUNTY’s equipment at the end of the usage period. AIRLINE stock shall be subject to approval by the COUNTY. In the event that the COUNTY deems the AIRLINE stock to be injurious to CUPPS, the AIRLINE will immediately cease usage of the offending stock upon such notice by the COUNTY.
SECTION 6.03 RADIO FREQUENCY IDENTIFICATION BAG TAG STOCK

The COUNTY will not supply RFID bag tag stock for use in as part of the Baggage Handling System unless RFID becomes standard common use stock at all locations within the airport. AIRLINE shall be required to meet the IATA / ATA standards for the twenty-one inch (21") bag tag (or as the standard may be amended by IATA / ATA), prior to the start-up of operations at the Airport. In the event that RFID is deployed airport wide, the AIRLINE shall provide to the COUNTY the necessary Baggage Service Messages (BSMs) that will be required to facilitate the AIRLINE's baggage through the Baggage Handling System that utilizes RFID technology to track and route baggage to the appropriate baggage carousel. The COUNTY makes no express warranty as to the operability of the technology and/or baggage handling system equipment and the sole extent of liability of the COUNTY with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably possible to technical difficulties with the BHS equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with the RFID, BHS, and BSMS systems. The AIRLINE will not be allowed to use its own bag tag stock, unless specifically permitted to do so in writing by the COUNTY, which must at the time meet any and all standards that may be set forth by the COUNTY for such stock. The COUNTY reserves the right to sell and collect applicable advertising revenues that may be generated from the reverse side of any the COUNTY-supplied bag tag stock.

SECTION 6.04 COMMON USE SELF-SERVICE KIOSK (CUSS) EQUIPMENT

The AIRLINE will not install, deploy, or otherwise engage in the use of any proprietary self-service check-in kiosks and/or device, applications, and/or technologies on its Leased Premises, any portion of the Airport with the expectation to screen any checked bags at the Airport without prior approval from the Airport Director. At the request of the Airport Director, the AIRLINE will work with the COUNTY and other related parties in the development of a Common Use Self Service (CUSS) compliant kiosk application, or other similar applications, and/or devices as may be required to have the AIRLINE operational on all CUSS kiosks at the Airport. The COUNTY reserves the right to establish the locations for implementation of such CUSS kiosks to meet the needs of its customers and the Air Transportation Companies, as well as the operational needs of the Airport. The COUNTY agrees to supply and maintain, with its personnel and at its expense, all common-use self-service kiosk equipment, which shall be situated at designated ticket counters, at various areas of the terminal lobby and customer service areas, and other such locations, and using such passenger processing models as determined by the Airport Director to be most beneficial to meet the operational needs of the Airport. The COUNTY will supply all of the boarding pass stock necessary for the use of the CUSS equipment. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as
expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE’s vendor issues relating to the AIRLINE’s applications that run in conjunction with the CUSS systems. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport.

SECTION 6.05 NO MODIFICATIONS TO COUNTY’S EQUIPMENT

The AIRLINE shall not install at any gate holdroom, gate counter, skycap, ticket counter, or kiosk, any AIRLINE owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment without the prior express written permission of Airport Director. The AIRLINE shall not make any modification to the COUNTY’s Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by the AIRLINE shall be remedied by the AIRLINE, to the sole satisfaction of the COUNTY, at the sole cost of the AIRLINE. In the event that the damage is repaired by the COUNTY, the AIRLINE will reimburse the COUNTY for both the fully-allocated cost of time and materials pertaining to the repairs plus twenty percent (20%) administrative fees.

SECTION 6.06 NETWORK USAGE

The AIRLINE will not install any proprietary cabling and/or similar infrastructure at the Airport without prior written approval of the COUNTY. As such, AIRLINE shall make use of the COUNTY’s data communications backbone at the Airport for its communications needs to connect separate operating locations within the Airport campus, (i.e. ticketing, baggage service, operations, maintenance, etc.). The AIRLINE shall be fully integrated into the COUNTY’s infrastructure backbone prior to startup of operations and thereafter shall be responsible to remove all proprietary cabling and/or other similar infrastructure, back to point of origin, at the AIRLINE’s sole cost. Where authorized, at the discretion of the Airport Director, any and all data communication cabling installed by the AIRLINE shall be in accordance with the COUNTY’s Airport Tenant Design Guidelines, and upon installation shall become the property of the COUNTY. Such improvements shall not be subject to any reimbursement or useful life clauses under Section 8.01 of this LEASE. The COUNTY may impose reasonable fees to AIRLINE for the use of such network, including but not limited to, any fees for unusual and/or excessive or non-standard usage, as reasonably determined by Director.

A. The AIRLINE will assign a representative(s), hereinafter "Authorized Network Representative," to work with the COUNTY to determine user access and network connectivity information. The AIRLINE shall be solely responsible for ensuring that Authorized Network Representatives are not security risks, and upon the COUNTY’s request, provide the COUNTY with any information reasonably necessary for the
COUNTY to evaluate any security event or incident relating to any Authorized Network Representative or use of the COUNTY’s network.

B. The AIRLINE shall be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (i) the AIRLINE's use of the COUNTY’s network is secure and is used only for authorized purposes stated herein, and (ii) the AIRLINE's business information and data are protected against improper access, use, loss, disclosure, alteration, or destruction. The AIRLINE agrees that it will not abuse or misuse the Network Connection, or any of the components thereof, or any of the capabilities provided thereby. Unless otherwise explicitly provided herein, in no event shall the AIRLINE use the Network Connection as its internet service provider.

(1) The AIRLINE shall notify the COUNTY’s Information Systems as soon as possible upon the discovery of any security breach or potential security breach that may affect the AIRLINE or the COUNTY’s confidential information or the security of the Network or any Network Connection.

(2) The AIRLINE shall ensure adequate security protection for the COUNTY from any third-party connections established on the AIRLINE's network. Adequate security protection means (i) protection to preserve confidentiality, integrity, and availability of the Network and information of the COUNTY, and (ii) protection from malicious codes and/or unauthorized intrusions.

(3) The AIRLINE and the COUNTY shall be responsible for maintaining the highest industry standards for security best practices on computing devices that could affect the availability and health of the Network connection, the Network, systems, applications or data of the AIRLINE and the COUNTY, respectively, specifically including, but not limited to, use of up-to-date antivirus protection, anti-SPAM, and establishment and use of a timely security patch management process.

SECTION 6.07 WIRELESS APPLICATIONS AND SIMILAR TECHNOLOGIES

The AIRLINE acknowledges that the COUNTY provides wireless capabilities for the AIRLINE’s operational use, in accordance with applicable Federal Communications Commission (FCC) regulations, rulings, and/or guidelines. The AIRLINE agrees that it will not install, deploy, or otherwise engage in the use of any transmitting wireless device, applications, and/or technologies on its Exclusive Use Areas, any portion of the Airport or within the airport system (regardless of any Exclusive Use, Preferential Use, Common Use, and/or Joint Use assignments) without having first obtained the express written permission of the Airport Director. Such wireless applications shall only be for the AIRLINE’s operational use. Use by any others or for the benefit of any other parties is specifically prohibited. At the request of the Airport Director, the AIRLINE will cease operation of a particular device due to interference with another transmitting device that is deemed necessary for operational and/or life-safety purposes.
SECTION 6.08 IN-LINE BAGGAGE HANDLING SYSTEM OBLIGATIONS, DUTIES, AND RESPONSIBILITIES

A. The AIRLINE will have use of the In-Line Baggage Handling Systems (BHS) in a location as designated by the Director to meet the operational needs of the Airport. The AIRLINE will be responsible to verify that it has a certified CUTE, CUSS, and Baggage Service Messages (BSM) applications to operate the BHS, and RFID where applicable, prior to the start-up of service at the Airport. The AIRLINE will actively work with the COUNTY staff and the AIRLINE’s system provider(s) to expedite all information systems and/or technologies work that may be required to ensure such applications are properly certified by the COUNTY and its system provider(s), if applicable. The COUNTY shall have the right to charge the AIRLINE for any expenses incurred by the COUNTY, including staffing to manage passenger lines and/or additional maintenance staff, if the AIRLINE fails to adhere to BHS system procedures and/or properly staff the baggage make-up areas to meet the demand and such failure results in an operational impact to the Airport and/or the BHS equipment.

B. Following the COUNTY's BHS training, provided by the COUNTY to the AIRLINE, the AIRLINE will be solely responsible for the proper operations, training, and supervision of its staff for its portion of the operational responsibilities of the BHS system. The AIRLINE shall ensure that it maintains staffing levels during all operational hours, including irregular operations, that are sufficient to retrieve baggage from the baggage make-up carrousels and/or piers in order to prevent the inefficient use of the in-line baggage handling system in a fully automated mode and to prevent the system from initiating a "die-back" situation, which may require the COUNTY to intercede manually and/or cause additional staffing by the COUNTY, its contractors, or TSA staff to initiate baggage screening mitigation procedures as a result of baggage stacking up on the make-up carrousels and/or piers. The AIRLINE shall not initiate any procedures or work rules that, as determined by the Director, will negatively impact the in-line BHS without the prior written approval of the COUNTY and without concurrence from TSA. The COUNTY reserves the right to recover any costs from the AIRLINE that may result from the AIRLINE’s failure to comply with this Section of the LEASE.

C. The AIRLINE will designate a representative as a Ground Security Coordinator (GSC) to handle issues that may arise from time to time with the BHS. The GSC will be the point of contact with the TSA and the COUNTY for all issues concerning checked passenger baggage and/or BHS performance. The GSC must be available during the AIRLINE’s operational hours.

D. The AIRLINE acknowledges that all oversized checked baggage must be delivered to a designated oversized area for screening.

E. The AIRLINE acknowledges it may have a more stringent screening requirement for checked passenger baggage than that of TSA. As such, the AIRLINE will be responsible to provide these additional screening services and associated staffing to meet such
requirements, including, but not limited to, X-Ray screening, and any additional training for additional services, and/or any additional services at no additional cost to the COUNTY. The AIRLINE must provide evidence of proper training for such additional measures to the Director upon request. The COUNTY may, at its sole discretion provide and maintain the X-Ray screening device.

F. The AIRLINE shall be responsible to order, pick-up and maintain an appropriate level of any and all consumables related to the Common Use Equipment and/or BHS, including, but not limited to, RFID embedded bag tag stock, boarding pass stock, toner cartridges for laser printers, or other similar items, in accordance with policies and procedures established by the COUNTY in the event AIRLINE uses propriety consumables.

ARTICLE VII - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 7.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The AIRLINE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The AIRLINE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the AIRLINE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The AIRLINE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws. Hazardous waste generated by the AIRLINE or its contractors shall be disposed properly and under the AIRLINE’s EPA ID number.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water
The drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The AIRLINE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The AIRLINE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the AIRLINE.

SECTION 7.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The AIRLINE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The AIRLINE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the AIRLINE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the AIRLINE shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines.
or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

SECTION 7.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the AIRLINE, the AIRLINE’s operations at the Airport or any action arising from and which involve the AIRLINE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

1. The AIRLINE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE’s release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.

2. The AIRLINE’s release of Hazardous Substances upon or within the Airport.

3. The AIRLINE’s violation of any applicable Environmental Law, except that the AIRLINE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.

4. The AIRLINE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 7.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney’s fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE’s indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney’s fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 7.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 7.05 ENVIRONMENTAL STEWARDSHIP

A. All AIRLINE facilities and improvements shall meet the Airport’s Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the AIRLINE installs any new infrastructure, the AIRLINE is required to use the Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The AIRLINE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

(1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

(2) Climate Action Plan.

(3) Waste Management Plan.

(4) Storm Water Pollution Prevention Plan.
C. The AIRLINE shall implement the following conservation measures and policies:

   (1) Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

   (2) Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.

   (3) Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

   (4) Install energy-efficient heating and cooling equipment when replacing or upgrading.

   (5) Use energy-efficient computers and servers when replacing this equipment.

   (6) Select equipment with variable speed motors and fan drives, when possible.

   (7) Utilize paperless ticket technology, when possible.

D. The AIRLINE shall implement and support the following environmental policies:

   (1) Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The AIRLINE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

   (2) The AIRLINE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

   (3) The AIRLINE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the AIRLINE’s procurement of goods and services as applicable.

   (4) The AIRLINE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.
(5) Upon request, the AIRLINE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 7.06 ANTI-IDLING POLICY

Within six months of LEASE execution, AIRLINE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. AIRLINE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the AIRLINE.

ARTICLE VIII – CONSTRUCTION AND IMPROVEMENTS

SECTION 8.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE's Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall make every reasonable effort to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE's operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE's unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 8.02 IMPROVEMENTS BY THE AIRLINE

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE’s expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred seventy five thousand
dollars ($175,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The AIRLINE's Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE's sole cost and expense. The AIRLINE
shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE’s cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

**SECTION 8.03 AIRLINE REIMBURSEMENT**

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE’s Leased Premises from this LEASE or terminates the LEASE for convenience pursuant to Section 2.03, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

\[
\text{COMPENSATION} = A \times \frac{B}{C}
\]

- **A** = The AIRLINE’s actual leasehold improvement construction costs submitted in accordance with Section 8.07 in this LEASE.
- **B** = Number of full months remaining in Lease Term.
- **C** = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with “As-Built Documents” and “Record Documents” as required by Section 8.07 of this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.
SECTION 8.04 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 8.03 in this LEASE shall be the AIRLINE’s sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 et seq.), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 et seq.), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE’s rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

SECTION 8.05 AIRLINE’S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.
B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.
C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 8.06 MECHANICS LIENS OR STOP-NOTICES

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys’ fees and costs.
In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the AIRLINE shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two (2) optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 8.07 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance
(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 8.08 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to
the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 8.09 HEALTH AND SAFETY

The AIRLINE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE IX - ACCOMMODATION

SECTION 9.01 JOINT USE REQUIREMENT

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the
availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE's Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE's reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE's Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airline’s operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE agrees that, in the event it subleases its Leased Premises to another airline, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE’s actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two (2) times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE X - ASSIGNMENT AND SUBLEASE

SECTION 10.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. Transfers. The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30)
days prior written notice of all proposed Transfers. The AIRLINE shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the AIRLINE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 11.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The AIRLINE, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of the AIRLINE as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.
(7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

(8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and/or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

(4) The AIRLINE fails to comply with Paragraph C, of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the AIRLINE assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are
non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

SECTION 10.02 SUCCESSORS IN INTEREST

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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE XI - TERMINATION AND DEFAULT

SECTION 11.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.

SECTION 11.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder with prior written notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;

D. The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;

E. The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;

F. If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE’s business;
G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the AIRLINE shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 11.03  CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE'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 expiration.

SECTION 11.04  DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 11.05  THE COUNTY'S RIGHT TO RE-ENTER

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the LEASE terms and shall not constitute an acceptance or surrender.
The AIRLINE 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE XII - SECURITY

SECTION 12.01 AIRPORT SECURITY

The AIRLINE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The AIRLINE is responsible for fines imposed by any regulatory agency as a result of the AIRLINE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The AIRLINE employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LEASE. The AIRLINE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed AIRLINE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The AIRLINE employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The AIRLINE employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The AIRLINE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. **Local Security.** The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE’s constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the AIRLINE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. **Federal Security.** As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated AIRLINE Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the AIRLINE shall pay the applicable fees. Upon successful completion of the background checks, the AIRLINE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated AIRLINE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The AIRLINE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The AIRLINE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The AIRLINE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The AIRLINE and all AIRLINE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. AIRLINE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must
immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of AIRLINE personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff’s Department—Airport Police Services by calling (949) 252-5000. The AIRLINE or AIRLINE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the AIRLINE’s employee’s or contractor’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of AIRLINE personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the AIRLINE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The AIRLINE’s security deposit may be applied to cover the cost of the fine.

ARTICLE XIII - INSURANCE AND INDEMNITY

SECTION 13.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE’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.

The AIRLINE agrees that the AIRLINE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.
If the AIRLINE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE 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 the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE’S employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the 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 COUNT’s action.

The AIRLINE may occupy the Airport Premises only upon providing to the COUNTY, the required insurance stated herein and maintain such insurance for the entire term of this LEASE. The COUNTY reserves the right to terminate this LEASE at any time the AIRLINE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. The AIRLINE shall pay the COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. The AIRLINE shall provide to the COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE; excluding General Aviation Liability. All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE 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 Airport Premises. Such proof of insurance must be maintained by the AIRLINE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of AIRLINE’s current audited financial report. If the AIRLINE’s SIR is approved, AIRLINE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from the AIRLINE’s, its agents, employee’s or
subcontractor’s performance of this Agreement, the AIRLINE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) The AIRLINE’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 the AIRLINE’s SIR provision shall be interpreted as though the AIRLINE was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td>(Including but not limited to General Liability, Passenger Legal Liability, Personal Injury, Contractual Liability, Premises, Products and Completed Operations, Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td>$250,000,000 aggregate</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers’ Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims made or per occurrence</td>
</tr>
<tr>
<td>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.</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**

The Aviation General 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, agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’s insurance is primary and any insurance or self-insurance maintained by 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, agents and agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’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 policy 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 insurance policies required by this LEASE shall waive all rights of subrogation against 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 COUNTY’s financial interest when applicable.

If the AIRLINE’s Pollution Liability policy is a claims-made policy, the AIRLINE 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 (NOTICES) below or to an address provided by Airport Director. AIRLINE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require AIRLINE 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 the COUNTY of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE’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.

SECTION 13.02 INDEMNITY

The AIRLINE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the AIRLINE pursuant to this LEASE. If judgment is entered against the AIRLINE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the AIRLINE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIV - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 14.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. AIRLINE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If AIRLINE transfers its obligation to another, the transferee is obligated in the same manner as AIRLINE.

B. AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) AIRLINE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) AIRLINE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by AIRLINE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by AIRLINE of the AIRLINE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4) AIRLINE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, AIRLINE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the AIRLINE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the AIRLINE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The AIRLINE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The AIRLINE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if AIRLINE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the AIRLINE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the AIRLINE may request the United States to enter into the litigation to protect the interests of the United States.

C. AIRLINE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, AIRLINE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) AIRLINE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. AIRLINE shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

E. AIRLINE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

(prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 14.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

SECTION 14.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 14.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The AIRLINE agrees that the AIRLINE’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The AIRLINE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 14.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the AIRLINE in this LEASE, or any local authorities shall not apply to the AIRLINE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 14.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 14.07 RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 14.08 HEIGHT LIMITATION OF STRUCTURES

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 14.09 NONINTERFERENCE WITH AIRCRAFT

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

SECTION 14.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 14.11 AFFIRMATIVE ACTION REQUIREMENTS

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 14.12 AMERICANS WITH DISABILITIES ACT

The AIRLINE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the AIRLINE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the AIRLINE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The AIRLINE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The AIRLINE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the AIRLINE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The AIRLINE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the AIRLINE’s failure to comply with the ADA.
SECTION 14.13 BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the AIRLINE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The AIRLINE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the AIRLINE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The AIRLINE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the AIRLINE owns and operates additional ramps, the AIRLINE shall maintain those ramps in proper working condition. The AIRLINE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XV - MISCELLANEOUS PROVISIONS

SECTION 15.01 TIME

Time is of the essence in this LEASE.

SECTION 15.02 LEASE ORGANIZATION

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.

SECTION 15.03 AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 15.04 SIGNS

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. The AIRLINE shall submit for approval all new signage to be placed in the ticketing lobby including baggage sizers, and pylon signs. Illustrative drawings and design dimensions must accompany all requests for approval. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the AIRLINE.

The AIRLINE will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of temporary promotional signs for the AIRLINE shall be accompanied by illustrative drawings and design dimensions along with information about the
type of signs proposed, and proposed locations. All approved promotional signs shall be allowed to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage must be removed, or the AIRLINE may resubmit a request to COUNTY to extend past the ninety (90) days.

The AIRLINE shall keep all ticket counter space used by the AIRLINE and any associated ticket lifts and podiums free of all signs, advertising materials, credit card application dispensing units, posters and banners. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the AIRLINE’s expense; the COUNTY may dispose of items if they are not promptly claimed by the AIRLINE after notice from the COUNTY.

SECTION 15.05 PERMITS AND LICENSES

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

SECTION 15.06 RESERVED

SECTION 15.07 TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid promptly.

SECTION 15.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental or other charge required of the AIRLINE except as may be expressly provided elsewhere in this LEASE.
SECTION 15.09 PARTIAL INVALIDITY

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.

SECTION 15.10 WAIVER OF RIGHTS

The failure of the COUNTY or the AIRLINE 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 the COUNTY or the AIRLINE 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 15.11 RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE’s operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the AIRLINE’s use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

SECTION 15.12 AUTHORITY OF THE AIRLINE

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.
SECTION 15.13  PUBLIC RECORDS

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 15.14  RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 15.15  GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 15.16  ATTORNEYS’ FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 15.17  EMERGENCY SERVICES

Airport Director has the right to request that the AIRLINE’S employees aid in and use AIRLINE’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The AIRLINE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 15.18 NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY
    John Wayne Airport
    3160 Airway Avenue
    Costa Mesa, CA 92626

TO: AIRLINE
    Delta Air Lines
    1030 Delta Blvd, Dept 877
    Atlanta, GA 30320

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
JOHN WAYNE AIRPORT
CERTIFICATED PASSENGER AIRLINE LEASE

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

DELTA AIRLINES
By: [Signature]
GM - Corporate Real Estate
By: [Signature]

APPROVED AS TO FORM:
County Counsel
By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:
Auditor-Controller
By: [Signature] 10/01/20

RECOMMENDED FOR APPROVAL:
John Wayne Airport
By: Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY
COUNTY OF ORANGE
By: Chairwoman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California
LEASED DESCRIPTION

Parcel Numbers: PM 1121-300-82; 82.1; 82.2; 82.3

Project Name: John Wayne Airport

Second Party: Delta Air Lines

The Leased Premises referred to in this Lease shall mean all the premises shown on a floor plan marked "Exhibit B", attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 300-71: Airport Ticket Counter Office and Ticket Counter containing 863 square feet, 471 square feet respectively, located on the north concourse of the departure level.

Parcel 300-71.1 Operations Office containing 1,648 square feet of space located on the north concourse of the arrival level.

Parcel 300-71.2 Baggage Service Office containing 200 square feet located on the north concourse of the arrival level.

Said Exclusive Use Areas shall also include the premises shown on a plot plan marked "Exhibit C", attached hereto and made a part hereof, being Apron Equipment Storage Area designated as Parcel 300-82.3 containing the square footage as specified herein. Said "Exhibit C" may be revised at any time by Airport Director.

The Leased Premises shall also include the premises shown on a floor plan marked "Exhibit D", being those certain Common Use Areas designated as Baggage Claim/Baggage Make-up Areas, Holdrooms, Airside Concourses, Security Areas, and Loading Bridges.

Said Exclusive Use and Common Use Areas are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

EXHIBIT A
8-25-14
DELTA

ATO
863 SQ FT

TICKETING
471 SQ FT

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT INTERIOR ROOM DIMENSIONS. THICKNESS OF INTERIOR WALLS ADDED TO TOTAL AREA. (WHERE APPLICABLE)

NO SCALE
DELTA

BAGGAGE SERVICE
OFFICE

200 SQ FT

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT
INTERIOR ROOM DIMENSIONS. THICKNESS OF
INTERIOR WALLS ADDED TO TOTAL AREA.
(WHERE APPLICABLE)

NO SCALE

APPROXIMATE LOCATION

Page 76 of 76
DELTA

RAMP SPACES

1648 SQ FT

STORAGE  RAMP OFFICES
386 SQ FT  1096 SQ FT

OFFICE

166 SQ FT

NO SCALE

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT
INTERIOR ROOM DIMENSIONS, THICKNESS OF
INTERIOR WALLS ADDED TO TOTAL AREA,
(WHERE APPLICABLE)

APPROXIMATE LOCATION
RAMP EQUIPMENT STORAGE AREA

EXHIBIT C
John Wayne Airport
Airline Common Use Areas

DEPARTURE LEVEL

Holdrooms
Airside Concourses
Security Area

ARRIVAL LEVEL

Baggage Make-up
Baggage Claim
## JOHN WAYNE AIRPORT
### SUMMARY OF OPERATION AND MAINTENANCE RESPONSIBILITIES

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**Key:**
- **A** = Airline
- **C** = County

1. Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.
2. Airline is responsible for routine maintenance, including relamping and ballast replacement.
3. Airline is responsible for cleaning ramp areas of trash and spills (from building to VSR).

If Airline fails to perform its maintenance and repair obligations as stated in the Lease, the County may perform the work after providing the Airline written notice and recover its entire cost plus a 15% charge from Airline as additional costs. Said costs shall be due and payable by the Airline to the County as stated in Article V, Section 5.07 of the Lease.

In the event the Airline makes any repairs or modifications to an area or equipment, at the request of the County, as per Section 4.01 subsection C of this Lease, and those areas or equipment are currently maintained by the County, the County will continue the maintenance responsibilities for those areas or equipment.

**EXHIBIT E**
CERTIFICATED PASSENGER AIRLINE LEASE

Dated ______________

Between

County of Orange

and

Frontier Airlines, Inc.
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LIST OF EXHIBITS

EXHIBIT A  LEASED PREMISES DESCRIPTION – TERMINAL EXCLUSIVE USE AREA

EXHIBIT B  FLOOR PLAN OF LEASED PREMISES – TERMINAL EXCLUSIVE USE AREA

EXHIBIT C  MAP OF RAMP EQUIPMENT STORAGE AREA

EXHIBIT D  MAP – COMMON USE AREAS

EXHIBIT E  AIRLINE MAINTENANCE OBLIGATIONS
THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this ___
day of __________, 2021, by and between the COUNTY OF ORANGE, a political subdivision
of the State of California ("the COUNTY"), and FRONTIER AIRLINES, INC. ("the AIRLINE").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor
of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of
California, and operates and maintains the Airport as a governmental function for the primary
purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of
persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise
authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises,
facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the
residents who live under the Airport's approach and departure corridors, the COUNTY has
developed one of the most stringent access and noise abatement programs in the country. The
Airport monitors all aircraft operations, both commercial and private, for compliance with the
program. These noise abatement and access restrictions derive from the 1985 Settlement
Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented
through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-
1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and
Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties,
to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to
implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE
AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy
decisions of the Board of Supervisors regarding the appropriate point of balance between the
competing interests of the air transportation and aviation community and local residents living in
the vicinity of the Airport. These policy decisions address, among other issues, nighttime
operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the AIRLINE mutually desire to enter into a LEASE in
order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the
Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and
WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the JWA – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving JWA.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving JWA.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08 APRON AREA

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’s governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

SECTION 1.14 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

"CUPPS" shall mean the Airport's Common Use Passenger Processing System.

SECTION 1.16 CUSS

"CUSS" shall mean Common Use Self Service.
SECTION 1.17  EMV

"EMV" shall mean Europay, Mastercard, or Visa.

SECTION 1.18  DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.19  ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20 EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.21 FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT of 1958, or such successor agency as may have similar jurisdiction over the AIRLINE or its business, and the Airport.

SECTION 1.22 GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.23 HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.24 IAF

"IAF" shall mean the International Arrival Facility and include the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.25 NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant
Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.26   PFC

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

SECTION 1.27   POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28   RON

"RON" shall mean the remain overnight positions where the AIRLINE’s aircraft are required to park when they "remain overnight" at JWA.
SECTION 1.29 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.30 TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at JWA, as may be modified at any time during the term of this LEASE.

SECTION 1.31 TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02 HOLDING OVER

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03 TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01 LEASED PREMISES

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."

Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:
A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 9.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area."

B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:

1. Baggage Claim and Baggage Make-up Areas;
2. Hold-rooms (departure lounges);
3. Airside Concourses;
4. Landside Concourses;
5. Baggage and Passenger Screening Areas;

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

**SECTION 3.02 NATURE OF AIRLINE'S ESTATE**

The AIRLINE acknowledges and agrees:

A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.
SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director and/or designee prior to installation.

ARTICLE IV - RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The AIRLINE shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1) Exclusive Use Areas

(a) Terminal Building. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, and operations/ramp office.

For the purpose of calculating terminal building rent, the AIRLINE's Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b) Terminal Apron. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contain the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c) Airport Tenant Improvement Amortization Schedule. The AIRLINE shall reimburse the COUNTY for tenant improvement by the COUNTY based on the amortization schedule established by the Airport Director.
(2) **Common Use Areas**

(a) **Arrival Level.** The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.

(b) **Departure Level.** The COUNTY shall establish fees for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

(c) **IAF.** Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carriers operating international flights according to the carrier's ratio of international deplaned passengers and the schedule established by the COUNTY.
(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airlines percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

1. The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

2. In the event AIRLINE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by AIRLINE customers and AIRLINE shall indemnify the COUNTY pursuant to Section 13.02 of this LEASE for such transactions.

3. **Additional Fees**

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the cost to
be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges, and may require the AIRLINE to submit future monthly report electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that that allows AIRLINE to efficiently report of information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE’s use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

C. Based upon prior written agreement between the AIRLINE and the COUNTY, the AIRLINE may pay for facilities repairs or modifications that would normally be the responsibility of the COUNTY. Costs for such repairs or modifications shall be deducted from the AIRLINE rent by the COUNTY upon submittal to the COUNTY of invoices, receipts, statements, or other documentation acceptable to the COUNTY for said repairs or modifications. All invoices, receipts, statements or other documentation shall include a detailed description of the nature of the work performed and the associated costs. Upon completion of all repairs or modifications, the AIRLINE shall submit to the COUNTY a written request for rent credit and all documentation for the repairs or modifications.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01, 4.08 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the AIRLINE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY’s right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to AIRLINE plus a twenty-five dollar ($25.00) processing fee.

C. **Penalty for NSF Check** In the event a check submitted by AIRLINE is returned for non-sufficient funds (“NSF”), the AIRLINE agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. AIRLINE may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.04 PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article XI hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 4.03 of this LEASE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.
SECTION 4.05  PROVISION AGAINST SET-OFFS

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.06  SECURITY DEPOSIT

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder. PFCs shall be excluded from the rents, fees and charges used to determine the AIRLINE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE’s full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE’s performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of
expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article XI of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

SECTION 4.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned to the new entrant AIRLINE after six (6) months of continuous operation.

SECTION 4.08 MARKETING FUND FEE

The COUNTY has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, AIRLINE shall be required to make an annual marketing fund payment in the amount of ten thousand dollars ($10,000.00). AIRLINE agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants’ promotions and directly related expenses. In the event any year of this LEASE contains less than 12 months, AIRLINE shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commenced on November 1, AIRLINE would pay the monthly pro-rata portion ($833.33 per month) of the annual marketing fund amount for November and
December (totaling $1,666.66). Then, commencing on January 1, AIRLINE would make the full annual marketing fund payment of $10,000.00. Should the LEASE expire on September 15, AIRLINE would pay a pro-rata portion of the annual amount for the months of January through September.

ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01 USE

The AIRLINE’s use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 9.01 in this LEASE, this operation is subject to the following authorized uses:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.

F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the AIRLINE’s employees at the Airport and in-flight catering services in support of the AIRLINE’s air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
I. Handling of other airlines' operations and ticketing pursuant to Section 9.01 in this LEASE.

J. Employee training incidental to the other uses permitted under this Section.

K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.

L. Other uses as authorized by the Airport Director.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and AIRLINE’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the AIRLINE’s operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the AIRLINE.

The AIRLINE’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The AIRLINE agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the term of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.

C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the AIRLINE from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article XI in this LEASE are subject to the terms, provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The AIRLINE agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the AIRLINE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the AIRLINE by action of the Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and, the AIRLINE has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the AIRLINE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown are Pacific Time.

The AIRLINE acknowledges that the COUNTY may, by regulation, permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The AIRLINE does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** AIRLINE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by AIRLINE. AIRPORT will make reasonable efforts to develop a gate management software that allows for efficient uploading and maintaining of current daily arrival and departure information by AIRLINE.

E. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY’s and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or Common Use Area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE's activity for the month.
The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., Pacific Time) of the following day.

C. Audits. All the AIRLINE's records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

(1) The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or

(2) The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A above. The adequacy of records shall be determined at the sole discretion of the COUNTY's Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE's use of the Leased Premises.
D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY’s option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.

2. Require that the AIRLINE pay rents and fees based on the COUNTY’s best good faith estimate of the AIRLINE’s activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits, and the COUNTY’s overhead; or, at the Auditor-Controller’s option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.

**SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES AND EXCLUSIVE USE AREAS**

The AIRLINE agrees to maintain Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Exclusive Use Areas and improvements in good condition. All repairs and improvements made by the AIRLINE to the Exclusive Use Areas shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Exclusive Use Areas. Any additions, alterations, repairs and changes of use or occupancy in the Exclusive Use Areas shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed. Maintenance obligations of the AIRLINE are shown on Exhibit E, which exhibit is attached hereto and by reference made a part hereof.
The AIRLINE shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The AIRLINE further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE’s Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering AIRLINE’s leased premises.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE’s property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY’s negligence or willful misconduct.
SECTION 5.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE’s gate loading positions.

The AIRLINE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. AIRLINE shall promptly remove all oil and grease spillage attributable to the AIRLINE’s aircraft or equipment.

If the AIRLINE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 5.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 5.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used
upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 5.11     AIRCRAFT PARKING

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 3.01 in this LEASE.

If in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The AIRLINE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE VI - INFORMATION TECHNOLOGY AND COMMON USE EQUIPMENT

SECTION 6.01 COMMON USE EQUIPMENT

The COUNTY agrees to supply and maintain all equipment for the CUPPS/CUSS, which shall be situated in areas such as, but not limited to ticket counters, ticket lobbies, skycap, and gate podiums. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably as possible to technical difficulties with the equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s service desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with CUPPS. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport including but not limited to gate assignment, scheduling and implementation of any software updates.

SECTION 6.02 COMMON USE EQUIPMENT STOCK

The AIRLINE may be asked to supply its own ticket (kiosk) stock in the use of the CUPPS at Common Use Space positions from time to time as it pertains to Radio Frequency Identification (RFID) or specialty stock not provided by the COUNTY. In the event that multiple airlines share kiosk space, all airlines will be required to remove their own stock and allow the other airlines to use the COUNTY supplied stock, as further outlined herein. When utilizing the COUNTY Common Use Space, the AIRLINE may use either its own stock or the COUNTY’s common stock. If the AIRLINE elects to use its own stock, it shall be responsible to remove all stock from the COUNTY’s equipment at the end of the usage period. AIRLINE stock shall be subject to approval by the COUNTY. In the event that the COUNTY deems the AIRLINE stock to be injurious to CUPPS, the AIRLINE will immediately cease usage of the offending stock upon such notice by the COUNTY.
SECTION 6.03  RADIO FREQUENCY IDENTIFICATION BAG TAG STOCK

The COUNTY will not supply RFID bag tag stock for use in as part of the Baggage Handling System unless RFID becomes standard common use stock at all locations within the airport. AIRLINE shall be required to meet the IATA / ATA standards for the twenty-one inch (21") bag tag (or as the standard may be amended by IATA / ATA), prior to the start-up of operations at the Airport. In the event that RFID is deployed airport wide, the AIRLINE shall provide to the COUNTY the necessary Baggage Service Messages (BSMs) that will be required to facilitate the AIRLINE's baggage through the Baggage Handling System that utilizes RFID technology to track and route baggage to the appropriate baggage carrousel. The COUNTY makes no express warranty as to the operability of the technology and/or baggage handling system equipment and the sole extent of liability of the COUNTY with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably possible to technical difficulties with the BHS equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with the RFID, BHS, and BSMs systems. The AIRLINE will not be allowed to use its own bag tag stock, unless specifically permitted to do so in writing by the COUNTY, which must at the time meet any and all standards that may be set forth by the COUNTY for such stock. The COUNTY reserves the right to sell and collect applicable advertising revenues that may be generated from the reverse side of any the COUNTY-supplied bag tag stock.

SECTION 6.04  COMMON USE SELF-SERVICE KIOSK (CUSS) EQUIPMENT

The AIRLINE will not install, deploy, or otherwise engage in the use of any proprietary self-service check-in kiosks and/or device, applications, and/or technologies on its Leased Premises, any portion of the Airport with the expectation to screen any checked bags at the Airport without prior approval from the Airport Director. At the request of the Airport Director, the AIRLINE will work with the COUNTY and other related parties in the development of a Common Use Self Service (CUSS) compliant kiosk application, or other similar applications, and/or devices as may be required to have the AIRLINE operational on all CUSS kiosks at the Airport. The COUNTY reserves the right to establish the locations for implementation of such CUSS kiosks to meet the needs of its customers and the Air Transportation Companies, as well as the operational needs of the Airport. The COUNTY agrees to supply and maintain, with its personnel and at its expense, all common-use self-service kiosk equipment, which shall be situated at designated ticket counters, at various areas of the terminal lobby and customer service areas, and other such locations, and using such passenger processing models as determined by the Airport Director to be most beneficial to meet the operational needs of the Airport. The COUNTY will supply all of the boarding pass stock necessary for the use of the CUSS equipment. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as
expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY's designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE’s vendor issues relating to the AIRLINE’s applications that run in conjunction with the CUSS systems. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport.

SECTION 6.05 NO MODIFICATIONS TO COUNTY’S EQUIPMENT

The AIRLINE shall not install at any gate holdroom, gate counter, skycap, ticket counter, or kiosk, any AIRLINE owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment without the prior express written permission of Airport Director. The AIRLINE shall not make any modification to the COUNTY's Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by the AIRLINE shall be remedied by the AIRLINE, to the sole satisfaction of the COUNTY, at the sole cost of the AIRLINE. In the event that the damage is repaired by the COUNTY, the AIRLINE will reimburse the COUNTY for both the fully-allocated cost of time and materials pertaining to the repairs plus twenty percent (20%) administrative fees.

SECTION 6.06 NETWORK USAGE

The AIRLINE will not install any proprietary cabling and/or similar infrastructure at the Airport without prior written approval of the COUNTY. As such, AIRLINE shall make use of the COUNTY’s data communications backbone at the Airport for its communications needs to connect separate operating locations within the Airport campus, (i.e. ticketing, baggage service, operations, maintenance, etc.). The AIRLINE shall be fully integrated into the COUNTY’s infrastructure backbone prior to startup of operations and thereafter shall be responsible to remove all proprietary cabling and/or other similar infrastructure, back to point of origin, at the AIRLINE’s sole cost. Where authorized, at the discretion of the Airport Director, any and all data communication cabling installed by the AIRLINE shall be in accordance with the COUNTY’s Airport Tenant Design Guidelines, and upon installation shall become the property of the COUNTY. Such improvements shall not be subject to any reimbursement or useful life clauses under Section 8.01 of this LEASE. The COUNTY may impose reasonable fees to AIRLINE for the use of such network, including but not limited to, any fees for unusual and/or excessive or non-standard usage, as reasonably determined by Director.

A. The AIRLINE will assign a representative(s), hereinafter "Authorized Network Representative," to work with the COUNTY to determine user access and network connectivity information. The AIRLINE shall be solely responsible for ensuring that Authorized Network Representatives are not security risks, and upon the COUNTY’s request, provide the COUNTY with any information reasonably necessary for the
COUNTY to evaluate any security event or incident relating to any Authorized Network Representative or use of the COUNTY’s network.

B. The AIRLINE shall be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (i) the AIRLINE's use of the COUNTY's network is secure and is used only for authorized purposes stated herein, and (ii) the AIRLINE's business information and data are protected against improper access, use, loss, disclosure, alteration, or destruction. The AIRLINE agrees that it will not abuse or misuse the Network Connection, or any of the components thereof, or any of the capabilities provided thereby. Unless otherwise explicitly provided herein, in no event shall the AIRLINE use the Network Connection as its internet service provider.

(1) The AIRLINE shall notify the COUNTY's Information Systems as soon as possible upon the discovery of any security breach or potential security breach that may affect the AIRLINE or the COUNTY’s confidential information or the security of the Network or any Network Connection.

(2) The AIRLINE shall ensure adequate security protection for the COUNTY from any third-party connections established on the AIRLINE's network. Adequate security protection means (i) protection to preserve confidentiality, integrity, and availability of the Network and information of the COUNTY, and (ii) protection from malicious codes and/or unauthorized intrusions.

(3) The AIRLINE and the COUNTY shall be responsible for maintaining the highest industry standards for security best practices on computing devices that could affect the availability and health of the Network connection, the Network, systems, applications or data of the AIRLINE and the COUNTY, respectively, specifically including, but not limited to, use of up-to-date antivirus protection, anti-SPAM, and establishment and use of a timely security patch management process.

SECTION 6.07 WIRELESS APPLICATIONS AND SIMILAR TECHNOLOGIES

The AIRLINE acknowledges that the COUNTY provides wireless capabilities for the AIRLINE’s operational use, in accordance with applicable Federal Communications Commission (FCC) regulations, rulings, and/or guidelines. The AIRLINE agrees that it will not install, deploy, or otherwise engage in the use of any transmitting wireless device, applications, and/or technologies on its Exclusive Use Areas, any portion of the Airport or within the airport system (regardless of any Exclusive Use, Preferential Use, Common Use, and/or Joint Use assignments) without having first obtained the express written permission of the Airport Director. Such wireless applications shall only be for the AIRLINE’s operational use. Use by any others or for the benefit of any other parties is specifically prohibited. At the request of the Airport Director, the AIRLINE will cease operation of a particular device due to interference with another transmitting device that is deemed necessary for operational and/or life-safety purposes.
SECTION 6.08  IN-LINE BAGGAGE HANDLING SYSTEM OBLIGATIONS, DUTIES, AND RESPONSIBILITIES

A. The AIRLINE will have use of the In-Line Baggage Handling Systems (BHS) in a location as designated by the Director to meet the operational needs of the Airport. The AIRLINE will be responsible to verify that it has a certified CUTE, CUSS, and Baggage Service Messages (BSM) applications to operate the BHS, and RFID where applicable, prior to the start-up of service at the Airport. The AIRLINE will actively work with the COUNTY staff and the AIRLINE’s system provider(s) to expedite all information systems and/or technologies work that may be required to ensure such applications are properly certified by the COUNTY and its system provider(s), if applicable. The COUNTY shall have the right to charge the AIRLINE for any expenses incurred by the COUNTY, including staffing to manage passenger lines and/or additional maintenance staff, if the AIRLINE fails to adhere to BHS system procedures and/or properly staff the baggage make-up areas to meet the demand and such failure results in an operational impact to the Airport and/or the BHS equipment.

B. Following the COUNTY's BHS training, provided by the COUNTY to the AIRLINE, the AIRLINE will be solely responsible for the proper operations, training, and supervision of its staff for its portion of the operational responsibilities of the BHS system. The AIRLINE shall ensure that it maintains staffing levels during all operational hours, including irregular operations, that are sufficient to retrieve baggage from the baggage make-up carrousels and/or piers in order to prevent the inefficient use of the in-line baggage handling system in a fully automated mode and to prevent the system from initiating a "die-back" situation, which may require the COUNTY to intercede manually and/or cause additional staffing by the COUNTY, its contractors, or TSA staff to initiate baggage screening mitigation procedures as a result of baggage stacking up on the make-up carrousels and/or piers. The AIRLINE shall not initiate any procedures or work rules that, as determined by the Director, will negatively impact the in-line BHS without the prior written approval of the COUNTY and without concurrence from TSA. The COUNTY reserves the right to recover any costs from the AIRLINE that may result from the AIRLINE's failure to comply with this Section of the LEASE.

C. The AIRLINE will designate a representative as a Ground Security Coordinator (GSC) to handle issues that may arise from time to time with the BHS. The GSC will be the point of contact with the TSA and the COUNTY for all issues concerning checked passenger baggage and/or BHS performance. The GSC must be available during the AIRLINE’s operational hours.

D. The AIRLINE acknowledges that all oversized checked baggage must be delivered to a designated oversized area for screening.

E. The AIRLINE acknowledges it may have a more stringent screening requirement for checked passenger baggage than that of TSA. As such, the AIRLINE will be responsible to provide these additional screening services and associated staffing to meet such
requirements, including, but not limited to, X-Ray screening, and any additional training for additional services, and/or any additional services at no additional cost to the COUNTY. The AIRLINE must provide evidence of proper training for such additional measures to the Director upon request. The COUNTY may, at its sole discretion provide and maintain the X-Ray screening device.

F. The AIRLINE shall be responsible to order, pick-up and maintain an appropriate level of any and all consumables related to the Common Use Equipment and/or BHS, including, but not limited to, RFID embedded bag tag stock, boarding pass stock, toner cartridges for laser printers, or other similar items, in accordance with policies and procedures established by the COUNTY in the event AIRLINE uses propriety consumables.

ARTICLE VII - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 7.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The AIRLINE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The AIRLINE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the AIRLINE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The AIRLINE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws. Hazardous waste generated by the AIRLINE or its contractors shall be disposed properly and under the AIRLINE’s EPA ID number.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water
drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The AIRLINE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The AIRLINE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the AIRLINE.

SECTION 7.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The AIRLINE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The AIRLINE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the AIRLINE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the AIRLINE shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines
or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

SECTION 7.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the AIRLINE, the AIRLINE’s operations at the Airport or any action arising from and which involve the AIRLINE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

1. The AIRLINE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE’s release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.

2. The AIRLINE’s release of Hazardous Substances upon or within the Airport.

3. The AIRLINE’s violation of any applicable Environmental Law, except that the AIRLINE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.

4. The AIRLINE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 7.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 7.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 7.05 ENVIRONMENTAL STEWARDSHIP

A. All AIRLINE facilities and improvements shall meet the Airport’s Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the AIRLINE installs any new infrastructure, the AIRLINE is required to use the Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The AIRLINE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

(1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

(2) Climate Action Plan.

(3) Waste Management Plan.

(4) Storm Water Pollution Prevention Plan.
C. The AIRLINE shall implement the following conservation measures and policies:

1. Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

2. Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.

3. Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

4. Install energy-efficient heating and cooling equipment when replacing or upgrading.

5. Use energy-efficient computers and servers when replacing this equipment.

6. Select equipment with variable speed motors and fan drives, when possible.

7. Utilize paperless ticket technology, when possible.

D. The AIRLINE shall implement and support the following environmental policies:

1. Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The AIRLINE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

2. The AIRLINE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

3. The AIRLINE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the AIRLINE’s procurement of goods and services as applicable.

4. The AIRLINE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.
(5) Upon request, the AIRLINE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 7.06 ANTI-IDLING POLICY

Within six months of LEASE execution, AIRLINE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. AIRLINE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the AIRLINE.

ARTICLE VIII – CONSTRUCTION AND IMPROVEMENTS

SECTION 8.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE’s Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall make every reasonable effort to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE's operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE's unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 8.02 IMPROVEMENTS BY THE AIRLINE

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE’s expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred seventy five thousand
dollars ($175,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The AIRLINE's Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE's sole cost and expense. The AIRLINE
shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE’s cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

**SECTION 8.03 AIRLINE REIMBURSEMENT**

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE’s Leased Premises from this LEASE or terminates the LEASE for convenience pursuant to Section 2.03, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

\[
\text{COMPENSATION} = A \times \frac{B}{C}
\]

- **A** = The AIRLINE’s actual leasehold improvement construction costs submitted in accordance with Section 8.07 in this LEASE.
- **B** = Number of full months remaining in Lease Term.
- **C** = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with “As-Built Documents” and “Record Documents” as required by Section 8.07 of this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.
SECTION 8.04 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 8.03 in this LEASE shall be the AIRLINE’s sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 et seq.), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 et seq.), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE’s rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

SECTION 8.05 AIRLINE’S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.
B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.
C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 8.06 MECHANICS LIENS OR STOP-NOTICES

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys’ fees and costs.
In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the AIRLINE shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two (2) optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 8.07 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance
(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 8.08 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to
the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 8.09 HEALTH AND SAFETY

The AIRLINE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE IX - ACCOMMODATION

SECTION 9.01 JOINT USE REQUIREMENT

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the
availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE's Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE's reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE's Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airlines' operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE agrees that, in the event it subleases its Leased Premises to another airline, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE's actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two (2) times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE X - ASSIGNMENT AND SUBLEASE

SECTION 10.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. Transfers. The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30)
days prior written notice of all proposed Transfers. The AIRLINE shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the AIRLINE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 11.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The AIRLINE, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of the AIRLINE as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.
(7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

(8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.

C. Affiliate Transactions. The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and/or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
(3) In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

(4) The AIRLINE fails to comply with Paragraph C, of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the AIRLINE assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are
non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

SECTION 10.02 SUCCESSORS IN INTEREST

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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE XI - TERMINATION AND DEFAULT

SECTION 11.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.

SECTION 11.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder with prior written notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;

D. The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;

E. The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;

F. If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE's business;
G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the AIRLINE shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 11.03 CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE'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 expiration.

SECTION 11.04 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 11.05 THE COUNTY'S RIGHT TO RE-ENTER

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the LEASE terms and shall not constitute an acceptance or surrender.
The AIRLINE 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE XII - SECURITY

SECTION 12.01 AIRPORT SECURITY

The AIRLINE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The AIRLINE is responsible for fines imposed by any regulatory agency as a result of the AIRLINE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The AIRLINE employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LEASE. The AIRLINE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed AIRLINE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The AIRLINE employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The AIRLINE employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The AIRLINE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. **Local Security.** The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE’s constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the AIRLINE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. **Federal Security.** As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated AIRLINE Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the AIRLINE shall pay the applicable fees. Upon successful completion of the background checks, the AIRLINE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated AIRLINE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The AIRLINE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The AIRLINE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The AIRLINE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The AIRLINE and all AIRLINE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. AIRLINE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must
immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of AIRLINE personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff’s Department–Airport Police Services by calling (949) 252-5000. The AIRLINE or AIRLINE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the AIRLINE’s employee’s or contractor’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of AIRLINE personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the AIRLINE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The AIRLINE’s security deposit may be applied to cover the cost of the fine.

ARTICLE XIII - INSURANCE AND INDEMNITY

SECTION 13.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE’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.

The AIRLINE agrees that the AIRLINE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.
If the AIRLINE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE 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 the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE’S employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the 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.

The AIRLINE may occupy the Airport Premises only upon providing to the COUNTY, the required insurance stated herein and maintain such insurance for the entire term of this LEASE. The COUNTY reserves the right to terminate this LEASE at any time the AIRLINE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. The AIRLINE shall pay the COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. The AIRLINE shall provide to the COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE; excluding General Aviation Liability. All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE 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 Airport Premises. Such proof of insurance must be maintained by the AIRLINE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of AIRLINE’s current audited financial report. If the AIRLINE’s SIR is approved, AIRLINE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from the AIRLINE’s, its agents, employee’s or
subcontractor’s performance of this Agreement, the AIRLINE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) The AIRLINE’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 the AIRLINE’s SIR provision shall be interpreted as though the AIRLINE was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
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<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
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<tr>
<td>(Including but not limited to General</td>
<td>$250,000,000 aggregate</td>
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<td>Liability, Passenger Legal Liability,</td>
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<td>Personal Injury, Contractual Liability,</td>
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<td>Premises, Products and Completed</td>
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<td>Operations, Ground Hangarkeepers and</td>
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<td>liability for vehicles and mobile</td>
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<td>equipment operated on restricted airport premises.)</td>
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<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
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<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims made or per occurrence</td>
</tr>
<tr>
<td>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.</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**

The Aviation General 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, agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’s insurance is primary and any insurance or self-insurance maintained by 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.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’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 policy 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 insurance policies required by this LEASE shall waive all rights of subrogation against 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 COUNTY’s financial interest when applicable.

If the AIRLINE’s Pollution Liability policy is a claims-made policy, the AIRLINE 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 (NOTICES) below or to an address provided by Airport Director. AIRLINE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require AIRLINE 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 the COUNTY of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE'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.

SECTION 13.02 INDEMNITY

The AIRLINE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the AIRLINE pursuant to this LEASE. If judgment is entered against the AIRLINE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the AIRLINE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIV - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 14.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. AIRLINE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If AIRLINE transfers its obligation to another, the transferee is obligated in the same manner as AIRLINE.

B. AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) AIRLINE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) AIRLINE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by AIRLINE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by AIRLINE of the AIRLINE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4) AIRLINE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, AIRLINE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the AIRLINE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the AIRLINE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The AIRLINE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The AIRLINE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if AIRLINE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the AIRLINE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the AIRLINE may request the United States to enter into the litigation to protect the interests of the United States.

C. AIRLINE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, AIRLINE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) AIRLINE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. AIRLINE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. AIRLINE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

(prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 14.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

SECTION 14.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 14.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The AIRLINE agrees that the AIRLINE’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The AIRLINE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 14.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the AIRLINE in this LEASE, or any local authorities shall not apply to the AIRLINE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 14.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 14.07 RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 14.08 HEIGHT LIMITATION OF STRUCTURES

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 14.09 NONINTERFERENCE WITH AIRCRAFT

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

SECTION 14.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 14.11 AFFIRMATIVE ACTION REQUIREMENTS

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 14.12 AMERICANS WITH DISABILITIES ACT

The AIRLINE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the AIRLINE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the AIRLINE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The AIRLINE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The AIRLINE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the AIRLINE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The AIRLINE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the AIRLINE’s failure to comply with the ADA.
SECTION 14.13  BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the AIRLINE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The AIRLINE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the AIRLINE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The AIRLINE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the AIRLINE owns and operates additional ramps, the AIRLINE shall maintain those ramps in proper working condition. The AIRLINE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XV - MISCELLANEOUS PROVISIONS

SECTION 15.01  TIME

Time is of the essence in this LEASE.

SECTION 15.02  LEASE ORGANIZATION

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.

SECTION 15.03  AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 15.04  SIGNS

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. The AIRLINE shall submit for approval all new signage to be placed in the ticketing lobby including baggage sizers, and pylon signs. Illustrative drawings and design dimensions must accompany all requests for approval. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the AIRLINE.

The AIRLINE will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of temporary promotional signs for the AIRLINE shall be accompanied by illustrative drawings and design dimensions along with information about the
type of signs proposed, and proposed locations. All approved promotional signs shall be allowed to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage must be removed, or the AIRLINE may resubmit a request to COUNTY to extend past the ninety (90) days.

The AIRLINE shall keep all ticket counter space used by the AIRLINE and any associated ticket lifts and podiums free of all signs, advertising materials, credit card application dispensing units, posters and banners. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the AIRLINE’s expense; the COUNTY may dispose of items if they are not promptly claimed by the AIRLINE after notice from the COUNTY.

SECTION 15.05 PERMITS AND LICENSES

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

SECTION 15.06 RESERVED

SECTION 15.07 TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid promptly.

SECTION 15.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental or other charge required of the AIRLINE except as may be expressly provided elsewhere in this LEASE.
SECTION 15.09 PARTIAL INVALIDITY

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.

SECTION 15.10 WAIVER OF RIGHTS

The failure of the COUNTY or the AIRLINE 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 the COUNTY or the AIRLINE 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 15.11 RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE's operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the AIRLINE's use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

SECTION 15.12 AUTHORITY OF THE AIRLINE

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.
SECTION 15.13 PUBLIC RECORDS

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 15.14 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 15.15 GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 15.16 ATTORNEYS' FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 15.17 EMERGENCY SERVICES

Airport Director has the right to request that the AIRLINE’S employees aid in and use AIRLINE’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The AIRLINE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 15.18    NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:  COUNTY
     John Wayne Airport
     3160 Airway Avenue
     Costa Mesa, CA 92626

TO:  AIRLINE
     Frontier Airlines, Inc.
     4545 Airport Way, 4th Floor
     Denver, CO 80239

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
JOHN WAYNE AIRPORT
CERTIFICATED PASSENGER AIRLINE LEASE

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

FRONTIER AIRLINES, INC.

By: [Signature]

Howard Diamond
SVP, General Counsel & Secretary

APPROVED AS TO FORM:

County Counsel

By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: [Signature]

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: [Signature]

Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

Robin Stieler
Clerk of the Board of Supervisors of Orange County, California

COUNTY

COUNTY OF ORANGE

By: [Signature]

Chairwoman, Board of Supervisors
LEASED DESCRIPTION

Parcel Numbers: PM 1121-300-0083

Project Name: John Wayne Airport

Second Party: Frontier Airlines

The Leased Premises referred to in this Lease shall mean all the premises shown on a floor plan marked "Exhibit B", attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 300-72: Airport Ticket Office and Ticket Counter containing 420 square feet and 185 square feet respectively, located on the Terminal C departure level.

Said Exclusive Use Areas shall also include the premises shown on a plot plan marked "Exhibit C", attached hereto and made a part hereof, being Apron Equipment Storage Area designated as Parcel 300-82.1 containing the square footage as specified herein. Said "Exhibit C" may be revised at any time by Airport Director.

The Leased Premises shall also include the premises shown on a floor plan marked "Exhibit D", being those certain Common Use Areas designated as Baggage Claim/Baggage Make-up Areas, Holdrooms, Airside Concourses, Security Areas, and Loading Bridges.

Said Exclusive Use and Common Use Areas are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.
TICKETING & ATO

NOT TO SCALE

FRONTIER
ATO
420 SQ FT

WALK WAY

FRONTIER
TICKETING
185 SQ FT

7'
6'
5'

= ROOM NUMBER

APPROXIMATE LOCATION
### JOHN WAYNE AIRPORT

#### SUMMARY OF OPERATION AND MAINTENANCE RESPONSIBILITIES

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**Key:**

- **A** = Airline
- **C** = County

1. Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.
2. Airline is responsible for routine maintenance, including relamping and ballast replacement.
3. Airline is responsible for cleaning ramp areas of trash and spills (from building to VSR).

If Airline fails to perform its maintenance and repair obligations as stated in the Lease, the County may perform the work after providing the Airline written notice and recover its entire cost plus a 15% charge from Airline as additional costs. Said costs shall be due and payable by the Airline to the County as stated in Article V, Section 5.07 of the Lease.

In the event the Airline makes any repairs or modifications to an area or equipment, at the request of the County, as per Section 4.01 subsection C of this Lease, and those areas or equipment are currently maintained by the County, the County will continue the maintenance responsibilities for those areas or equipment.

**EXHIBIT E**
CERTIFICATED PASSENGER AIRLINE LEASE

Dated ______________

Between

County of Orange

and

Southwest Airlines Co.
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THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this ___
day of ____________, 2021, by and between the COUNTY OF ORANGE, a political subdivision
of the State of California ("the COUNTY"), and SOUTHWEST AIRLINES CO. ("the AIRLINE").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor
of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of
California, and operates and maintains the Airport as a governmental function for the primary
purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of
persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise
authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises,
facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the
residents who live under the Airport's approach and departure corridors, the COUNTY has
developed one of the most stringent access and noise abatement programs in the country. The
Airport monitors all aircraft operations, both commercial and private, for compliance with the
program. These noise abatement and access restrictions derive from the 1985 Settlement
Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented
through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-
1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and
Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties,
to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to
implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE
AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy
decisions of the Board of Supervisors regarding the appropriate point of balance between the
competing interests of the air transportation and aviation community and local residents living in
the vicinity of the Airport. These policy decisions address, among other issues, nighttime
operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the AIRLINE mutually desire to enter into a LEASE in
order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the
Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and
WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

"AAAC" shall mean the JWA – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving JWA.

SECTION 1.02 AAAC CHAIR

"AAAC CHAIR" shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving JWA.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08 APRON AREA

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’s governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

SECTION 1.14 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

"CUPPS" shall mean the Airport's Common Use Passenger Processing System.

SECTION 1.16 CUSS

"CUSS" shall mean Common Use Self Service.
SECTION 1.17   EMV

"EMV" shall mean Europay, Mastercard, or Visa.

SECTION 1.18   DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.19   ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20 EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.21 FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT OF 1958, or such successor agency as may have similar jurisdiction over the AIRLINE or its business, and the Airport.

SECTION 1.22 GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.23 HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.24 IAF

"IAF" shall mean the International Arrival Facility and include the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.25 NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant
Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.26 PFC

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

SECTION 1.27 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);

b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);

c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;

d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);

e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;

f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;

g. Materials which contain base/neutral or acid extractable organic compounds;

h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;

i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and

j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28 RON

"RON" shall mean the remain overnight positions where the AIRLINE's aircraft are required to park when they "remain overnight" at JWA.
SECTION 1.29    STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.30    TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at JWA, as may be modified at any time during the term of this LEASE.

SECTION 1.31    TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LEASE

SECTION 2.01    TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02    HOLDING OVER

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03    TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01    LEASED PREMISES

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."

Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:
A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 9.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area."

B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:

1. Baggage Claim and Baggage Make-up Areas;
2. Hold-rooms (departure lounges);
3. Airside Concourses;
4. Landside Concourses;
5. Baggage and Passenger Screening Areas;

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

**SECTION 3.02 NATURE OF AIRLINE'S ESTATE**

The AIRLINE acknowledges and agrees:

A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.
SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director and/or designee prior to installation.

ARTICLE IV - RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The AIRLINE shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1) Exclusive Use Areas

(a) Terminal Building. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, and operations/ramp office.

For the purpose of calculating terminal building rent, the AIRLINE's Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b) Terminal Apron. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contains the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c) Airport Tenant Improvement Amortization Schedule. The AIRLINE shall reimburse the COUNTY for tenant improvement by the COUNTY based on the amortization schedule established by the Airport Director.
(2) Common Use Areas

(a) Arrival Level. The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.

(b) Departure Level. The COUNTY shall establish fees for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

(c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carriers operating international flights according to the carrier's ratio of international deplaned passengers and the schedule established by the COUNTY.
(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

1. The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

2. In the event AIRLINE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by AIRLINE customers and AIRLINE shall indemnify the COUNTY pursuant to Section 13.02 of this LEASE for such transactions.

3. **Additional Fees**

   The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the cost to
be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges, and may require the AIRLINE to submit future monthly report electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that allows AIRLINE to efficiently report of information requested.

   (1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

   (2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

   (3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE’s use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

C. Based upon prior written agreement between the AIRLINE and the COUNTY, the AIRLINE may pay for facilities repairs or modifications that would normally be the responsibility of the COUNTY. Costs for such repairs or modifications shall be deducted from the AIRLINE rent by the COUNTY upon submittal to the COUNTY of invoices, receipts, statements, or other documentation acceptable to the COUNTY for said repairs or modifications. All invoices, receipts, statements or other documentation shall include a detailed description of the nature of the work performed and the associated costs. Upon completion of all repairs or modifications, the AIRLINE shall submit to the COUNTY a written request for rent credit and all documentation for the repairs or modifications.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01, 4.08 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the AIRLINE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY’s right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to AIRLINE plus a twenty-five dollar ($25.00) processing fee.

C. **Penalty for NSF Check** In the event a check submitted by AIRLINE is returned for non-sufficient funds ("NSF"), the AIRLINE agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. AIRLINE may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.04      PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article XI hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 4.03 of this LEASE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.
SECTION 4.05 PROVISION AGAINST SET-OFFS

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.06 SECURITY DEPOSIT

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder. PFCs shall be excluded from the rents, fees and charges used to determine the AIRLINE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE's full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE’s performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of
expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article XI of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

SECTION 4.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned to the new entrant AIRLINE after six (6) months of continuous operation.

SECTION 4.08 MARKETING FUND FEE

The COUNTY has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, AIRLINE shall be required to make an annual marketing fund payment in the amount of ten thousand dollars ($10,000.00). AIRLINE agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants’ promotions and directly related expenses. In the event any year of this LEASE contains less than 12 months, AIRLINE shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commenced on November 1, AIRLINE would pay the monthly pro-rata portion ($833.33 per month) of the annual marketing fund amount for November and
December (totaling $1,666.66). Then, commencing on January 1, AIRLINE would make the full annual marketing fund payment of $10,000.00. Should the LEASE expire on September 15, AIRLINE would pay a pro-rata portion of the annual amount for the months of January through September.

ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01    USE

The AIRLINE's use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 9.01 in this LEASE, this operation is subject to the following authorized uses:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.

F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the AIRLINE's employees at the Airport and in-flight catering services in support of the AIRLINE's air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
I. Handling of other airlines' operations and ticketing pursuant to Section 9.01 in this LEASE.

J. Employee training incidental to the other uses permitted under this Section.

K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.

L. Other uses as authorized by the Airport Director.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and AIRLINE’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the AIRLINE’s operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the AIRLINE.

The AIRLINE’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE’s use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The AIRLINE agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the term of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.

C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the AIRLINE from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article XI in this LEASE are subject to the terms, provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The AIRLINE agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the AIRLINE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the AIRLINE by action of the Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and, the AIRLINE has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the AIRLINE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown are Pacific Time.

The AIRLINE acknowledges that the COUNTY may, by regulation, permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The AIRLINE does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or
C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** AIRLINE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by AIRLINE. AIRPORT will make reasonable efforts to develop a gate management software that allows for efficient uploading and maintaining of current daily arrival and departure information by AIRLINE.

E. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or Common Use Area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE's activity for the month.
The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., Pacific Time) of the following day.

C. **Audits.** All the AIRLINE's records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or

2. The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE’s use of the Leased Premises.
D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY’s option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.

2. Require that the AIRLINE pay rents and fees based on the COUNTY’s best good faith estimate of the AIRLINE’s activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits, and the COUNTY’s overhead; or, at the Auditor-Controller’s option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.

**SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES AND EXCLUSIVE USE AREAS**

The AIRLINE agrees to maintain Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Exclusive Use Areas and improvements in good condition. All repairs and improvements made by the AIRLINE to the Exclusive Use Areas shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Exclusive Use Areas. Any additions, alterations, repairs and changes of use or occupancy in the Exclusive Use Areas shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed. Maintenance obligations of the AIRLINE are shown on Exhibit E, which exhibit is attached hereto and by reference made a part hereof.
The AIRLINE shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The AIRLINE further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE's Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering AIRLINE’s leased premises.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY’s negligence or willful misconduct.
SECTION 5.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE’s gate loading positions.

The AIRLINE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. AIRLINE shall promptly remove all oil and grease spillage attributable to the AIRLINE’s aircraft or equipment.

If the AIRLINE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 5.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 5.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used
upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 5.11 AIRCRAFT PARKING

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 3.01 in this LEASE.

If in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The AIRLINE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE VI - INFORMATION TECHNOLOGY AND COMMON USE EQUIPMENT

SECTION 6.01 COMMON USE EQUIPMENT

The COUNTY agrees to supply and maintain all equipment for the CUPPS/CUSS, which shall be situated in areas such as, but not limited to ticket counters, ticket lobbies, skycap, and gate podiums. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably as possible to technical difficulties with the equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s service desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with CUPPS. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport including but not limited to gate assignment, scheduling and implementation of any software updates.

SECTION 6.02 COMMON USE EQUIPMENT STOCK

The AIRLINE may be asked to supply its own ticket (kiosk) stock in the use of the CUPPS at Common Use Space positions from time to time as it pertains to Radio Frequency Identification (RFID) or specialty stock not provided by the COUNTY. In the event that multiple airlines share kiosk space, all airlines will be required to remove their own stock and allow the other airlines to use the COUNTY supplied stock, as further outlined herein. When utilizing the COUNTY Common Use Space, the AIRLINE may use either its own stock or the COUNTY’s common stock. If the AIRLINE elects to use its own stock, it shall be responsible to remove all stock from the COUNTY’s equipment at the end of the usage period. AIRLINE stock shall be subject to approval by the COUNTY. In the event that the COUNTY deems the AIRLINE stock to be injurious to CUPPS, the AIRLINE will immediately cease usage of the offending stock upon such notice by the COUNTY.
SECTION 6.03 RADIO FREQUENCY IDENTIFICATION BAG TAG STOCK

The COUNTY will not supply RFID bag tag stock for use in as part of the Baggage Handling System unless RFID becomes standard common use stock at all locations within the airport. AIRLINE shall be required to meet the IATA / ATA standards for the twenty-one inch (21”) bag tag (or as the standard may be amended by IATA / ATA), prior to the start-up of operations at the Airport. In the event that RFID is deployed airport wide, the AIRLINE shall provide to the COUNTY the necessary Baggage Service Messages (BSMs) that will be required to facilitate the AIRLINE's baggage through the Baggage Handling System that utilizes RFID technology to track and route baggage to the appropriate baggage carousel. The COUNTY makes no express warranty as to the operability of the technology and/or baggage handling system equipment and the sole extent of liability of the COUNTY with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably possible to technical difficulties with the BHS equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with the RFID, BHS, and BSMs systems. The AIRLINE will not be allowed to use its own bag tag stock, unless specifically permitted to do so in writing by the COUNTY, which must at the time meet any and all standards that may be set forth by the COUNTY for such stock. The COUNTY reserves the right to sell and collect applicable advertising revenues that may be generated from the reverse side of any the COUNTY-supplied bag tag stock.

SECTION 6.04 COMMON USE SELF-SERVICE KIOSK (CUSS) EQUIPMENT

The AIRLINE will not install, deploy, or otherwise engage in the use of any proprietary self-service check-in kiosks and/or device, applications, and/or technologies on its Leased Premises, any portion of the Airport with the expectation to screen any checked bags at the Airport without prior approval from the Airport Director. At the request of the Airport Director, the AIRLINE will work with the COUNTY and other related parties in the development of a Common Use Self Service (CUSS) compliant kiosk application, or other similar applications, and/or devices as may be required to have the AIRLINE operational on all CUSS kiosks at the Airport. The COUNTY reserves the right to establish the locations for implementation of such CUSS kiosks to meet the needs of its customers and the Air Transportation Companies, as well as the operational needs of the Airport. The COUNTY agrees to supply and maintain, with its personnel and at its expense, all common-use self-service kiosk equipment, which shall be situated at designated ticket counters, at various areas of the terminal lobby and customer service areas, and other such locations, and using such passenger processing models as determined by the Airport Director to be most beneficial to meet the operational needs of the Airport. The COUNTY will supply all of the boarding pass stock necessary for the use of the CUSS equipment. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as
expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE’s vendor issues relating to the AIRLINE’s applications that run in conjunction with the CUSS systems. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport.

SECTION 6.05  NO MODIFICATIONS TO COUNTY’S EQUIPMENT

The AIRLINE shall not install at any gate holdroom, gate counter, skycap, ticket counter, or kiosk, any AIRLINE owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment without the prior express written permission of Airport Director. The AIRLINE shall not make any modification to the COUNTY’s Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by the AIRLINE shall be remedied by the AIRLINE, to the sole satisfaction of the COUNTY, at the sole cost of the AIRLINE. In the event that the damage is repaired by the COUNTY, the AIRLINE will reimburse the COUNTY for both the fully-allocated cost of time and materials pertaining to the repairs plus twenty percent (20%) administrative fees.

SECTION 6.06  NETWORK USAGE

The AIRLINE will not install any proprietary cabling and/or similar infrastructure at the Airport without prior written approval of the COUNTY. As such, AIRLINE shall make use of the COUNTY’s data communications backbone at the Airport for its communications needs to connect separate operating locations within the Airport campus, (i.e. ticketing, baggage service, operations, maintenance, etc.). The AIRLINE shall be fully integrated into the COUNTY’s infrastructure backbone prior to startup of operations and thereafter shall be responsible to remove all proprietary cabling and/or other similar infrastructure, back to point of origin, at the AIRLINE’s sole cost. Where authorized, at the discretion of the Airport Director, any and all data communication cabling installed by the AIRLINE shall be in accordance with the COUNTY’s Airport Tenant Design Guidelines, and upon installation shall become the property of the COUNTY. Such improvements shall not be subject to any reimbursement or useful life clauses under Section 8.01 of this LEASE. The COUNTY may impose reasonable fees to AIRLINE for the use of such network, including but not limited to, any fees for unusual and/or excessive or non-standard usage, as reasonably determined by Director.

A. The AIRLINE will assign a representative(s), hereinafter "Authorized Network Representative," to work with the COUNTY to determine user access and network connectivity information. The AIRLINE shall be solely responsible for ensuring that Authorized Network Representatives are not security risks, and upon the COUNTY’s request, provide the COUNTY with any information reasonably necessary for the
COUNTY to evaluate any security event or incident relating to any Authorized Network Representative or use of the COUNTY’s network.

B. The AIRLINE shall be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (i) the AIRLINE's use of the COUNTY's network is secure and is used only for authorized purposes stated herein, and (ii) the AIRLINE's business information and data are protected against improper access, use, loss, disclosure, alternation, or destruction. The AIRLINE agrees that it will not abuse or misuse the Network Connection, or any of the components thereof, or any of the capabilities provided thereby. Unless otherwise explicitly provided herein, in no event shall the AIRLINE use the Network Connection as its internet service provider.

(1) The AIRLINE shall notify the COUNTY's Information Systems as soon as possible upon the discovery of any security breach or potential security breach that may affect the AIRLINE or the COUNTY’s confidential information or the security of the Network or any Network Connection.

(2) The AIRLINE shall ensure adequate security protection for the COUNTY from any third-party connections established on the AIRLINE's network. Adequate security protection means (i) protection to preserve confidentiality, integrity, and availability of the Network and information of the COUNTY, and (ii) protection from malicious codes and/or unauthorized intrusions.

(3) The AIRLINE and the COUNTY shall be responsible for maintaining the highest industry standards for security best practices on computing devices that could affect the availability and health of the Network connection, the Network, systems, applications or data of the AIRLINE and the COUNTY, respectively, specifically including, but not limited to, use of up-to-date antivirus protection, anti-SPAM, and establishment and use of a timely security patch management process.

SECTION 6.07 WIRELESS APPLICATIONS AND SIMILAR TECHNOLOGIES

The AIRLINE acknowledges that the COUNTY provides wireless capabilities for the AIRLINE’s operational use, in accordance with applicable Federal Communications Commission (FCC) regulations, rulings, and/or guidelines. The AIRLINE agrees that it will not install, deploy, or otherwise engage in the use of any transmitting wireless device, applications, and/or technologies on its Exclusive Use Areas, any portion of the Airport or within the airport system (regardless of any Exclusive Use, Preferential Use, Common Use, and/or Joint Use assignments) without having first obtained the express written permission of the Airport Director. Such wireless applications shall only be for the AIRLINE’s operational use. Use by any others or for the benefit of any other parties is specifically prohibited. At the request of the Airport Director, the AIRLINE will cease operation of a particular device due to interference with another transmitting device that is deemed necessary for operational and/or life-safety purposes.
SECTION 6.08  IN-LINE BAGGAGE HANDLING SYSTEM OBLIGATIONS, DUTIES, AND RESPONSIBILITIES

A. The AIRLINE will have use of the In-Line Baggage Handling Systems (BHS) in a location as designated by the Director to meet the operational needs of the Airport. The AIRLINE will be responsible to verify that it has a certified CUTE, CUSS, and Baggage Service Messages (BSM) applications to operate the BHS, and RFID where applicable, prior to the start-up of service at the Airport. The AIRLINE will actively work with the COUNTY staff and the AIRLINE’s system provider(s) to expedite all information systems and/or technologies work that may be required to ensure such applications are properly certified by the COUNTY and its system provider(s), if applicable. The COUNTY shall have the right to charge the AIRLINE for any expenses incurred by the COUNTY, including staffing to manage passenger lines and/or additional maintenance staff, if the AIRLINE fails to adhere to BHS system procedures and/or properly staff the baggage make-up areas to meet the demand and such failure results in an operational impact to the Airport and/or the BHS equipment.

B. Following the COUNTY’s BHS training, provided by the COUNTY to the AIRLINE, the AIRLINE will be solely responsible for the proper operations, training, and supervision of its staff for its portion of the operational responsibilities of the BHS system. The AIRLINE shall ensure that it maintains staffing levels during all operational hours, including irregular operations, that are sufficient to retrieve baggage from the baggage make-up carrousels and/or piers in order to prevent the inefficient use of the in-line baggage handling system in a fully automated mode and to prevent the system from initiating a “die-back” situation, which may require the COUNTY to intercede manually and/or cause additional staffing by the COUNTY, its contractors, or TSA staff to initiate baggage screening mitigation procedures as a result of baggage stacking up on the make-up carrousels and/or piers. The AIRLINE shall not initiate any procedures or work rules that, as determined by the Director, will negatively impact the in-line BHS without the prior written approval of the COUNTY and without concurrence from TSA. The COUNTY reserves the right to recover any costs from the AIRLINE that may result from the AIRLINE’s failure to comply with this Section of the LEASE.

C. The AIRLINE will designate a representative as a Ground Security Coordinator (GSC) to handle issues that may arise from time to time with the BHS. The GSC will be the point of contact with the TSA and the COUNTY for all issues concerning checked passenger baggage and/or BHS performance. The GSC must be available during the AIRLINE’s operational hours.

D. The AIRLINE acknowledges that all oversized checked baggage must be delivered to a designated oversized area for screening.

E. The AIRLINE acknowledges it may have a more stringent screening requirement for checked passenger baggage than that of TSA. As such, the AIRLINE will be responsible to provide these additional screening services and associated staffing to meet such
requirements, including, but not limited to, X-Ray screening, and any additional training for additional services, and/or any additional services at no additional cost to the COUNTY. The AIRLINE must provide evidence of proper training for such additional measures to the Director upon request. The COUNTY may, at its sole discretion provide and maintain the X-Ray screening device.

F. The AIRLINE shall be responsible to order, pick-up and maintain an appropriate level of any and all consumables related to the Common Use Equipment and/or BHS, including, but not limited to, RFID embedded bag tag stock, boarding pass stock, toner cartridges for laser printers, or other similar items, in accordance with policies and procedures established by the COUNTY in the event AIRLINE uses propriety consumables.

ARTICLE VII - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 7.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The AIRLINE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The AIRLINE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the AIRLINE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The AIRLINE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws. Hazardous waste generated by the AIRLINE or its contractors shall be disposed properly and under the AIRLINE’s EPA ID number.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water
drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The AIRLINE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The AIRLINE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the AIRLINE.

SECTION 7.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The AIRLINE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The AIRLINE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the AIRLINE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the AIRLINE shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines
or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

SECTION 7.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the AIRLINE, the AIRLINE’s operations at the Airport or any action arising from and which involve the AIRLINE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

1. The AIRLINE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE’s release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.

2. The AIRLINE’s release of Hazardous Substances upon or within the Airport.

3. The AIRLINE’s violation of any applicable Environmental Law, except that the AIRLINE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.

4. The AIRLINE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 7.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 7.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 7.05 ENVIRONMENTAL STEWARDSHIP

A. All AIRLINE facilities and improvements shall meet the Airport's Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the AIRLINE installs any new infrastructure, the AIRLINE is required to use the Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The AIRLINE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

   (1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

   (2) Climate Action Plan.

   (3) Waste Management Plan.

   (4) Storm Water Pollution Prevention Plan.
C. The AIRLINE shall implement the following conservation measures and policies:

   (1) Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

   (2) Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.

   (3) Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

   (4) Install energy-efficient heating and cooling equipment when replacing or upgrading.

   (5) Use energy-efficient computers and servers when replacing this equipment.

   (6) Select equipment with variable speed motors and fan drives, when possible.

   (7) Utilize paperless ticket technology, when possible.

D. The AIRLINE shall implement and support the following environmental policies:

   (1) Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The AIRLINE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

   (2) The AIRLINE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

   (3) The AIRLINE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the AIRLINE’s procurement of goods and services as applicable.

   (4) The AIRLINE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.
Upon request, the AIRLINE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 7.06 ANTI-IDLING POLICY

Within six months of LEASE execution, AIRLINE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. AIRLINE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the AIRLINE.

ARTICLE VIII – CONSTRUCTION AND IMPROVEMENTS

SECTION 8.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE’s Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall make every reasonable effort to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE’s operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE's unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 8.02 IMPROVEMENTS BY THE AIRLINE

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE’s expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred seventy five thousand...
dollars ($175,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The AIRLINE's Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE's sole cost and expense. The AIRLINE
shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

**SECTION 8.03 AIRLINE REIMBURSEMENT**

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE's Leased Premises from this LEASE or terminates the LEASE for convenience pursuant to Section 2.03, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

\[
\text{COMPENSATION} = A \times \frac{B}{C}
\]

- **A** = The AIRLINE’s actual leasehold improvement construction costs submitted in accordance with Section 8.07 in this LEASE.
- **B** = Number of full months remaining in Lease Term.
- **C** = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with “As-Built Documents” and “Record Documents” as required by Section 8.07 of this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.
SECTION 8.04 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 8.03 in this LEASE shall be the AIRLINE’s sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 et seq.), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 et seq.), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE’s rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

SECTION 8.05 AIRLINE’S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.
B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.
C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 8.06 MECHANICS LIENS OR STOP-NOTICES

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys’ fees and costs.
In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the AIRLINE shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two (2) optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 8.07 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents”, organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY’s satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance
(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: "Record Documents", e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 8.08 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to
the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 8.09     HEALTH AND SAFETY

The AIRLINE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE IX - ACCOMMODATION

SECTION 9.01     JOINT USE REQUIREMENT

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the
availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE’s Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE’s reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE's Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airlines' operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE agrees that, in the event it subleases its Leased Premises to another airline, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE's actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two (2) times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

**ARTICLE X - ASSIGNMENT AND SUBLEASE**

**SECTION 10.01 ASSIGNING, SUBLETTING, AND TRANSFERRING**

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. **Transfers.** The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30)
days prior written notice of all proposed Transfers. The AIRLINE shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the AIRLINE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 11.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The AIRLINE, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of the AIRLINE as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.
(7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

(8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.

C. Affiliate Transactions. The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and/or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
(3) In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

(4) The AIRLINE fails to comply with Paragraph C, of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the AIRLINE assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are
non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

SECTION 10.02 SUCCESSORS IN INTEREST

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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE XI - TERMINATION AND DEFAULT

SECTION 11.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.

SECTION 11.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder with prior written notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;

D. The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;

E. The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;

F. If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE's business;
G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the AIRLINE shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 11.03  CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE'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 expiration.

SECTION 11.04  DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 11.05  THE COUNTY'S RIGHT TO RE-ENTER

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the LEASE terms and shall not constitute an acceptance or surrender.
The AIRLINE 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE XII - SECURITY

SECTION 12.01 AIRPORT SECURITY

The AIRLINE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The AIRLINE is responsible for fines imposed by any regulatory agency as a result of the AIRLINE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The AIRLINE employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LEASE. The AIRLINE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed AIRLINE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The AIRLINE employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The AIRLINE employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The AIRLINE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. **Local Security.** The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE’s constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the AIRLINE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. **Federal Security.** As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated AIRLINE Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the AIRLINE shall pay the applicable fees. Upon successful completion of the background checks, the AIRLINE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated AIRLINE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The AIRLINE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The AIRLINE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The AIRLINE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The AIRLINE and all AIRLINE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. AIRLINE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must
immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of AIRLINE personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff’s Department – Airport Police Services by calling (949) 252-5000. The AIRLINE or AIRLINE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the AIRLINE’s employee’s or contractor’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of AIRLINE personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the AIRLINE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The AIRLINE’s security deposit may be applied to cover the cost of the fine.

ARTICLE XIII - INSURANCE AND INDEMNITY

SECTION 13.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE’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.

The AIRLINE agrees that the AIRLINE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.
If the AIRLINE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE 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 the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE’S employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the 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.

The AIRLINE may occupy the Airport Premises only upon providing to the COUNTY, the required insurance stated herein and maintain such insurance for the entire term of this LEASE. The COUNTY reserves the right to terminate this LEASE at any time the AIRLINE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. The AIRLINE shall pay the COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. The AIRLINE shall provide to the COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE; excluding General Aviation Liability. All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE 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 Airport Premises. Such proof of insurance must be maintained by the AIRLINE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of AIRLINE’s current audited financial report. If the AIRLINE’s SIR is approved, AIRLINE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from the AIRLINE’s, its agents, employee’s or
subcontractor’s performance of this Agreement, the AIRLINE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) The AIRLINE’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 the AIRLINE’s SIR provision shall be interpreted as though the AIRLINE was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td>(Including but not limited to General Liability, Passenger Legal Liability, Personal Injury, Contractual Liability, Premises, Products and Completed Operations, Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td>$250,000,000 aggregate</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims made or per occurrence</td>
</tr>
<tr>
<td>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.</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**

The Aviation General 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, agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’s insurance is primary and any insurance or self-insurance maintained by 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.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’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 policy 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 insurance policies required by this LEASE shall waive all rights of subrogation against 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 COUNTY’s financial interest when applicable.

If the AIRLINE’s Pollution Liability policy is a claims-made policy, the AIRLINE 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 (NOTICES) below or to an address provided by Airport Director. AIRLINE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require AIRLINE 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 the COUNTY of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE’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.

SECTION 13.02 INDEMNITY

The AIRLINE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the AIRLINE pursuant to this LEASE. If judgment is entered against the AIRLINE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the AIRLINE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIV - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 14.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. AIRLINE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If AIRLINE transfers its obligation to another, the transferee is obligated in the same manner as AIRLINE.

B. AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) AIRLINE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) AIRLINE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by AIRLINE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by AIRLINE of the AIRLINE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4) AIRLINE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, AIRLINE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the AIRLINE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the AIRLINE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The AIRLINE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The AIRLINE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if AIRLINE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the AIRLINE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the AIRLINE may request the United States to enter into the litigation to protect the interests of the United States.

C. AIRLINE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, AIRLINE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) AIRLINE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. AIRLINE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. AIRLINE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

(prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 14.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

SECTION 14.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 14.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The AIRLINE agrees that the AIRLINE’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The AIRLINE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 14.05  FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the AIRLINE in this LEASE, or any local authorities shall not apply to the AIRLINE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 14.06  NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 14.07  RESERVATION OF AVIATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 14.08  HEIGHT LIMITATION OF STRUCTURES

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 14.09  NONINTERFERENCE WITH AIRCRAFT

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

SECTION 14.10  WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 14.11  AFFIRMATIVE ACTION REQUIREMENTS

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 14.12  AMERICANS WITH DISABILITIES ACT

The AIRLINE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the AIRLINE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the AIRLINE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The AIRLINE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The AIRLINE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the AIRLINE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. The AIRLINE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the AIRLINE’s failure to comply with the ADA.
SECTION 14.13 BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the AIRLINE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The AIRLINE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the AIRLINE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The AIRLINE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the AIRLINE owns and operates additional ramps, the AIRLINE shall maintain those ramps in proper working condition. The AIRLINE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XV - MISCELLANEOUS PROVISIONS

SECTION 15.01 TIME

Time is of the essence in this LEASE.

SECTION 15.02 LEASE ORGANIZATION

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.

SECTION 15.03 AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 15.04 SIGNS

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. The AIRLINE shall submit for approval all new signage to be placed in the ticketing lobby including baggage sizers, and pylon signs. Illustrative drawings and design dimensions must accompany all requests for approval. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the AIRLINE.

The AIRLINE will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of temporary promotional signs for the AIRLINE shall be accompanied by illustrative drawings and design dimensions along with information about the
type of signs proposed, and proposed locations. All approved promotional signs shall be allowed to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage must be removed, or the AIRLINE may resubmit a request to COUNTY to extend past the ninety (90) days.

The AIRLINE shall keep all ticket counter space used by the AIRLINE and any associated ticket lifts and podiums free of all signs, advertising materials, credit card application dispensing units, posters and banners. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the AIRLINE’s expense; the COUNTY may dispose of items if they are not promptly claimed by the AIRLINE after notice from the COUNTY.

SECTION 15.05 PERMITS AND LICENSES

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

SECTION 15.06 RESERVED

SECTION 15.07 TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid promptly.

SECTION 15.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental or other charge required of the AIRLINE except as may be expressly provided elsewhere in this LEASE.
SECTION 15.09 PARTIAL INVALIDITY

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.

SECTION 15.10 WAIVER OF RIGHTS

The failure of the COUNTY or the AIRLINE 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 the COUNTY or the AIRLINE 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 15.11 RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE’s operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the AIRLINE’s use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

SECTION 15.12 AUTHORITY OF THE AIRLINE

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.
SECTION 15.13 PUBLIC RECORDS

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 15.14 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 15.15 GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 15.16 ATTORNEYS' FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 15.17 EMERGENCY SERVICES

Airport Director has the right to request that the AIRLINE’S employees aid in and use AIRLINE’S inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The AIRLINE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 15.18   NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:    COUNTY                           TO:    AIRLINE
        John Wayne Airport                Southwest Airlines Co.
        3160 Airway Avenue                2702 Love Field Drive
        Costa Mesa, CA 92626             HDQ/4PF

        Dallas, TX 75235-1611

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

SOUTHWEST AIRLINES CO.

By: 
By: Mark R. Shen - EVP

APPROVED AS TO FORM:

County Counsel
By: 

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller
By: Fianco Caron 10/21/20

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: Barry Rondinella
   Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY

COUNTY OF ORANGE

By: Chairwoman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California
LEASED DESCRIPTION

Parcel Numbers: PM 1121-300-0084; 84.1; 84.2; 84.3, 84.4

Project Name: John Wayne Airport

Third Party: Southwest Airlines Co.

The Leased Premises referred to in this Lease shall mean all the premises shown on a floor plan marked "Exhibit B", attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 300-84: Airport Ticket Office and Ticket Counter containing 2,522 square feet and 1,108 square feet respectively, located on the Terminal C departure level.

Parcel 300-84.1 Baggage Service Office containing 1,493 square feet of space located on the Terminal C arrival level.

Parcel 300-84.2 Operations Office containing 4,582 square feet of space located on the Terminal C arrival level.

Parcel 300-84.3 Apron Equipment Storage Area containing 310 square feet of space located in the open overhang area under the terminal building adjacent to the apron.

Parcel 300-84.4 Operations Office containing 445 square feet of space located on the Terminal B arrival level.

Said Exclusive Use Areas shall also include the premises shown on a plot plan marked "Exhibit C", attached hereto and made a part hereof, being additional Apron Equipment Storage Area on the terminal apron. Said "Exhibit C" may be revised at any time by Airport Director.

The Leased Premises shall also include the premises shown on a floor plan marked "Exhibit D", being those certain Common Use Areas designated as Baggage Claim/Baggage Make-up Areas, Holdrooms, Airside Concourses, Security Areas, and Loading Bridges.

Said Exclusive Use and Common Use Areas are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

EXHIBIT A
9/16/2020
RAMP SPACES

4582 SQ FT

NOT TO SCALE

= ROOM NUMBER

APPROXIMATE LOCATION
BAGGAGE SERVICE OFFICES
1493 SQ. FT.
RAMP EQUIPMENT STORAGE AREA

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**Key:**
- **A** = Airline
- **C** = County

1. Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.
2. Airline is responsible for routine maintenance, including relamping and ballast replacement.
3. Airline is responsible for cleaning ramp areas of trash and spills (from building to VSR).

If Airline fails to perform its maintenance and repair obligations as stated in the Lease, the County may perform the work after providing the Airline written notice and recover its entire cost plus a 15% charge from Airline as additional costs. Said costs shall be due and payable by the Airline to the County as stated in Article V, Section 5.07 of the Lease.

In the event the Airline makes any repairs or modifications to an area or equipment, at the request of the County, as per Section 4.01 subsection C of this Lease, and those areas or equipment are currently maintained by the County, the County will continue the maintenance responsibilities for those areas or equipment.

**EXHIBIT E**
CERTIFICATED PASSENGER AIRLINE LEASE

Dated ________________

Between

County of Orange

and

United Airlines, Inc.
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LIST OF EXHIBITS

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EXHIBIT B  FLOOR PLAN OF LEASED PREMISES – TERMINAL EXCLUSIVE USE AREA

EXHIBIT C  MAP OF RAMP EQUIPMENT STORAGE AREA

EXHIBIT D  MAP – COMMON USE AREAS

EXHIBIT E  AIRLINE MAINTENANCE OBLIGATIONS
THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this ___ day of __________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("the COUNTY"), and UNITED AIRLINES, INC. ("the AIRLINE").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties, to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the AIRLINE mutually desire to enter into a LEASE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and
WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the JWA – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving JWA.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving JWA.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08 APRON AREA

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’s governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

SECTION 1.14 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

"CUPPS" shall mean the Airport's Common Use Passenger Processing System.

SECTION 1.16 CUSS

"CUSS" shall mean Common Use Self Service.
SECTION 1.17   EMV

"EMV" shall mean Europay, Mastercard, or Visa.

SECTION 1.18   DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.19   ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20  EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.21  FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT of 1958, or such successor agency as may have similar jurisdiction over the AIRLINE or its business, and the Airport.

SECTION 1.22  GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.23  HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.24  IAF

"IAF" shall mean the International Arrival Facility and include the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.25  NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant
Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.26 PFC

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

SECTION 1.27 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28 RON

"RON" shall mean the remain overnight positions where the AIRLINE’s aircraft are required to park when they "remain overnight" at JWA.
SECTION 1.29  STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.30  TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at JWA, as may be modified at any time during the term of this LEASE.

SECTION 1.31  TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LEASE

SECTION 2.01  TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02  HOLDING OVER

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03  TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01  LEASED PREMISES

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."

Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:
A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 9.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area."

B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:

1. Baggage Claim and Baggage Make-up Areas;
2. Hold-rooms (departure lounges);
3. Airside Concourses;
4. Landside Concourses;
5. Baggage and Passenger Screening Areas;

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

**SECTION 3.02 NATURE OF AIRLINE'S ESTATE**

The AIRLINE acknowledges and agrees:

A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.
SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director and/or designee prior to installation.

ARTICLE IV - RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The AIRLINE shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1) Exclusive Use Areas

(a) **Terminal Building.** Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

   Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, and operations/ramp office.

   For the purpose of calculating terminal building rent, the AIRLINE's Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b) **Terminal Apron.** Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contains the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c) **Airport Tenant Improvement Amortization Schedule.** The AIRLINE shall reimburse the COUNTY for tenant improvement by the COUNTY based on the amortization schedule established by the Airport Director.
(2) **Common Use Areas**

(a) **Arrival Level.** The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.

(b) **Departure Level.** The COUNTY shall establish fees for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/pasenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

(c) **IAF.** Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carriers operating international flights according to the carrier’s ratio of international deplaned passengers and the schedule established by the COUNTY.
(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

(1) The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

(2) In the event AIRLINE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by AIRLINE customers and AIRLINE shall indemnify the COUNTY pursuant to Section 13.02 of this LEASE for such transactions.

(3) **Additional Fees**

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the cost to
be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges, and may require the AIRLINE to submit future monthly report electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that that allows AIRLINE to efficiently report of information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

C. Based upon prior written agreement between the AIRLINE and the COUNTY, the AIRLINE may pay for facilities repairs or modifications that would normally be the responsibility of the COUNTY. Costs for such repairs or modifications shall be deducted from the AIRLINE rent by the COUNTY upon submittal to the COUNTY of invoices, receipts, statements, or other documentation acceptable to the COUNTY for said repairs or modifications. All invoices, receipts, statements or other documentation shall include a detailed description of the nature of the work performed and the associated costs. Upon completion of all repairs or modifications, the AIRLINE shall submit to the COUNTY a written request for rent credit and all documentation for the repairs or modifications.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01, 4.08 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the AIRLINE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY’s right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to AIRLINE plus a twenty-five dollar ($25.00) processing fee.

C. **Penalty for NSF Check.** In the event a check submitted by AIRLINE is returned for non-sufficient funds (“NSF”), the AIRLINE agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. AIRLINE may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.04 PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article XI hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 4.03 of this LEASE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.
SECTION 4.05      PROVISION AGAINST SET-OFFS

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.06      SECURITY DEPOSIT

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder. PFCs shall be excluded from the rents, fees and charges used to determine the AIRLINE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE’s full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE’s performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director’s prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of...
expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article XI of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

SECTION 4.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned to the new entrant AIRLINE after six (6) months of continuous operation.

SECTION 4.08 MARKETING FUND FEE

The COUNTY has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, AIRLINE shall be required to make an annual marketing fund payment in the amount of ten thousand dollars ($10,000.00). AIRLINE agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants’ promotions and directly related expenses. In the event any year of this LEASE contains less than 12 months, AIRLINE shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commenced on November 1, AIRLINE would pay the monthly pro-rata portion ($833.33 per month) of the annual marketing fund amount for November and
December (totaling $1,666.66). Then, commencing on January 1, AIRLINE would make the full annual marketing fund payment of $10,000.00. Should the LEASE expire on September 15, AIRLINE would pay a pro-rata portion of the annual amount for the months of January through September.

ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01 USE

The AIRLINE's use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 9.01 in this LEASE, this operation is subject to the following authorized uses:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.

F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the AIRLINE's employees at the Airport and in-flight catering services in support of the AIRLINE's air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
I. Handling of other airlines' operations and ticketing pursuant to Section 9.01 in this LEASE.

J. Employee training incidental to the other uses permitted under this Section.

K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.

L. Other uses as authorized by the Airport Director.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and AIRLINE’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the AIRLINE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the AIRLINE.

The AIRLINE’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE’s use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The AIRLINE agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the term of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.

C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the AIRLINE from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article XI in this LEASE are subject to the terms, provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The AIRLINE agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the AIRLINE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the AIRLINE by action of the Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and, the AIRLINE has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the AIRLINE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown are Pacific Time.

The AIRLINE acknowledges that the COUNTY may, by regulation, permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The AIRLINE does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** AIRLINE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by AIRLINE. AIRPORT will make reasonable efforts to develop a gate management software that allows for efficient uploading and maintaining of current daily arrival and departure information by AIRLINE.

E. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or Common Use Area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE's activity for the month.
The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., Pacific Time) of the following day.

C. **Audits.** All the AIRLINE's records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or

2. The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A above. The adequacy of records shall be determined at the sole discretion of the COUNTY's Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE's use of the Leased Premises.
D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY's option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.

2. Require that the AIRLINE pay rents and fees based on the COUNTY's best good faith estimate of the AIRLINE's activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY's employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits, and the COUNTY's overhead; or, at the Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.

**SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES AND EXCLUSIVE USE AREAS**

The AIRLINE agrees to maintain Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Exclusive Use Areas and improvements in good condition. All repairs and improvements made by the AIRLINE to the Exclusive Use Areas shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Exclusive Use Areas. Any additions, alterations, repairs and changes of use or occupancy in the Exclusive Use Areas shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed. Maintenance obligations of the AIRLINE are shown on Exhibit E, which exhibit is attached hereto and by reference made a part hereof.
The AIRLINE shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The AIRLINE further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE's Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering AIRLINE’s leased premises.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE’s property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY’s negligence or willful misconduct.
SECTION 5.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE’s gate loading positions.

The AIRLINE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. AIRLINE shall promptly remove all oil and grease spillage attributable to the AIRLINE’s aircraft or equipment.

If the AIRLINE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 5.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 5.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used
upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 5.11 AIRCRAFT PARKING

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 3.01 in this LEASE.

If in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The AIRLINE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE VI - INFORMATION TECHNOLOGY AND COMMON USE EQUIPMENT

SECTION 6.01 COMMON USE EQUIPMENT

The COUNTY agrees to supply and maintain all equipment for the CUPPS/CUSS, which shall be situated in areas such as, but not limited to ticket counters, ticket lobbies, skycap, and gate podiums. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably as possible to technical difficulties with the equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s service desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with CUPPS. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport including but not limited to gate assignment, scheduling and implementation of any software updates.

SECTION 6.02 COMMON USE EQUIPMENT STOCK

The AIRLINE may be asked to supply its own ticket (kiosk) stock in the use of the CUPPS at Common Use Space positions from time to time as it pertains to Radio Frequency Identification (RFID) or specialty stock not provided by the COUNTY. In the event that multiple airlines share kiosk space, all airlines will be required to remove their own stock and allow the other airlines to use the COUNTY supplied stock, as further outlined herein. When utilizing the COUNTY Common Use Space, the AIRLINE may use either its own stock or the COUNTY’s common stock. If the AIRLINE elects to use its own stock, it shall be responsible to remove all stock from the COUNTY’s equipment at the end of the usage period. AIRLINE stock shall be subject to approval by the COUNTY. In the event that the COUNTY deems the AIRLINE stock to be injurious to CUPPS, the AIRLINE will immediately cease usage of the offending stock upon such notice by the COUNTY.
SECTION 6.03 RADIO FREQUENCY IDENTIFICATION BAG TAG STOCK

The COUNTY will not supply RFID bag tag stock for use in as part of the Baggage Handling System unless RFID becomes standard common use stock at all locations within the airport. AIRLINE shall be required to meet the IATA / ATA standards for the twenty-one inch (21") bag tag (or as the standard may be amended by IATA / ATA), prior to the start-up of operations at the Airport. In the event that RFID is deployed airport wide, the AIRLINE shall provide to the COUNTY the necessary Baggage Service Messages (BSMs) that will be required to facilitate the AIRLINE's baggage through the Baggage Handling System that utilizes RFID technology to track and route baggage to the appropriate baggage carousel. The COUNTY makes no express warranty as to the operability of the technology and/or baggage handling system equipment and the sole extent of liability of the COUNTY with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably possible to technical difficulties with the BHS equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with the RFID, BHS, and BSMs systems. The AIRLINE will not be allowed to use its own bag tag stock, unless specifically permitted to do so in writing by the COUNTY, which must at the time meet any and all standards that may be set forth by the COUNTY for such stock. The COUNTY reserves the right to sell and collect applicable advertising revenues that may be generated from the reverse side of any the COUNTY-supplied bag tag stock.

SECTION 6.04 COMMON USE SELF-SERVICE KIOSK (CUSS) EQUIPMENT

The AIRLINE will not install, deploy, or otherwise engage in the use of any proprietary self-service check-in kiosks and/or device, applications, and/or technologies on its Leased Premises, any portion of the Airport with the expectation to screen any checked bags at the Airport without prior approval from the Airport Director. At the request of the Airport Director, the AIRLINE will work with the COUNTY and other related parties in the development of a Common Use Self Service (CUSS) compliant kiosk application, or other similar applications, and/or devices as may be required to have the AIRLINE operational on all CUSS kiosks at the Airport. The COUNTY reserves the right to establish the locations for implementation of such CUSS kiosks to meet the needs of its customers and the Air Transportation Companies, as well as the operational needs of the Airport. The COUNTY agrees to supply and maintain, with its personnel and at its expense, all common-use self-service kiosk equipment, which shall be situated at designated ticket counters, at various areas of the terminal lobby and customer service areas, and other such locations, and using such passenger processing models as determined by the Airport Director to be most beneficial to meet the operational needs of the Airport. The COUNTY will supply all of the boarding pass stock necessary for the use of the CUSS equipment. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as
expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE’s vendor issues relating to the AIRLINE’s applications that run in conjunction with the CUSS systems. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport.

SECTION 6.05 NO MODIFICATIONS TO COUNTY’S EQUIPMENT

The AIRLINE shall not install at any gate holdroom, gate counter, skycap, ticket counter, or kiosk, any AIRLINE owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment without the prior express written permission of Airport Director. The AIRLINE shall not make any modification to the COUNTY’s Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by the AIRLINE shall be remedied by the AIRLINE, to the sole satisfaction of the COUNTY, at the sole cost of the AIRLINE. In the event that the damage is repaired by the COUNTY, the AIRLINE will reimburse the COUNTY for both the fully-allocated cost of time and materials pertaining to the repairs plus twenty percent (20%) administrative fees.

SECTION 6.06 NETWORK USAGE

The AIRLINE will not install any proprietary cabling and/or similar infrastructure at the Airport without prior written approval of the COUNTY. As such, AIRLINE shall make use of the COUNTY’s data communications backbone at the Airport for its communications needs to connect separate operating locations within the Airport campus, (i.e. ticketing, baggage service, operations, maintenance, etc.). The AIRLINE shall be fully integrated into the COUNTY’s infrastructure backbone prior to startup of operations and thereafter shall be responsible to remove all proprietary cabling and/or other similar infrastructure, back to point of origin, at the AIRLINE’s sole cost. Where authorized, at the discretion of the Airport Director, any and all data communication cabling installed by the AIRLINE shall be in accordance with the COUNTY’s Airport Tenant Design Guidelines, and upon installation shall become the property of the COUNTY. Such improvements shall not be subject to any reimbursement or useful life clauses under Section 8.01 of this LEASE. The COUNTY may impose reasonable fees to AIRLINE for the use of such network, including but not limited to, any fees for unusual and/or excessive or non-standard usage, as reasonably determined by Director.

A. The AIRLINE will assign a representative(s), hereinafter "Authorized Network Representative," to work with the COUNTY to determine user access and network connectivity information. The AIRLINE shall be solely responsible for ensuring that Authorized Network Representatives are not security risks, and upon the COUNTY’s request, provide the COUNTY with any information reasonably necessary for the
COUNTY to evaluate any security event or incident relating to any Authorized Network Representative or use of the COUNTY’s network.

B. The AIRLINE shall be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (i) the AIRLINE's use of the COUNTY’s network is secure and is used only for authorized purposes stated herein, and (ii) the AIRLINE's business information and data are protected against improper access, use, loss, disclosure, alteration, or destruction. The AIRLINE agrees that it will not abuse or misuse the Network Connection, or any of the components thereof, or any of the capabilities provided thereby. Unless otherwise explicitly provided herein, in no event shall the AIRLINE use the Network Connection as its internet service provider.

1. The AIRLINE shall notify the COUNTY’s Information Systems as soon as possible upon the discovery of any security breach or potential security breach that may affect the AIRLINE or the COUNTY’s confidential information or the security of the Network or any Network Connection.

2. The AIRLINE shall ensure adequate security protection for the COUNTY from any third-party connections established on the AIRLINE's network. Adequate security protection means (i) protection to preserve confidentiality, integrity, and availability of the Network and information of the COUNTY, and (ii) protection from malicious codes and/or unauthorized intrusions.

3. The AIRLINE and the COUNTY shall be responsible for maintaining the highest industry standards for security best practices on computing devices that could affect the availability and health of the Network connection, the Network, systems, applications or data of the AIRLINE and the COUNTY, respectively, specifically including, but not limited to, use of up-to-date antivirus protection, anti-SPAM, and establishment and use of a timely security patch management process.

SECTION 6.07 WIRELESS APPLICATIONS AND SIMILAR TECHNOLOGIES

The AIRLINE acknowledges that the COUNTY provides wireless capabilities for the AIRLINE’s operational use, in accordance with applicable Federal Communications Commission (FCC) regulations, rulings, and/or guidelines. The AIRLINE agrees that it will not install, deploy, or otherwise engage in the use of any transmitting wireless device, applications, and/or technologies on its Exclusive Use Areas, any portion of the Airport or within the airport system (regardless of any Exclusive Use, Preferential Use, Common Use, and/or Joint Use assignments) without having first obtained the express written permission of the Airport Director. Such wireless applications shall only be for the AIRLINE’s operational use. Use by any others or for the benefit of any other parties is specifically prohibited. At the request of the Airport Director, the AIRLINE will cease operation of a particular device due to interference with another transmitting device that is deemed necessary for operational and/or life-safety purposes.
SECTION 6.08  IN-LINE BAGGAGE HANDLING SYSTEM OBLIGATIONS, DUTIES, AND RESPONSIBILITIES

A. The AIRLINE will have use of the In-Line Baggage Handling Systems (BHS) in a location as designated by the Director to meet the operational needs of the Airport. The AIRLINE will be responsible to verify that it has a certified CUTE, CUSS, and Baggage Service Messages (BSM) applications to operate the BHS, and RFID where applicable, prior to the start-up of service at the Airport. The AIRLINE will actively work with the COUNTY staff and the AIRLINE’s system provider(s) to expedite all information systems and/or technologies work that may be required to ensure such applications are properly certified by the COUNTY and its system provider(s), if applicable. The COUNTY shall have the right to charge the AIRLINE for any expenses incurred by the COUNTY, including staffing to manage passenger lines and/or additional maintenance staff, if the AIRLINE fails to adhere to BHS system procedures and/or properly staff the baggage make-up areas to meet the demand and such failure results in an operational impact to the Airport and/or the BHS equipment.

B. Following the COUNTY’s BHS training, provided by the COUNTY to the AIRLINE, the AIRLINE will be solely responsible for the proper operations, training, and supervision of its staff for its portion of the operational responsibilities of the BHS system. The AIRLINE shall ensure that it maintains staffing levels during all operational hours, including irregular operations, that are sufficient to retrieve baggage from the baggage make-up carrousels and/or piers in order to prevent the inefficient use of the in-line baggage handling system in a fully automated mode and to prevent the system from initiating a “die-back” situation, which may require the COUNTY to intercede manually and/or cause additional staffing by the COUNTY, its contractors, or TSA staff to initiate baggage screening mitigation procedures as a result of baggage stacking up on the make-up carrousels and/or piers. The AIRLINE shall not initiate any procedures or work rules that, as determined by the Director, will negatively impact the in-line BHS without the prior written approval of the COUNTY and without concurrence from TSA. The COUNTY reserves the right to recover any costs from the AIRLINE that may result from the AIRLINE’s failure to comply with this Section of the LEASE.

C. The AIRLINE will designate a representative as a Ground Security Coordinator (GSC) to handle issues that may arise from time to time with the BHS. The GSC will be the point of contact with the TSA and the COUNTY for all issues concerning checked passenger baggage and/or BHS performance. The GSC must be available during the AIRLINE’s operational hours.

D. The AIRLINE acknowledges that all oversized checked baggage must be delivered to a designated oversized area for screening.

E. The AIRLINE acknowledges it may have a more stringent screening requirement for checked passenger baggage than that of TSA. As such, the AIRLINE will be responsible to provide these additional screening services and associated staffing to meet such
requirements, including, but not limited to, X-Ray screening, and any additional training for additional services, and/or any additional services at no additional cost to the COUNTY. The AIRLINE must provide evidence of proper training for such additional measures to the Director upon request. The COUNTY may, at its sole discretion provide and maintain the X-Ray screening device.

F. The AIRLINE shall be responsible to order, pick-up and maintain an appropriate level of any and all consumables related to the Common Use Equipment and/or BHS, including, but not limited to, RFID embedded bag tag stock, boarding pass stock, toner cartridges for laser printers, or other similar items, in accordance with policies and procedures established by the COUNTY in the event AIRLINE uses propriety consumables.

ARTICLE VII - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 7.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The AIRLINE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The AIRLINE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the AIRLINE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The AIRLINE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws. Hazardous waste generated by the AIRLINE or its contractors shall be disposed properly and under the AIRLINE’s EPA ID number.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water
drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The AIRLINE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The AIRLINE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the AIRLINE.

SECTION 7.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The AIRLINE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The AIRLINE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the AIRLINE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the AIRLINE shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines
or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE’s operation under this LEASE.

SECTION 7.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the AIRLINE, the AIRLINE’s operations at the Airport or any action arising from and which involve the AIRLINE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

(1) The AIRLINE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE’s release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.

(2) The AIRLINE’s release of Hazardous Substances upon or within the Airport.

(3) The AIRLINE’s violation of any applicable Environmental Law, except that the AIRLINE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.

(4) The AIRLINE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 7.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney’s fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 7.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 7.05 ENVIRONMENTAL STEWARDSHIP

A. All AIRLINE facilities and improvements shall meet the Airport’s Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the AIRLINE installs any new infrastructure, the AIRLINE is required to use the Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The AIRLINE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

   (1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

   (2) Climate Action Plan.

   (3) Waste Management Plan.

   (4) Storm Water Pollution Prevention Plan.
C. The AIRLINE shall implement the following conservation measures and policies:

1. Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

2. Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.

3. Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

4. Install energy-efficient heating and cooling equipment when replacing or upgrading.

5. Use energy-efficient computers and servers when replacing this equipment.

6. Select equipment with variable speed motors and fan drives, when possible.

7. Utilize paperless ticket technology, when possible.

D. The AIRLINE shall implement and support the following environmental policies:

1. Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The AIRLINE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

2. The AIRLINE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

3. The AIRLINE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the AIRLINE’s procurement of goods and services as applicable.

4. The AIRLINE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.
(5) Upon request, the AIRLINE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 7.06 ANTI-IDLING POLICY

Within six months of LEASE execution, AIRLINE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. AIRLINE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the AIRLINE.

ARTICLE VIII – CONSTRUCTION AND IMPROVEMENTS

SECTION 8.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE’s Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall make every reasonable effort to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE's operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE's unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 8.02 IMPROVEMENTS BY THE AIRLINE

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE’s expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred seventy five thousand
dollars ($175,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY’s Risk Management Services.

D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The AIRLINE’s Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE’s sole cost and expense. The AIRLINE
shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE’s cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

**SECTION 8.03 AIRLINE REIMBURSEMENT**

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE’s Leased Premises from this LEASE or terminates the LEASE for convenience pursuant to Section 2.03, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE to the Leased Premises as follows:

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

\[
\text{COMPENSATION} = A \times \frac{B}{C}
\]

**A** = The AIRLINE's actual leasehold improvement construction costs submitted in accordance with Section 8.07 in this LEASE.

**B** = Number of full months remaining in Lease Term.

**C** = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with "As-Built Documents" and “Record Documents” as required by Section 8.07 of this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.
SECTION 8.04 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 8.03 in this LEASE shall be the AIRLINE’s sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 et seq.), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 et seq.), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE’s rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

SECTION 8.05 AIRLINE’S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.

B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.

C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 8.06 MECHANICS LIENS OR STOP-NOTICES

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys’ fees and costs.
In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the AIRLINE shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two (2) optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 8.07 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance
(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e., separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 8.08  DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE’s aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to
the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 8.09 HEALTH AND SAFETY

The AIRLINE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE IX - ACCOMMODATION

SECTION 9.01 JOINT USE REQUIREMENT

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the
availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE's Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE's reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE's Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airlines' operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE agrees that, in the event it subleases its Leased Premises to another airline, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE's actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two (2) times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE X - ASSIGNMENT AND SUBLEASE

SECTION 10.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. Transfers. The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30)
days prior written notice of all proposed Transfers. The AIRLINE shall not make any such
Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of
any of the terms of the LEASE. All Transfer documents shall be consistent with the terms,
covenants, and conditions of the LEASE, and in the event of any inconsistency, the
provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers
include the acquisition by any person other than the AIRLINE of any stock or interest in
said corporation, unincorporated association, or partnership in the aggregate amount of
fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any
Transfer of the LEASE or any interest in the Leased Premises shall constitute a material
breach of this LEASE by, and shall not confer any leasehold rights upon the transferee.
Such failure shall be grounds for termination of this LEASE for default pursuant to Section
11.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily
withhold consent to any Transfer, but the COUNTY may withhold consent at its sole
discretion if any of the following conditions exist:

1. The AIRLINE, its successors or assigns are in default of any term, covenant or
condition of this LEASE, whether notice of default has or has not been given by
the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep,
perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not
experienced in performing the LEASE obligations, as determined by the Airport
Director.

4. Subtenant's use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration
therefore, of any and every kind, have not been revealed in writing to the Airport
Director.

6. Any construction required of the AIRLINE as a condition of this LEASE has not
been completed to the satisfaction of the COUNTY.
(7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

(8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and/or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

4. The AIRLINE fails to comply with Paragraph C, of this Section; or if

5. The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if

6. The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the AIRLINE assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

1. The name and address of proposed assignee;

2. All of the terms and conditions of such offer; and

3. Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are
non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

SECTION 10.02 SUCCESSORS IN INTEREST

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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE XI - TERMINATION AND DEFAULT

SECTION 11.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.

SECTION 11.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder with prior written notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;

D. The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;

E. The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;

F. If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE's business;
G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the AIRLINE shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 11.03  CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE'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 expiration.

SECTION 11.04  DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 11.05  THE COUNTY'S RIGHT TO RE-ENTER

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the LEASE terms and shall not constitute an acceptance or surrender.
The AIRLINE 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE XII - SECURITY

SECTION 12.01 AIRPORT SECURITY

The AIRLINE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The AIRLINE is responsible for fines imposed by any regulatory agency as a result of the AIRLINE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The AIRLINE employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LEASE. The AIRLINE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed AIRLINE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The AIRLINE employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The AIRLINE employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The AIRLINE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. **Local Security.** The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE’s constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the AIRLINE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. **Federal Security.** As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated AIRLINE Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the AIRLINE shall pay the applicable fees. Upon successful completion of the background checks, the AIRLINE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated AIRLINE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The AIRLINE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The AIRLINE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The AIRLINE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The AIRLINE and all AIRLINE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. AIRLINE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must
immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of AIRLINE personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff’s Department–Airport Police Services by calling (949) 252-5000. The AIRLINE or AIRLINE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the AIRLINE’s employee’s or contractor’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of AIRLINE personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the AIRLINE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The AIRLINE’s security deposit may be applied to cover the cost of the fine.

ARTICLE XIII - INSURANCE AND INDEMNITY

SECTION 13.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE’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.

The AIRLINE agrees that the AIRLINE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.
If the AIRLINE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE 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 the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE’S employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the 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.

The AIRLINE may occupy the Airport Premises only upon providing to the COUNTY, the required insurance stated herein and maintain such insurance for the entire term of this LEASE. The COUNTY reserves the right to terminate this LEASE at any time the AIRLINE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. The AIRLINE shall pay the COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. The AIRLINE shall provide to the COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE; excluding General Aviation Liability. All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE 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 Airport Premises. Such proof of insurance must be maintained by the AIRLINE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of AIRLINE’s current audited financial report. If the AIRLINE’s SIR is approved, AIRLINE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from the AIRLINE’s, its agents, employee’s or
subcontractor’s performance of this Agreement, the AIRLINE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) The AIRLINE’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 the AIRLINE’s SIR provision shall be interpreted as though the AIRLINE was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
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<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
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<tr>
<td>(Including but not limited to General Liability, Passenger</td>
<td>$250,000,000 aggregate</td>
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<tr>
<td>Legal Liability, Personal Injury, Contractual Liability,</td>
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<tr>
<td>Premises, Products and Completed Operations, Ground Hangarkeepers</td>
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<td>liability for vehicles and mobile equipment operated on</td>
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<td>restricted airport premises.)</td>
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<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims made or per occurrence</td>
</tr>
<tr>
<td>Commercial Property Insurance on an “All Risk” or “Special</td>
<td>100% of the Replacement Cost Value and no</td>
</tr>
<tr>
<td>Causes of Loss” basis covering all contents and any tenant</td>
<td>coinsurance provision</td>
</tr>
<tr>
<td>improvements including Business Interruption/Loss of Rents</td>
<td></td>
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<tr>
<td>with a 12-month limit.</td>
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</tbody>
</table>

**Required Endorsements**

The Aviation General 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, agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’s insurance is primary and any insurance or self-insurance maintained by 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.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’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 policy 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 insurance policies required by this LEASE shall waive all rights of subrogation against 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 COUNTY’s financial interest when applicable.

If the AIRLINE’s Pollution Liability policy is a claims-made policy, the AIRLINE 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 (NOTICES) below or to an address provided by Airport Director. AIRLINE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require AIRLINE 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 the COUNTY of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE'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.

SECTION 13.02 INDEMNITY

The AIRLINE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the AIRLINE pursuant to this LEASE. If judgment is entered against the AIRLINE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the AIRLINE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIV - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 14.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. AIRLINE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If AIRLINE transfers its obligation to another, the transferee is obligated in the same manner as AIRLINE.

B. AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) AIRLINE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) AIRLINE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by AIRLINE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by AIRLINE of the AIRLINE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4) AIRLINE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, AIRLINE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the AIRLINE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the AIRLINE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The AIRLINE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The AIRLINE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if AIRLINE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the AIRLINE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the AIRLINE may request the United States to enter into the litigation to protect the interests of the United States.

C. AIRLINE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, AIRLINE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) AIRLINE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. AIRLINE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. AIRLINE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

(prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 14.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

SECTION 14.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 14.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The AIRLINE agrees that the AIRLINE’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The AIRLINE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 14.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the AIRLINE in this LEASE, or any local authorities shall not apply to the AIRLINE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 14.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 14.07 RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 14.08 HEIGHT LIMITATION OF STRUCTURES

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 14.09 NONINTERFERENCE WITH AIRCRAFT

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

SECTION 14.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 14.11 AFFIRMATIVE ACTION REQUIREMENTS

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 14.12 AMERICANS WITH DISABILITIES ACT

The AIRLINE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the AIRLINE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the AIRLINE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The AIRLINE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The AIRLINE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the AIRLINE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. The AIRLINE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the AIRLINE’s failure to comply with the ADA.
SECTION 14.13  BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the AIRLINE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The AIRLINE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the AIRLINE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The AIRLINE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the AIRLINE owns and operates additional ramps, the AIRLINE shall maintain those ramps in proper working condition. The AIRLINE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XV - MISCELLANEOUS PROVISIONS

SECTION 15.01  TIME

Time is of the essence in this LEASE.

SECTION 15.02  LEASE ORGANIZATION

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.

SECTION 15.03  AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 15.04  SIGNS

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. The AIRLINE shall submit for approval all new signage to be placed in the ticketing lobby including baggage sizers, and pylon signs. Illustrative drawings and design dimensions must accompany all requests for approval. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the AIRLINE.

The AIRLINE will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of temporary promotional signs for the AIRLINE shall be accompanied by illustrative drawings and design dimensions along with information about the
type of signs proposed, and proposed locations. All approved promotional signs shall be allowed to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage must be removed, or the AIRLINE may resubmit a request to COUNTY to extend past the ninety (90) days.

The AIRLINE shall keep all ticket counter space used by the AIRLINE and any associated ticket lifts and podiums free of all signs, advertising materials, credit card application dispensing units, posters and banners. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the AIRLINE’s expense; the COUNTY may dispose of items if they are not promptly claimed by the AIRLINE after notice from the COUNTY.

SECTION 15.05  PERMITS AND LICENSES

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

SECTION 15.06  RESERVED

SECTION 15.07  TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid promptly.

SECTION 15.08  CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental or other charge required of the AIRLINE except as may be expressly provided elsewhere in this LEASE.
SECTION 15.09  PARTIAL INVALIDITY

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.

SECTION 15.10  WAIVER OF RIGHTS

The failure of the COUNTY or the AIRLINE 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 the COUNTY or the AIRLINE 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 15.11  RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE's operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the AIRLINE's use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

SECTION 15.12  AUTHORITY OF THE AIRLINE

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.
SECTION 15.13  PUBLIC RECORDS

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 15.14  RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 15.15  GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 15.16  ATTORNEYS’ FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 15.17  EMERGENCY SERVICES

Airport Director has the right to request that the AIRLINE’S employees aid in and use AIRLINE’S inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The AIRLINE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 15.18 NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO: AIRLINE

United Airlines, Inc.
233 S. Wacker Drive, 11th Floor
Chicago, IL 60606
Attn: Corporate Real Estate

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
JOHN WAYNE AIRPORT
CERTIFICATED PASSENGER AIRLINE LEASE

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

UNITED AIRLINES, INC.

By: ________________________________

By: ________________________________

APPROVED AS TO FORM:

County Counsel

By: ________________________________

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: ________________________________

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: ________________________________

Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

COUNTY
COUNTY OF ORANGE

By: ________________________________
Chairwoman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California
LEASED PREMISES

Parcel Numbers: PM 1121-300-0085; 85.1; 85.2; 85.3, 85.4, 85.5

Project Name: John Wayne Airport

Second Party: United Airlines, Inc.

The Leased Premises referred to in this Lease shall mean all the premises shown on a floor plan marked “Exhibit B”, attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 300-85: Airport Ticket Office and Ticket Counter containing 1,924 square feet and 1,140 square feet respectively, located on the Terminal A concourse of the departure level.

Parcel 300-85.1 Operations Office containing 2,819 square feet located on the Terminal A concourse of the arrival level.

Parcel 300-85.2 Operations Office containing 548 square feet located on the Terminal B concourse of the arrival level.

Parcel 300-85.3 Baggage Service Office containing 297 square feet located on the Terminal B concourse of the arrival level.

Parcel 300-85.4 Apron Equipment Storage Area containing 576 square feet of space located in the open overhang area under the Terminal B Building adjacent to the apron.

Parcel 300-85.5 Operations Office containing 131 square feet located on the Terminal A concourse of the arrival level.

Said Exclusive Use Areas shall also include the premises shown on a plot plan marked “Exhibit C”, attached hereto and made a part hereof, being Apron Equipment Storage Area designated as Parcel 300-85.5 containing the square footage as specified herein. Said “Exhibit C” may be revised at any time by Airport Manager.

The Leased Premises shall also include the premises shown on a floor plan marked “Exhibit D”, being those certain Common Use Areas designated as Baggage Claim/Baggage Make-up Areas, Holdrooms, Airside Concourses, Security Areas, and Loading Bridges.

Said Exclusive Use and Common Use Areas are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

EXHIBIT A
9/16/2020
SURVEYOR'S NOTE:

AREA CALCULATIONS ARE BASED ON AS-BUILT INTERIOR ROOM DIMENSIONS. THICKNESS OF INTERIOR WALLS ADD TO TOTAL AREA.

TOTAL

2819 SQ FT

1933 SQ FT

886 SQ FT
NOTE:

SURVEYOR'S NOTE:

WHERE APPLICABLE

INTERIOR WALLS ADDED TO TOTAL AREA.

INTERIOR ROOM DIMENSIONS. THICKNESS OF

AREA CALCULATIONS ARE BASED ON AS-BUILT

TOTAL

548 SQ FT

TERMINAL B

RAMP OFFICE

UNITED AIRLINES
Attachment F

EXHIBIT B

LINE 25
COLUMN

LINE
COLUMN

WHERE APPLICABLE
INTERIOR WALLS ADDED TO TOTAL AREA.
INTERIOR ROOM DIMENSIONS. THICKNESS OF
AREA CALCULATIONS ARE BASED ON AS-BUILT
SURVEYOR'S NOTE:

TOTAL 2,975 SQ FT
TERMINAL B
OFFICE
BAGGAGE SERVICE
UNITED AIRLINES

K RANDALL
SURVEYED BY

DATE 9-21-2020
PAGE 6 OF 6

#853
JWA AIRLINE OCCUPANCY AREAS

Attachment F
UNITED AIRLINES RAMP STORAGE TERMINAL A

131 SQ FT

COLUMN LINE

55

COLUMN LINE

56

AIRLINE OCCUPANCY AREAS
IN LYNX
3-27-2020
K. RANDALL
JOHN WAYNE AIRPORT SURVEYOR

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John Wayne Airport
Airline Common Use Areas

DEPARTURE LEVEL

ARRIVAL LEVEL

- Holdrooms
- Airside Concourses
- Security Area

- Baggage Make-up
- Baggage Claim
## JOHN WAYNE AIRPORT  
### SUMMARY OF OPERATION AND MAINTENANCE RESPONSIBILITIES

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**Key:**
- A = Airline
- C = County

1. Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.
2. Airline is responsible for routine maintenance, including relamping and ballast replacement.
3. Airline is responsible for cleaning ramp areas of trash and spills (from building to VSR).

If Airline fails to perform its maintenance and repair obligations as stated in the Lease, the County may perform the work after providing the Airline written notice and recover its entire cost plus a 15% charge from Airline as additional costs. Said costs shall be due and payable by the Airline to the County as stated in Article V, Section 5.07 of the Lease.

In the event the Airline makes any repairs or modifications to an area or equipment, at the request of the County, as per Section 4.01 subsection C of this Lease, and those areas or equipment are currently maintained by the County, the County will continue the maintenance responsibilities for those areas or equipment.

**EXHIBIT E**
CERTIFICATED PASSENGER
AIRLINE LEASE

Dated ______________

Between

County of Orange

and

WestJet, an Alberta Partnership
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THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this day of ____________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("the COUNTY"), and WESTJET, AN ALBERTA PARTNERSHIP ("the AIRLINE").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties, to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the AIRLINE mutually desire to enter into a LEASE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and
WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 *et seq.*, and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

"AAAC" shall mean the JWA – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving JWA.

SECTION 1.02 AAAC CHAIR

"AAAC CHAIR" shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving JWA.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08 APRON AREA

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’s governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

SECTION 1.14 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

"CUPPS" shall mean the Airport's Common Use Passenger Processing System.

SECTION 1.16 CUSS

"CUSS" shall mean Common Use Self Service.
SECTION 1.17  EMV

"EMV" shall mean Europay, Mastercard, or Visa.

SECTION 1.18  DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.19  ENVIRONMENTAL LAWS

"Environmental Laws" shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 ("CERCLA"), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20  EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.21  FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT of 1958, or such successor agency as may have similar jurisdiction over the AIRLINE or its business, and the Airport.

SECTION 1.22  GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.23  HAZARDOUS SUBSTANCES

"Hazardous Substances" shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term "Hazardous Substances" includes, without limitation, any material or substance which is: (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.24  IAF

"IAF" shall mean the International Arrival Facility and include the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.25  NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant...
SECTION 1.26 PFC

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

SECTION 1.27 POLLUTANT

"Pollutant" means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28 RON

"RON" shall mean the remain overnight positions where the AIRLINE's aircraft are required to park when they "remain overnight" at JWA.
SECTION 1.29 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.30 TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at JWA, as may be modified at any time during the term of this LEASE.

SECTION 1.31 TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02 HOLDING OVER

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03 TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01 LEASED PREMISES

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."

Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:
A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 9.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area."

B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:

1. Baggage Claim and Baggage Make-up Areas;
2. Hold-rooms (departure lounges);
3. Airside Concourses;
4. Landside Concourses;
5. Baggage and Passenger Screening Areas;

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

**SECTION 3.02 NATURE OF AIRLINE'S ESTATE**

The AIRLINE acknowledges and agrees:

A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.
SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director and/or designee prior to installation.

ARTICLE IV - RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The AIRLINE shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1) Exclusive Use Areas

(a) **Terminal Building.** Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, and operations/ramp office.

For the purpose of calculating terminal building rent, the AIRLINE's Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b) **Terminal Apron.** Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contains the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c) **Airport Tenant Improvement Amortization Schedule.** The AIRLINE shall reimburse the COUNTY for tenant improvement by the COUNTY based on the amortization schedule established by the Airport Director.
Common Use Areas

(a) Arrival Level. The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.

(b) Departure Level. The COUNTY shall establish fees for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

(c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carriers operating international flights according to the carrier's ratio of international deplaned passengers and the schedule established by the COUNTY.
(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airlines percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

(1) The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

(2) In the event AIRLINE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by AIRLINE customers and AIRLINE shall indemnify the COUNTY pursuant to Section 13.02 of this LEASE for such transactions.

(3) **Additional Fees**

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty five percent (45%) of the cost to
be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges, and may require the AIRLINE to submit future monthly report electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that that allows AIRLINE to efficiently report of information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the AIRLINE's use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

C. Based upon prior written agreement between the AIRLINE and the COUNTY, the AIRLINE may pay for facilities repairs or modifications that would normally be the responsibility of the COUNTY. Costs for such repairs or modifications shall be deducted from the AIRLINE rent by the COUNTY upon submittal to the COUNTY of invoices, receipts, statements, or other documentation acceptable to the COUNTY for said repairs or modifications. All invoices, receipts, statements or other documentation shall include a detailed description of the nature of the work performed and the associated costs. Upon completion of all repairs or modifications, the AIRLINE shall submit to the COUNTY a written request for rent credit and all documentation for the repairs or modifications.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01, 4.08 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days’ written notice to the AIRLINE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY’s right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to AIRLINE plus a twenty-five dollar ($25.00) processing fee.

C. **Penalty for NSF Check.** In the event a check submitted by AIRLINE is returned for non-sufficient funds (“NSF”), the AIRLINE agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. AIRLINE may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.04       PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article XI hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 4.03 of this LEASE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.
SECTION 4.05 PROVISION AGAINST SET-OFFS

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.06 SECURITY DEPOSIT

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder. PFCs shall be excluded from the rents, fees and charges used to determine the AIRLINE's security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE's full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of
expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article XI of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

SECTION 4.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned to the new entrant AIRLINE after six (6) months of continuous operation.

SECTION 4.08 MARKETING FUND FEE

The COUNTY has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, AIRLINE shall be required to make an annual marketing fund payment in the amount of ten thousand dollars ($10,000.00). AIRLINE agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants’ promotions and directly related expenses. In the event any year of this LEASE contains less than 12 months, AIRLINE shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commenced on November 1, AIRLINE would pay the monthly pro-rata portion ($833.33 per month) of the annual marketing fund amount for November and
December (totaling $1,666.66). Then, commencing on January 1, AIRLINE would make the full annual marketing fund payment of $10,000.00. Should the LEASE expire on September 15, AIRLINE would pay a pro-rata portion of the annual amount for the months of January through September.

ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01 USE

The AIRLINE's use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 9.01 in this LEASE, this operation is subject to the following authorized uses:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.

F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the AIRLINE's employees at the Airport and in-flight catering services in support of the AIRLINE's air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
I. Handling of other airlines' operations and ticketing pursuant to Section 9.01 in this LEASE.

J. Employee training incidental to the other uses permitted under this Section.

K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.

L. Other uses as authorized by the Airport Director.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce "Airport Rules and Regulations" that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and AIRLINE's rights under this LEASE. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the AIRLINE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the AIRLINE.

The AIRLINE's operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE's operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE's operation under this LEASE.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The AIRLINE agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE's activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the term of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.

C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the AIRLINE from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article XI in this LEASE are subject to the terms, provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The AIRLINE agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the AIRLINE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the AIRLINE by action of the Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and, the AIRLINE has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the AIRLINE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown are Pacific Time.

The AIRLINE acknowledges that the COUNTY may, by regulation, permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The AIRLINE does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** AIRLINE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by AIRLINE. AIRPORT will make reasonable efforts to develop a gate management software that allows for efficient uploading and maintaining of current daily arrival and departure information by AIRLINE.

E. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or Common Use Area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE's activity for the month.
The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., Pacific Time) of the following day.

C. **Audits.** All the AIRLINE's records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

(1) The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or

(2) The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A above. The adequacy of records shall be determined at the sole discretion of the COUNTY's Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE's use of the Leased Premises.
D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY's option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.

2. Require that the AIRLINE pay rents and fees based on the COUNTY's best good faith estimate of the AIRLINE's activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY's employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits, and the COUNTY's overhead; or, at the Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.

**SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES AND EXCLUSIVE USE AREAS**

The AIRLINE agrees to maintain Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Exclusive Use Areas and improvements in good condition. All repairs and improvements made by the AIRLINE to the Exclusive Use Areas shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Exclusive Use Areas. Any additions, alterations, repairs and changes of use or occupancy in the Exclusive Use Areas shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed. Maintenance obligations of the AIRLINE are shown on Exhibit E, which exhibit is attached hereto and by reference made a part hereof.
The AIRLINE shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The AIRLINE further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE’s Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering AIRLINE’s leased premises.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE’s property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY’s negligence or willful misconduct.
SECTION 5.08   APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE’s gate loading positions.

The AIRLINE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. AIRLINE shall promptly remove all oil and grease spillage attributable to the AIRLINE’s aircraft or equipment.

If the AIRLINE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 5.09   ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 5.10   VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used
upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 5.11 AIRCRAFT PARKING

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 3.01 in this LEASE.

If in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines’ podiums. The AIRLINE’s plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE VI - INFORMATION TECHNOLOGY AND COMMON USE EQUIPMENT

SECTION 6.01 COMMON USE EQUIPMENT

The COUNTY agrees to supply and maintain all equipment for the CUPPS/CUSS, which shall be situated in areas such as, but not limited to ticket counters, ticket lobbies, skycap, and gate podiums. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably as possible to technical difficulties with the equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY’s service desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE’s applications that run in conjunction with CUPPS. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport including but not limited to gate assignment, scheduling and implementation of any software updates.

SECTION 6.02 COMMON USE EQUIPMENT STOCK

The AIRLINE may be asked to supply its own ticket (kiosk) stock in the use of the CUPPS at Common Use Space positions from time to time as it pertains to Radio Frequency Identification (RFID) or specialty stock not provided by the COUNTY. In the event that multiple airlines share kiosk space, all airlines will be required to remove their own stock and allow the other airlines to use the COUNTY supplied stock, as further outlined herein. When utilizing the COUNTY Common Use Space, the AIRLINE may use either its own stock or the COUNTY’s common stock. If the AIRLINE elects to use its own stock, it shall be responsible to remove all stock from the COUNTY’s equipment at the end of the usage period. AIRLINE stock shall be subject to approval by the COUNTY. In the event that the COUNTY deems the AIRLINE stock to be injurious to CUPPS, the AIRLINE will immediately cease usage of the offending stock upon such notice by the COUNTY.

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SECTION 6.03 RADIO FREQUENCY IDENTIFICATION BAG TAG STOCK

The COUNTY will not supply RFID bag tag stock for use in as part of the Baggage Handling System unless RFID becomes standard common use stock at all locations within the airport. AIRLINE shall be required to meet the IATA / ATA standards for the twenty-one inch (21") bag tag (or as the standard may be amended by IATA / ATA), prior to the start-up of operations at the Airport. In the event that RFID is deployed airport wide, the AIRLINE shall provide to the COUNTY the necessary Baggage Service Messages (BSMs) that will be required to facilitate the AIRLINE's baggage through the Baggage Handling System that utilizes RFID technology to track and route baggage to the appropriate baggage carousel. The COUNTY makes no express warranty as to the operability of the technology and/or baggage handling system equipment and the sole extent of liability of the COUNTY with respect to the technology and/or baggage handling system equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as expeditiously and as reasonably possible to technical difficulties with the BHS equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY's designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE-vendor issues relating to the AIRLINE's applications that run in conjunction with the RFID, BHS, and BSMs systems. The AIRLINE will not be allowed to use its own bag tag stock, unless specifically permitted to do so in writing by the COUNTY, which must at the time meet any and all standards that may be set forth by the COUNTY for such stock. The COUNTY reserves the right to sell and collect applicable advertising revenues that may be generated from the reverse side of any the COUNTY-supplied bag tag stock.

SECTION 6.04 COMMON USE SELF-SERVICE KIOSK (CUSS) EQUIPMENT

The AIRLINE will not install, deploy, or otherwise engage in the use of any proprietary self-service check-in kiosks and/or device, applications, and/or technologies on its Leased Premises, any portion of the Airport with the expectation to screen any checked bags at the Airport without prior approval from the Airport Director. At the request of the Airport Director, the AIRLINE will work with the COUNTY and other related parties in the development of a Common Use Self Service (CUSS) compliant kiosk application, or other similar applications, and/or devices as may be required to have the AIRLINE operational on all CUSS kiosks at the Airport. The COUNTY reserves the right to establish the locations for implementation of such CUSS kiosks to meet the needs of its customers and the Air Transportation Companies, as well as the operational needs of the Airport. The COUNTY agrees to supply and maintain, with its personnel and at its expense, all common-use self-service kiosk equipment, which shall be situated at designated ticket counters, at various areas of the terminal lobby and customer service areas, and other such locations, and using such passenger processing models as determined by the Airport Director to be most beneficial to meet the operational needs of the Airport. The COUNTY will supply all of the boarding pass stock necessary for the use of the CUSS equipment. The COUNTY makes no express warranty as to the operability of the equipment and the sole extent of liability of the COUNTY with respect to the equipment shall be limited to repair and/or replacement of malfunctioning equipment. The COUNTY will respond as
expeditiously and as reasonably as possible to technical difficulties with the Common Use Equipment after the AIRLINE has notified the COUNTY of such difficulties through the COUNTY's designated central help desk number. The AIRLINE shall ensure the same responsiveness and assistance to the COUNTY staff to identify and resolve the AIRLINE and/or AIRLINE's vendor issues relating to the AIRLINE's applications that run in conjunction with the C USS systems. The AIRLINE will work cooperatively with the COUNTY for the implementation of other new technologies to improve the efficiency of the Airport.

SECTION 6.05 NO MODIFICATIONS TO COUNTY'S EQUIPMENT

The AIRLINE shall not install at any gate holdroom, gate counter, skycap, ticket counter, or kiosk, any AIRLINE owned or proprietary computer equipment, kiosks, phones, other electronic equipment, or similar equipment without the prior express written permission of Airport Director. The AIRLINE shall not make any modification to the COUNTY's Common Use Equipment, including but not limited to, modifying the keyboards, adding adhesive or other markings, or otherwise modifying the equipment physically and/or electronically. Any such modifications and/or damage that is willfully or negligently caused by the AIRLINE shall be remedied by the AIRLINE, to the sole satisfaction of the COUNTY, at the sole cost of the AIRLINE. In the event that the damage is repaired by the COUNTY, the AIRLINE will reimburse the COUNTY for both the fully-allocated cost of time and materials pertaining to the repairs plus twenty percent (20%) administrative fees.

SECTION 6.06 NETWORK USAGE

The AIRLINE will not install any proprietary cabling and/or similar infrastructure at the Airport without prior written approval of the COUNTY. As such, AIRLINE shall make use of the COUNTY’s data communications backbone at the Airport for its communications needs to connect separate operating locations within the Airport campus, (i.e. ticketing, baggage service, operations, maintenance, etc.). The AIRLINE shall be fully integrated into the COUNTY’s infrastructure backbone prior to startup of operations and thereafter shall be responsible to remove all proprietary cabling and/or other similar infrastructure, back to point of origin, at the AIRLINE's sole cost. Where authorized, at the discretion of the Airport Director, any and all data communication cabling installed by the AIRLINE shall be in accordance with the COUNTY’s Airport Tenant Design Guidelines, and upon installation shall become the property of the COUNTY. Such improvements shall not be subject to any reimbursement or useful life clauses under Section 8.01 of this LEASE. The COUNTY may impose reasonable fees to AIRLINE for the use of such network, including but not limited to, any fees for unusual and/or excessive or non-standard usage, as reasonably determined by Director.

A. The AIRLINE will assign a representative(s), hereinafter "Authorized Network Representative," to work with the COUNTY to determine user access and network connectivity information. The AIRLINE shall be solely responsible for ensuring that Authorized Network Representatives are not security risks, and upon the COUNTY's request, provide the COUNTY with any information reasonably necessary for the
COUNTY to evaluate any security event or incident relating to any Authorized Network Representative or use of the COUNTY's network.

B. The AIRLINE shall be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (i) the AIRLINE's use of the COUNTY's network is secure and is used only for authorized purposes stated herein, and (ii) the AIRLINE's business information and data are protected against improper access, use, loss, disclosure, alteration, or destruction. The AIRLINE agrees that it will not abuse or misuse the Network Connection, or any of the components thereof, or any of the capabilities provided thereby. Unless otherwise explicitly provided herein, in no event shall the AIRLINE use the Network Connection as its internet service provider.

1. The AIRLINE shall notify the COUNTY's Information Systems as soon as possible upon the discovery of any security breach or potential security breach that may affect the AIRLINE or the COUNTY's confidential information or the security of the Network or any Network Connection.

2. The AIRLINE shall ensure adequate security protection for the COUNTY from any third-party connections established on the AIRLINE's network. Adequate security protection means (i) protection to preserve confidentiality, integrity, and availability of the Network and information of the COUNTY, and (ii) protection from malicious codes and/or unauthorized intrusions.

3. The AIRLINE and the COUNTY shall be responsible for maintaining the highest industry standards for security best practices on computing devices that could affect the availability and health of the Network connection, the Network, systems, applications or data of the AIRLINE and the COUNTY, respectively, specifically including, but not limited to, use of up-to-date antivirus protection, anti-SPAM, and establishment and use of a timely security patch management process.

SECTION 6.07 WIRELESS APPLICATIONS AND SIMILAR TECHNOLOGIES

The AIRLINE acknowledges that the COUNTY provides wireless capabilities for the AIRLINE’s operational use, in accordance with applicable Federal Communications Commission (FCC) regulations, rulings, and/or guidelines. The AIRLINE agrees that it will not install, deploy, or otherwise engage in the use of any transmitting wireless device, applications, and/or technologies on its Exclusive Use Areas, any portion of the Airport or within the airport system (regardless of any Exclusive Use, Preferential Use, Common Use, and/or Joint Use assignments) without having first obtained the express written permission of the Airport Director. Such wireless applications shall only be for the AIRLINE’s operational use. Use by any others or for the benefit of any other parties is specifically prohibited. At the request of the Airport Director, the AIRLINE will cease operation of a particular device due to interference with another transmitting device that is deemed necessary for operational and/or life-safety purposes.
SECTION 6.08  IN-LINE BAGGAGE HANDLING SYSTEM OBLIGATIONS, DUTIES, AND RESPONSIBILITIES

A. The AIRLINE will have use of the In-Line Baggage Handling Systems (BHS) in a location as designated by the Director to meet the operational needs of the Airport. The AIRLINE will be responsible to verify that it has a certified CUTE, CUSS, and Baggage Service Messages (BSM) applications to operate the BHS, and RFID where applicable, prior to the start-up of service at the Airport. The AIRLINE will actively work with the COUNTY staff and the AIRLINE’s system provider(s) to expedite all information systems and/or technologies work that may be required to ensure such applications are properly certified by the COUNTY and its system provider(s), if applicable. The COUNTY shall have the right to charge the AIRLINE for any expenses incurred by the COUNTY, including staffing to manage passenger lines and/or additional maintenance staff, if the AIRLINE fails to adhere to BHS system procedures and/or properly staff the baggage make-up areas to meet the demand and such failure results in an operational impact to the Airport and/or the BHS equipment.

B. Following the COUNTY’s BHS training, provided by the COUNTY to the AIRLINE, the AIRLINE will be solely responsible for the proper operations, training, and supervision of its staff for its portion of the operational responsibilities of the BHS system. The AIRLINE shall ensure that it maintains staffing levels during all operational hours, including irregular operations, that are sufficient to retrieve baggage from the baggage make-up carousels and/or piers in order to prevent the inefficient use of the in-line baggage handling system in a fully automated mode and to prevent the system from initiating a "die-back" situation, which may require the COUNTY to intervene manually and/or cause additional staffing by the COUNTY, its contractors, or TSA staff to initiate baggage screening mitigation procedures as a result of baggage stacking up on the make-up carousels and/or piers. The AIRLINE shall not initiate any procedures or work rules that, as determined by the Director, will negatively impact the in-line BHS without the prior written approval of the COUNTY and without concurrence from TSA. The COUNTY reserves the right to recover any costs from the AIRLINE that may result from the AIRLINE’s failure to comply with this Section of the LEASE.

C. The AIRLINE will designate a representative as a Ground Security Coordinator (GSC) to handle issues that may arise from time to time with the BHS. The GSC will be the point of contact with the TSA and the COUNTY for all issues concerning checked passenger baggage and/or BHS performance. The GSC must be available during the AIRLINE’s operational hours.

D. The AIRLINE acknowledges that all oversized checked baggage must be delivered to a designated oversized area for screening.

E. The AIRLINE acknowledges it may have a more stringent screening requirement for checked passenger baggage than that of TSA. As such, the AIRLINE will be responsible to provide these additional screening services and associated staffing to meet such
requirements, including, but not limited to, X-Ray screening, and any additional training for additional services, and/or any additional services at no additional cost to the COUNTY. The AIRLINE must provide evidence of proper training for such additional measures to the Director upon request. The COUNTY may, at its sole discretion provide and maintain the X-Ray screening device.

F. The AIRLINE shall be responsible to order, pick-up and maintain an appropriate level of any and all consumables related to the Common Use Equipment and/or BHS, including, but not limited to, RFID embedded bag tag stock, boarding pass stock, toner cartridges for laser printers, or other similar items, in accordance with policies and procedures established by the COUNTY in the event AIRLINE uses propriety consumables.

ARTICLE VII - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 7.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The AIRLINE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The AIRLINE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the AIRLINE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The AIRLINE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws. Hazardous waste generated by the AIRLINE or its contractors shall be disposed properly and under the AIRLINE’s EPA ID number.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water

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drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport’s Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The AIRLINE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The AIRLINE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the AIRLINE.

SECTION 7.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The AIRLINE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The AIRLINE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the AIRLINE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the AIRLINE shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to AIRLINE’s operation under this LEASE, including, but not limited to, the payment of any fines
or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers related to AIRLINE's operation under this LEASE.

SECTION 7.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the AIRLINE, the AIRLINE's operations at the Airport or any action arising from and which involve the AIRLINE's officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

(1) The AIRLINE's placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE's release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.

(2) The AIRLINE's release of Hazardous Substances upon or within the Airport.

(3) The AIRLINE's violation of any applicable Environmental Law, except that the AIRLINE's obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.

(4) The AIRLINE's causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 7.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 7.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 7.05 ENVIRONMENTAL STEWARDSHIP

A. All AIRLINE facilities and improvements shall meet the Airport's Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the AIRLINE installs any new infrastructure, the AIRLINE is required to use the Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The AIRLINE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

(1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

(2) Climate Action Plan.

(3) Waste Management Plan.

(4) Storm Water Pollution Prevention Plan.
C. The AIRLINE shall implement the following conservation measures and policies:

   (1) Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

   (2) Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.

   (3) Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

   (4) Install energy-efficient heating and cooling equipment when replacing or upgrading.

   (5) Use energy-efficient computers and servers when replacing this equipment.

   (6) Select equipment with variable speed motors and fan drives, when possible.

   (7) Utilize paperless ticket technology, when possible.

D. The AIRLINE shall implement and support the following environmental policies:

   (1) Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The AIRLINE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

   (2) The AIRLINE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

   (3) The AIRLINE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the AIRLINE’s procurement of goods and services as applicable.

   (4) The AIRLINE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.
(5) Upon request, the AIRLINE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 7.06 ANTI-IDLING POLICY

Within six months of LEASE execution, AIRLINE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. AIRLINE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the AIRLINE.

ARTICLE VIII – CONSTRUCTION AND IMPROVEMENTS

SECTION 8.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE’s Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall make every reasonable effort to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE’s operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE’s unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 8.02 IMPROVEMENTS BY THE AIRLINE

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE’s expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred seventy five thousand
dollars ($175,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The AIRLINE's Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE's sole cost and expense. The AIRLINE
shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE’s cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

**SECTION 8.03 AIRLINE REIMBURSEMENT**

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE’s Leased Premises from this LEASE or terminates the LEASE for convenience pursuant to Section 2.03, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

\[
\text{COMPENSATION} = A \times \frac{B}{C}
\]

A = The AIRLINE’s actual leasehold improvement construction costs submitted in accordance with Section 8.07 in this LEASE.

B = Number of full months remaining in Lease Term.

C = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with "As-Built Documents" and "Record Documents" as required by Section 8.07 of this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.
SECTION 8.04 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 8.03 in this LEASE shall be the AIRLINE's sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 et seq.), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 et seq.), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE's rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

SECTION 8.05 AIRLINE'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.

B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.

C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 8.06 MECHANICS LIENS OR STOP-NOTICES

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys' fees and costs.
In the event a mechanics lien or stop-notice is imposed upon the Lessed Premises, the AIRLINE shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two (2) optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 8.07 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of "As-Built Documents" and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the "As-Built Documents" and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance
(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

_Note:_ “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and “Record Documents”. Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the [www.ocair.com](http://www.ocair.com) website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director’s approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

**SECTION 8.08 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS**

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE’s aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to
the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 8.09 HEALTH AND SAFETY

The AIRLINE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE IX - ACCOMMODATION

SECTION 9.01 JOINT USE REQUIREMENT

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the
availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE's Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE's reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE's Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airlines' operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE, including the indemnification and insurance provisions.

The AIRLINE agrees that, in the event it subleases its Leased Premises to another airline, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE's actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two (2) times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE X - ASSIGNMENT AND SUBLEASE

SECTION 10.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. **Transfers.** The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30)
days prior written notice of all proposed Transfers. The AIRLINE shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the AIRLINE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 11.02.

B. Conditions of the COUNTY Approval. The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

(1) The AIRLINE, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

(2) The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

(3) The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

(4) Subtenant's use is in conflict with the terms of this LEASE.

(5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

(6) Any construction required of the AIRLINE as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.
(7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

(8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY’s regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and/or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
(3) In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

(4) The AIRLINE fails to comply with Paragraph C, of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. Bankruptcy Transaction. If the AIRLINE assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. Non-Transferable Privileges. Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are
non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

SECTION 10.02 SUCCESSORS IN INTEREST

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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE XI - TERMINATION AND DEFAULT

SECTION 11.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.

SECTION 11.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder with prior written notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;

D. The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;

E. The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;

F. If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE's business;
G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the AIRLINE shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director's discretion.

SECTION 11.03 CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE'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 expiration.

SECTION 11.04 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 11.05 THE COUNTY'S RIGHT TO RE-ENTER

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the LEASE terms and shall not constitute an acceptance or surrender.
The AIRLINE 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE XII - SECURITY

SECTION 12.01 AIRPORT SECURITY

The AIRLINE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The AIRLINE is responsible for fines imposed by any regulatory agency as a result of the AIRLINE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The AIRLINE employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LEASE. The AIRLINE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed AIRLINE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The AIRLINE employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The AIRLINE employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The AIRLINE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. Local Security. The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE’s constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the AIRLINE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. Federal Security. As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated AIRLINE Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the AIRLINE shall pay the applicable fees. Upon successful completion of the background checks, the AIRLINE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated AIRLINE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The AIRLINE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The AIRLINE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The AIRLINE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The AIRLINE and all AIRLINE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. AIRLINE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must
immediately be referred to the Sheriff's Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of AIRLINE personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. The AIRLINE or AIRLINE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the AIRLINE’s employee’s or contractor’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of AIRLINE personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the AIRLINE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The AIRLINE’s security deposit may be applied to cover the cost of the fine.

ARTICLE XIII - INSURANCE AND INDEMNITY

SECTION 13.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE’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.

The AIRLINE agrees that the AIRLINE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.
If the AIRLINE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE 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 the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE’S employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the 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.

The AIRLINE may occupy the Airport Premises only upon providing to the COUNTY, the required insurance stated herein and maintain such insurance for the entire term of this LEASE. The COUNTY reserves the right to terminate this LEASE at any time the AIRLINE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. The AIRLINE shall pay the COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. The AIRLINE shall provide to the COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE; excluding General Aviation Liability. All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE 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 Airport Premises. Such proof of insurance must be maintained by the AIRLINE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of AIRLINE’s current audited financial report. If the AIRLINE’s SIR is approved, AIRLINE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from the AIRLINE’s, its agents, employee’s or
subcontractor’s performance of this Agreement, the AIRLINE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) The AIRLINE’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 the AIRLINE’s SIR provision shall be interpreted as though the AIRLINE was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td>(Including but not limited to General Liability, Passenger Legal Liability, Personal Injury, Contractual Liability, Premises, Products and Completed Operations, Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td>$250,000,000 aggregate</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers’ Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims made or per occurrence</td>
</tr>
<tr>
<td>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.</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

Required Endorsements

The Aviation General 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, agents as Additional Insureds.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’s insurance is primary and any insurance or self-insurance maintained by 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.
2. A primary and non-contributing endorsement evidencing that the AIRLINE’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 policy 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 insurance policies required by this LEASE shall waive all rights of subrogation against 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 COUNTY’s financial interest when applicable.

If the AIRLINE’s Pollution Liability policy is a claims-made policy, the AIRLINE 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 (NOTICES) below or to an address provided by Airport Director. AIRLINE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require AIRLINE 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 the COUNTY of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE’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.

SECTION 13.02 INDEMNITY

The AIRLINE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the AIRLINE pursuant to this LEASE. If judgment is entered against the AIRLINE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the AIRLINE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIV - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 14.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. AIRLINE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If AIRLINE transfers its obligation to another, the transferee is obligated in the same manner as AIRLINE.

B. AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) AIRLINE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) AIRLINE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by AIRLINE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by AIRLINE of the AIRLINE's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4) AIRLINE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, AIRLINE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the AIRLINE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the AIRLINE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The AIRLINE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The AIRLINE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if AIRLINE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the AIRLINE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the AIRLINE may request the United States to enter into the litigation to protect the interests of the United States.

C. AIRLINE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, AIRLINE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) AIRLINE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. AIRLINE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. AIRLINE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

(prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA's Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 14.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

SECTION 14.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 14.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The AIRLINE agrees that the AIRLINE's use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The AIRLINE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 14.05  FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the AIRLINE in this LEASE, or any local authorities shall not apply to the AIRLINE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 14.06  NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 14.07  RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 14.08  HEIGHT LIMITATION OF STRUCTURES

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 14.09 NONINTERFERENCE WITH AIRCRAFT

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

SECTION 14.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 14.11 AFFIRMATIVE ACTION REQUIREMENTS

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 14.12 AMERICANS WITH DISABILITIES ACT

The AIRLINE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the AIRLINE's furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the AIRLINE's furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The AIRLINE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The AIRLINE shall deliver to the COUNTY, upon the COUNTY's request, a copy of each report and work plan. The COUNTY's approval of or acceptance of any aspect of the AIRLINE's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The AIRLINE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the AIRLINE's failure to comply with the ADA.
SECTION 14.13 BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the AIRLINE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The AIRLINE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the AIRLINE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The AIRLINE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the AIRLINE owns and operates additional ramps, the AIRLINE shall maintain those ramps in proper working condition. The AIRLINE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XV - MISCELLANEOUS PROVISIONS

SECTION 15.01 TIME

Time is of the essence in this LEASE.

SECTION 15.02 LEASE ORGANIZATION

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.

SECTION 15.03 AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 15.04 SIGNS

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. The AIRLINE shall submit for approval all new signage to be placed in the ticketing lobby including baggage sizers, and pylon signs. Illustrative drawings and design dimensions must accompany all requests for approval. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the AIRLINE.

The AIRLINE will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of temporary promotional signs for the AIRLINE shall be accompanied by illustrative drawings and design dimensions along with information about the
type of signs proposed, and proposed locations. All approved promotional signs shall be allowed
to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage
must be removed, or the AIRLINE may resubmit a request to COUNTY to extend past the ninety
(90) days.

The AIRLINE shall keep all ticket counter space used by the AIRLINE and any associated ticket
lifts and podiums free of all signs, advertising materials, credit card application dispensing units,
posters and banners. The COUNTY may without notice remove any unauthorized signs or
advertising materials, and may store them at the AIRLINE's expense; the COUNTY may dispose
of items if they are not promptly claimed by the AIRLINE after notice from the COUNTY.

SECTION 15.05 PERMITS AND LICENSES

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

SECTION 15.06 RESERVED

SECTION 15.07 TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon
fixtures, equipment or other property installed or constructed thereon, shall be the full
responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid
promptly.

SECTION 15.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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.
However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental
or other charge required of the AIRLINE except as may be expressly provided elsewhere in this
LEASE.
SECTION 15.09  PARTIAL INVALIDITY

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.

SECTION 15.10  WAIVER OF RIGHTS

The failure of the COUNTY or the AIRLINE 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 the COUNTY or the AIRLINE 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 15.11  RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE's operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the AIRLINE's use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

SECTION 15.12  AUTHORITY OF THE AIRLINE

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.
SECTION 15.13    PUBLIC RECORDS

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 15.14    RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 15.15    GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 15.16    ATTORNEYS’ FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 15.17    EMERGENCY SERVICES

Airport Director has the right to request that the AIRLINE’S employees aid in and use AIRLINE’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The AIRLINE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 15.18   NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:  COUNTY
John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO:  AIRLINE
WestJet an Alberta Partnership
22 Aerial Place NE
Calgary, Alberta
Canada T2E 3J1

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

WESTJET, AN ALBERTA PARTNERSHIP

By: Angela Avery

By: 

APPROVED AS TO FORM:

County Counsel

By: 

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: Vernon C. Carter 10/21/20

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: 

Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

COUNTY

COUNTY OF ORANGE

By: Chairwoman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California
LEASED PREMISES

Parcel Numbers: PM 1121-0300-0086

Project Name: John Wayne Airport

Second Party: WestJet, an Alberta Partnership

The Leased Premises referred to in this Lease shall mean all the premises shown on a floor plan marked "Exhibit B", attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 300-86: Airport Ticket Counter Office and Ticket Counter containing 260 square feet and 214 square feet respectively, located on the north concourse of the departure level.

The Leased Premises shall also include the premises shown on a floor plan marked "Exhibit D", being those certain Common Use Areas designated as Baggage Claim/Baggage Make-up Areas, Holdrooms, Airside Concourses, Security Areas, and Loading Bridges.

Said Exclusive Use and Common Use Areas are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.
WESTJET
ATO
260 SQ FT

= TICKETING AREA

WESTJET
TICKETING
214 SQ FT

SURVEYOR'S NOTE:
AREA CALCULATIONS ARE BASED ON AS-BUILT
INTERIOR ROOM DIMENSIONS. THICKNESS OF
INTERIOR WALLS ADDED TO TOTAL AREA.
(WHERE APPLICABLE)

APPROXIMATE LOCATION

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## JOHN WAYNE AIRPORT
### SUMMARY OF OPERATION AND MAINTENANCE RESPONSIBILITIES

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**Key:**
- A = Airline
- C = County

1. Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.
2. Airline is responsible for routine maintenance, including relamping and ballast replacement.
3. Airline is responsible for cleaning ramp areas of trash and spills (from building to VSR).

If Airline fails to perform its maintenance and repair obligations as stated in the Lease, the County may perform the work after providing the Airline written notice and recover its entire cost plus a 15% charge from Airline as additional costs. Said costs shall be due and payable by the Airline to the County as stated in Article V, Section 5.07 of the Lease.

In the event the Airline makes any repairs or modifications to an area or equipment, at the request of the County, as per Section 4.01 subsection C of this Lease, and those areas or equipment are currently maintained by the County, the County will continue the maintenance responsibilities for those areas or equipment.

**EXHIBIT E**
CARGO LEASE

Dated ______________

Between

County of Orange

and

Federal Express Corporation
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EXHIBIT C  MAP OF CARGO OPERATIONS LICENSE AREA
THIS CARGO LEASE ("LEASE") is made and entered into this ___ day of ____________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and FEDERAL EXPRESS CORPORATION ("CARRIER").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the CARRIER is engaged in the business of commercial air transportation of property, cargo, freight and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the CARRIER desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties, to, among other things, increase the number of cargo flights authorized to operate at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the CARRIER mutually desire to enter into a LEASE in order to provide commercial air transportation of property, cargo, freight and mail; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the CARRIER for the operation of the CARRIER's air transportation services; and
WHEREAS, the CARRIER acknowledges that this LEASE is being entered into under the provisions of Cal. PUBLIC UTIL. CODE §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the John Wayne Airport – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving John Wayne Airport.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving John Wayne Airport.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the CARRIER as specified herein.
SECTION 1.06 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.

SECTION 1.07 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.09 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’S governing body.

SECTION 1.10 CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the CARRIER and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.11 COMMERCIAL CARGO

"Commercial Cargo" shall mean any cargo, freight, packages or other similar items carried to or from JWA by any Air Carrier or Commuter Carrier.

SECTION 1.12 COMMERCIAL CARGO CARRIER

"Commercial Cargo Carrier" shall mean any entity which is an Air Carrier, but which conducts its operations at JWA solely for the purpose of carrying Commercial Cargo with aircraft regularly configured with zero (0) Passenger Seats available to the general public, and which does not offer passenger service to the public in connection with its operations at JWA.

SECTION 1.13 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.14 DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.15 ENVIRONMENTAL LAWS
“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.

SECTION 1.16 EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Airport and on the Airfield which the COUNTY has granted the CARRIER the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The CARRIER's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.
SECTION 1.17  FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT of 1958, or such successor agency as may have similar jurisdiction over the CARRIER or its business, and the Airport.

SECTION 1.18  GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.19  HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.20  LICENSE AREA

"License Area” shall mean the area referred to as the Cargo Operations Area, as further described in Article III, Section 3.01 and shown on Exhibit C.

SECTION 1.21  NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water.  "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.22  POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:
a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.23 RON

"RON" shall mean the remain overnight positions where the CARRIER's aircraft are required to park when they "remain overnight" at JWA.

SECTION 1.24 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.25 TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LEASE.

SECTION 1.26 TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.
ARTICLE II - TERM OF LEASE

SECTION 2.01  TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02  HOLDING OVER

In the event the CARRIER shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03  TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01  LEASED PREMISES

The COUNTY leases to the CARRIER that certain property hereinafter referred to as "Leased Premises." Said premises shall consist of the following:

A.  **Leased Premises.** The COUNTY leases to the CARRIER certain property at the Airport, known as the Leased Premises, containing Parcel 330-0029 and Parcel 330-0029.1, both of which are described in Exhibit A and shown on Exhibit B, attached to this LEASE and incorporated herein.

B.  **License Area.** The CARRIER shall also have access to a License Area referred to as the Cargo Operations Area identified as Parcel 330-XXXX. This area shall be used for the purpose of parking the CARRIER's aircraft during loading and unloading operations. The License Area is described and shown on Exhibit C, attached to this LEASE and incorporated herein.

The Airport Director may change the License Area at any time, however, if there is reasonable space available on the Airport that is not used for other aviation purposes, the Airport Director will make reasonable efforts to provide replacement space that will furnish the CARRIER with essentially the same utility as the space replaced for the remainder of the term of this LEASE.

Any and all references to the Leased Premises included in this LEASE, unless otherwise noted, shall include and apply to the License Area, as designated by the Airport Director.
SECTION 3.02  NATURE OF CARRIER'S ESTATE

The CARRIER acknowledges and agrees:

A. That the COUNTY has granted to the CARRIER a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the CARRIER has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.

SECTION 3.03  INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The CARRIER shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director prior to installation.

ARTICLE IV – RENT, FEES AND CHARGES

SECTION 4.01  RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The CARRIER shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period, and the CARRIER agrees that the COUNTY will not invoice for such rents, fees and charges.

   Leased Premises. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for equipment storage and cargo operations. For purposes of calculating terminal apron rent, the Leased Premises contain the square feet shown on Exhibit A and shown on Exhibit B.
In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

B. The CARRIER shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The CARRIER agrees that the COUNTY will not invoice for the following fees and charges, and may require the CARRIER to submit future monthly reports electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that allows CARRIER to efficiently report the information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Cargo operations fees based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure, and shall cover use of the License Area, which includes aircraft parking fees and the use of the airport access roadways.

(4) **Additional fees.** Additional fees shall be established by the COUNTY for annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by the COUNTY and incorporated into the above mentioned fees.

C. Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the CARRIER's use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the CARRIER shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the CARRIER or invoice the CARRIER for any underpayments for the previous period.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the CARRIER to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The CARRIER shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the CARRIER. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The CARRIER assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the CARRIER or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport's designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to the CARRIER plus a twenty-five dollar $25 processing fee.

C. **Penalty for NSF Check** In the event a check submitted by the CARRIER is returned for non-sufficient funds (“NSF”), the CARRIER agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. The CARRIER may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The CARRIER hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The CARRIER and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the CARRIER's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the CARRIER's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

**SECTION 4.04 PROVISION AGAINST SET-OFFS**

It is the obligation of the CARRIER to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the CARRIER desires to contest the validity or amount of any such fees and charges, the CARRIER shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

**SECTION 4.05 SECURITY DEPOSIT**

The CARRIER, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the CARRIER shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the CARRIER of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder.

The security deposit shall take one of the forms set out below and shall guarantee the CARRIER's full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the CARRIER's performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.
B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the CARRIER, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the CARRIER throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the CARRIER elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the CARRIER, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the CARRIER, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the CARRIER elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the CARRIER shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article X of this LEASE.

The CARRIER shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the CARRIER or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the CARRIER has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01 USE

The CARRIER's use of the Leased Premises and its operations shall be limited to conducting a cargo air service operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 8.01 in this LEASE, this operation is subject to the following authorized uses:
A. Loading and unloading of property, freight, cargo and mail.

B. The CARRIER shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the CARRIER in the conduct of its air transportation service.

C. Employee training incidental to the other uses permitted under this Section.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the CARRIER a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the CARRIER's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the CARRIER agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and the CARRIER’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the CARRIER written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the CARRIER's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the CARRIER.

The CARRIER’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the CARRIER shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the CARRIER's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to the CARRIER’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the CARRIER, its employees, subtenants, agents or suppliers related to the CARRIER's operation under this LEASE.

The COUNTY shall not be liable to the CARRIER for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the CARRIER be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the CARRIER's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The CARRIER agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the CARRIER shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the CARRIER's activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the CARRIER under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the terms of this LEASE, and that such privileges do not constitute property rights of the CARRIER.

C. The ADD allocations and other operating privileges made to the CARRIER under the Access Plan are not transferable, assignable or delegable by the CARRIER to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the CARRIER at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the CARRIER are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The CARRIER shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this
Section shall prevent the CARRIER from making any argument or asserting any position
to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke
or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article X in this LEASE are subject to the terms,
provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The CARRIER agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including
"regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number
of departures authorized and allocated to the CARRIER under the Access Plan. In addition
to any and all remedies available to the COUNTY under this LEASE and all provisions of
the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted
to the CARRIER under the provisions of the Access Plan. The CARRIER shall not operate
at JWA unless it conducts its operations with ADDs, allocated seat capacity or other
Authorized Departures directly and formally allocated to the CARRIER by action of the
Board of Supervisors; the CARRIER conducts all of its operations with aircraft which have
been certified for operation at the Airport consistent with Access Plan requirements;
and, the CARRIER has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the CARRIER's aircraft shall not
depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on
Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m.
(8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown
are Pacific Time.

The CARRIER acknowledges that the COUNTY may by regulation permit some
operations by general aviation (nonscheduled, noncommercial) users of the Airport during
the nighttime hours with certain specific aircraft types that have noise characteristics
similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that
term is defined in the Access Plan. The CARRIER does now, or may during the term of
this LEASE, operate Class E aircraft at the Airport; nevertheless, the CARRIER agrees
that the limitations on hours of operations contained in this Section shall be applicable to
all of its operations at the Airport, including its Class E operations.

The CARRIER further acknowledges that there is a rational basis for the COUNTY to
distinguish between general aviation operations and regularly scheduled operations by
Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction
does not constitute unlawful or unjustly discriminatory action by the COUNTY in its
operation and management of the Airport. The COUNTY agrees that this provision is, and
during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The CARRIER agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The CARRIER further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Noninterference.** The CARRIER shall cooperate with and not interfere with the COUNTY's and other CARRIERs' use of and operations at the Airport. The CARRIER shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

**SECTION 5.06 RECORDS AND ACCOUNTS**

A. **Records.** The CARRIER shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The CARRIER shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The CARRIER shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the CARRIER's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the CARRIER; the total combined certificated gross landing weight of all such aircraft operations; the weight and balance manifest from each flight; the total number of pounds of property, freight, cargo and mail enplaned and deplaned. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The CARRIER must attest that the list is an accurate representation of the CARRIER's activity for the month.

The CARRIER shall also provide to the Airport Director, for each day, a copy of the CARRIER's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., local time) of the following day.

C. **Audits.** All the CARRIER's records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical
limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the CARRIER, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the CARRIER shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the CARRIER if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the CARRIER in accordance with this LEASE and the rent due as determined by said audit; and/or

2. The CARRIER has failed to maintain true and complete records and supporting source documents in accordance with paragraph A. above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the CARRIER, shall be included as rent for the first month following invoice to the CARRIER.

Upon the request of the Auditor-Controller, the CARRIER shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the CARRIER’s use of the Leased Premises.

D. Failure to Maintain Adequate Records. In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the CARRIER fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY’s option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm
the amount of rents, fees and charges payable by the CARRIER under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the CARRIER upon demand.

(2) Require that the CARRIER pay rents and fees based on the COUNTY's best good faith estimate of the CARRIER's activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the CARRIER.

Costs payable by the CARRIER pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY's employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits and the COUNTY's overhead or, at the Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the CARRIER shall be included as rent for the first month following invoice to the CARRIER.

SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES

The CARRIER agrees to maintain the Leased Premises in a safe, clean, sanitary condition and in compliance with all applicable laws. The CARRIER shall be responsible to make all necessary repairs required to maintain the Leased Premises and improvements in good condition. All repairs and improvements made by the CARRIER to the Leased Premises shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Leased Premises. Any additions, alterations, repairs and changes of use or occupancy in the Leased Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

The CARRIER shall immediately notify the Airport Director and the Airport Operations Center ("AOC") of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or other any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The CARRIER further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the CARRIER's Leased Premises and other Airport facilities at any time.
for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering the CARRIER’S leased premises.

The CARRIER shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the CARRIER fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the CARRIER in writing of said failure. Should the CARRIER fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the CARRIER. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the CARRIER within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the CARRIER fails to maintain or make repairs or replacements, including removal of all its GSE and/or any CARRIER materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the CARRIER. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the CARRIER within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The CARRIER expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the CARRIER's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.

**SECTION 5.08 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON**

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.
SECTION 5.09 AIRCRAFT PARKING

The CARRIER shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the CARRIER subject to Section 4.01 in this LEASE.

If, in the judgment of the Airport Director, it becomes necessary to move the CARRIER's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the CARRIER shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the CARRIER, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the CARRIER shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the CARRIER fail to remove said aircraft, or should aircraft owned or operated by the CARRIER be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the CARRIER shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The CARRIER agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the CARRIER's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the CARRIER's use. The CARRIER agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.

SECTION 5.10 FUELING REQUIREMENTS

The CARRIER shall make separate arrangements with an approved on-Airport fuel provider for into-plane fueling on the License Area. A copy of the agreement entered into by the CARRIER shall be delivered to the Airport Director within ten (10) days of execution. No fueling at any other location on the Airport shall be permitted.
ARTICLE VI -ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 6.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The CARRIER agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The CARRIER shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the CARRIER’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The CARRIER shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the CARRIER shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The CARRIER shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the CARRIER. In conducting a clean-up of a Hazardous Substance release under this LEASE, the CARRIER shall comply with applicable Environmental Laws. Hazardous waste generated by the CARRIER or its contractors shall be disposed properly and under the CARRIER’s EPA ID number.

The CARRIER shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The CARRIER shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the CARRIER complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The CARRIER shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The CARRIER shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The CARRIER
shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the CARRIER.

SECTION 6.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The CARRIER shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The CARRIER is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the CARRIER for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the CARRIER shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the CARRIER within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the CARRIER shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the CARRIER's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to CARRIER’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the CARRIER, its employees, subtenants, agents or suppliers related to CARRIER’s operation under this LEASE.

SECTION 6.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the CARRIER shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable
Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the CARRIER, the CARRIER's operations at the Airport or any action arising from and which involve the CARRIER’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

1. The CARRIER's placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the CARRIER's release of Hazardous Substances on the Airport since the time the CARRIER first occupied the Airport.

2. The CARRIER's release of Hazardous Substances upon or within the Airport.

3. The CARRIER's violation of any applicable Environmental Law, except that the CARRIER's obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the CARRIER that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the CARRIER if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the CARRIER or if it is controlled by or under common control with the CARRIER.

4. The CARRIER's causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 6.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the CARRIER’s indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the CARRIER shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the CARRIER because of the concurrent negligence of the COUNTY and the CARRIER or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the CARRIER agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity
obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 6.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 6.05 ENVIRONMENTAL STEWARDSHIP

A. All CARRIER facilities and improvements shall meet the Airport's Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the CARRIER installs any new infrastructure, the CARRIER is required to use Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The CARRIER shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

   (1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

   (2) Climate Action Plan.

   (3) Waste Management Plan.

   (4) Storm Water Pollution Prevention Plan.

C. The CARRIER shall implement the following conservation measures and policies:

   (1) Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

   (2) Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.
(3) Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

(4) Install energy-efficient heating and cooling equipment when replacing or upgrading.

(5) Use energy-efficient computers and servers when replacing this equipment.

(6) Select equipment with variable speed motors and fan drives, when possible.

(7) Utilize paperless ticket technology, when possible.

D. The CARRIER shall implement and support the following environmental policies:

(1) Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The CARRIER shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

(2) The CARRIER shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

(3) The CARRIER has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the CARRIER’s procurement of goods and services as applicable.

(4) The CARRIER shall affirm its commitment to Environmental Sustainability at the Airport including water and power conservation, waste diversion, and pollution prevention. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.

(5) Upon request, the CARRIER shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 6.06         ANTI-IDLING POLICY

Within six months of LEASE execution, CARRIER must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not
occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. CARRIER’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the CARRIER.

ARTICLE VII - CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the CARRIER's Exclusive Use Area. The COUNTY shall provide the CARRIER advance notice of such action and shall make every reasonable effort to provide the CARRIER alternative space that is reasonably comparable for the CARRIER's operations at the same rates and charges that the CARRIER would have paid for the space being surrendered. In the event no alternative space is available, the CARRIER shall surrender its space promptly to the COUNTY, provided that the CARRIER shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the CARRIER's unamortized investment, if any, as documented by the CARRIER to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and the CARRIER. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 7.02 IMPROVEMENTS BY THE CARRIER

The CARRIER shall not perform any construction upon the Leased Premises nor shall the CARRIER modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the CARRIER shall be at the CARRIER's expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY’s discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred twenty five thousand dollars ($125,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. Compliance with Plans and Construction Standards. All improvements constructed by the CARRIER within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide,” which can be provided
by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The CARRIER shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the CARRIER, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the CARRIER's responsibility. The CARRIER, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The CARRIER shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the CARRIER and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The CARRIER warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The CARRIER agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the CARRIER or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the CARRIER shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The CARRIER's Cost and Expense.** All renovation or construction by the CARRIER pursuant to this Section shall be at the CARRIER's sole cost and expense. The CARRIER shall keep the Leased Premises and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The CARRIER shall have the right to contest any and all liens filed against its existing or future Leased Premises. The CARRIER further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the CARRIER must,
upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the CARRIER, at the CARRIER's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 7.03 CARRIER'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the CARRIER shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the CARRIER and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.

B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.

C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the CARRIER of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 7.04 MECHANICS LIENS OR STOP-NOTICES

The CARRIER shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the CARRIER, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the CARRIER shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.
Should the CARRIER fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 7.05 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. Drawings and Models:
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. Documents and Reports:
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance (O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines,
contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 7.06 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The CARRIER shall be responsible for any damage caused by the CARRIER, or the CARRIER's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the CARRIER is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the CARRIER. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the CARRIER within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the CARRIER-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the CARRIER-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the CARRIER shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction of improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the CARRIER's obligation under this paragraph. With respect to damage or
destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the CARRIER waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 7.07 HEALTH AND SAFETY

The CARRIER shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The CARRIER shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The CARRIER shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The CARRIER shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The CARRIER and/or the CARRIER's contractor shall submit, prior to the start of any tenant improvements, the CARRIER or CARRIER's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The CARRIER shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the CARRIER by Cal/OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE VIII - ACCOMMODATION

SECTION 8.01 JOINT USE REQUIREMENT

The CARRIER and/or other CARRIERs may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The CARRIER agrees to make every reasonable effort to offer to any CARRIER initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming CARRIER initiating service at the Airport is reasonable and possible, the CARRIER will have the right to consider the compatibility of the proposed operations of those with whom the CARRIER has subleases or handling arrangements, the CARRIER's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the CARRIER's Leases Premises and the availability of other such space at the Airport. Should the CARRIER deny another CARRIER initiating service at the Airport the opportunity to use the CARRIER's Leased Premises, the COUNTY may review the CARRIER's space usage, and should it reasonably determine, considering all the factors noted herein (including the CARRIER's reasons for such refusal), that the CARRIER unreasonably refused usage by such other CARRIER, it may require the CARRIER to permit the other CARRIER to use the CARRIER's Leased Premises, subject to the initiating
CARRIER executing an agreement with the CARRIER acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.

The CARRIER shall, by separate agreement with such all-cargo air service airlines as the COUNTY may designate, or by other arrangement as provided by Airport Director, provide space and/or services within Leased Premises to accommodate said airlines’ operation. Any said agreement for joint use shall be subject to the Airport Director’s approval and subject to the terms and conditions of this LEASE. The CARRIER agrees that, in the event it subleases its Leased Premises to another the CARRIER, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the CARRIER's actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the CARRIER to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the CARRIER for the pro-rata costs per square foot applicable to the CARRIER improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two times the square foot per annum rental rate currently paid by the CARRIER to the COUNTY unless the CARRIER can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE IX - ASSIGNMENT AND SUBLEASE

SECTION 9.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. Transfers. The CARRIER shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the CARRIER in the Leased Premises without the prior written approval of the COUNTY. The CARRIER shall give the COUNTY thirty (30) days prior written notice of all proposed Transfers. The CARRIER shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.
If the CARRIER is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the CARRIER of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the CARRIER to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 10.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The CARRIER, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of the CARRIER as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.

7. The CARRIER has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

8. The CARRIER attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain Loan Proceeds necessary to construct new improvements on the Leased Premises.
C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial CARRIERs operating, or desiring to operate, at the Airport ("the affiliate policy"). The CARRIER acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The CARRIER acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The CARRIER agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the CARRIER and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the CARRIER is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The CARRIER shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the CARRIER, the CARRIER shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the CARRIER, the CARRIER shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the CARRIER.

(3) In addition to all other obligations of the CARRIER, if the affiliate transaction involves the CARRIER and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the CARRIER shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.
Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the CARRIER without further obligation of the COUNTY, and without any liability of the COUNTY to the CARRIER whatsoever, if:

(1) The CARRIER fails to comply with Paragraph C, of this Section; or if

(2) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the CARRIER and its affiliate(s); or if

(3) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the CARRIER within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the CARRIER assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 *et seq.*, then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 *et seq.*, shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the CARRIER and are non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the CARRIER under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

**SECTION 9.02   SUCCESSORS IN INTEREST**
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 parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE X - TERMINATION AND DEFAULT

SECTION 10.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the CARRIER at the Airport.

SECTION 10.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder prior written notice to the CARRIER and may exercise all rights of entry for default and breach if the CARRIER fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, and charges;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the CARRIER at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the CARRIER;

D. The voluntary vacation or abandonment by the CARRIER of the conduct of air transportation business at the Airport;

E. The violation by the CARRIER of any of the terms of any insurance policy referred to in the LEASE;

F. If the CARRIER is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the CARRIER's business;

G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the CARRIER located at the Leased Premises or of the CARRIER's leasehold interest in the Leased Premises.
Where applicable, and unless otherwise stated in this LEASE, or by written notice, the CARRIER shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 10.03 CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the CARRIER shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the CARRIER'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 expiration.

SECTION 10.04 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the CARRIER abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the CARRIER and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the CARRIER or to any person claiming under the CARRIER, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the CARRIER possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 10.05 THE COUNTY'S RIGHT TO RE-ENTER

The CARRIER agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the CARRIER, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the CARRIER under the LEASE terms and shall not constitute an acceptance or surrender.

The CARRIER 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE XI - SECURITY
SECTION 11.01 AIRPORT SECURITY

The CARRIER shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The CARRIER is responsible for fines imposed by any regulatory agency as a result of the CARRIER’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The CARRIER employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work at the Airport under this LEASE. The CARRIER must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential ("Airport ID/Security Credential") process, a list of current Airport ID/Security Credentialized CARRIER employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The CARRIER employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The CARRIER employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The CARRIER must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. Local Security. The CARRIER shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the CARRIER’s constant surveillance. The CARRIER shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The CARRIER shall exercise control over any person or vehicle escorted by the CARRIER onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the CARRIER, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. Federal Security. As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The CARRIER may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.

C. Penalties and Fines. The CARRIER shall promptly pay any penalties for which the CARRIER is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the CARRIER, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.
D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated CARRIER personnel who will be working onsite, and engaged in the performance of work under this Lease, must pass Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and shall pay applicable fees. Upon successful completion of the background checks, CARRIER designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated CARRIER personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The CARRIER should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a USCBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The CARRIER’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The CARRIER shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The CARRIER and all CARRIER personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. CARRIER personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of the CARRIER personnel employment and/or termination of
the Lease. The loss of an Airport ID/Security Credential shall be reported within 24 hours to the Sheriff’s Department–Airport Police Services by calling (949) 252-5000. The CARRIER or CARRIER personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport ID/Security Credential is nontransferable.

In the event that the CARRIER’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of the CARRIER personnel or contracted personnel, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the CARRIER shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The CARRIER’s security deposit may be applied to cover the cost of the fine.

**ARTICLE XII - INSURANCE AND INDEMNITY**

**SECTION 12.01 INSURANCE**

The CARRIER agrees to purchase all required insurance at the CARRIER’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.

The CARRIER agrees that the CARRIER shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the CARRIER, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The CARRIER also agrees that upon cancellation, termination, or expiration of the CARRIER’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.

If the CARRIER fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the CARRIER 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 the CARRIER, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public,
and the CARRIER’s employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The CARRIER further agrees to hold the 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.

The CARRIER may occupy the Airport Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this LEASE.

COUNTY reserves the right to terminate this LEASE at any time the CARRIER’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. CARRIER shall pay COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. CARRIER shall provide to COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the CARRIER pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the CARRIER; excluding General Aviation Liability. All contractors performing work on behalf of the CARRIER pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The CARRIER shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the CARRIER under this LEASE. It is the obligation of the CARRIER 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 Airport Premises. Such proof of insurance must be maintained by the CARRIER 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of CARRIER’s current audited financial report. If CARRIER’s SIR is approved, LESSEE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from CARRIER’s, its agents, employee’s or subcontractor’s performance of this Agreement, CARRIER shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) CARRIER’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 the CARRIER’s SIR provision shall be interpreted as though the CARRIER was an insurer and the COUNTY was the insured.

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

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation General Liability (Including but not limited to General Liability, Passenger Legal Liability, Personal Injury, Contractual Liability, Premises, Products and Completed Operations, Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td>$250,000,000 per occurrence $250,000,000 aggregate</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims-made or per occurrence</td>
</tr>
<tr>
<td>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</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**

The Aviation General 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 and non-contributing endorsement evidencing that the CARRIER’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.
2. A primary and non-contributing endorsement evidencing that the CARRIER’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 policy 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 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 as respects the COUNTY’s financial interest when applicable.

If the CARRIER’s Pollution Liability policy is a claims-made policy, the CARRIER 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 (NOTICES) below or to an address provided by Airport Director. The CARRIER has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require the CARRIER 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 the COUNTY Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify the CARRIER in writing of changes in the insurance requirements. If the CARRIER does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the CARRIER, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the CARRIER’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.

SECTION 12.02 INDEMNITY
The CARRIER agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the CARRIER pursuant to this LEASE. If judgment is entered against the CARRIER and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the CARRIER and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIII - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 13.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. The CARRIER agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the CARRIER transfers its obligation to another, the transferee is obligated in the same manner as the CARRIER.

B. The CARRIER, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) The CARRIER will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) The CARRIER, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by the CARRIER for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the CARRIER of the CARRIER’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4) The CARRIER will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where
information required of a contractor is in the exclusive possession of another who
fails or refuses to furnish the information, the CARRIER will so certify to the
COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to
obtain this information.

5) In the event of the CARRIER’s noncompliance with the non-discrimination
provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA
may determine to be appropriate, including, but not limited to: withholding
payments under the contract until the CARRIER complies, and/or cancelling,
terminating, or suspending a contract, in whole or in part.

6) The CARRIER will include the provisions of paragraphs one through six in every
sublease or subcontract, including procurements of materials and leases of
equipment, unless exempt by the Acts, the Regulations, and directives issued
pursuant thereto. The CARRIER will take action with respect to any sublease,
subcontract or procurement as the COUNTY or FAA may direct as a means of
enforcing such provisions including sanctions for noncompliance. Provided, that
if CARRIER becomes involved in, or is threatened with litigation by a subtenant,
subcontractor, or supplier because of such direction, the CARRIER may request the
COUNTY to enter into any litigation to protect the interests of the COUNTY. In
addition, the CARRIER may request the United States to enter into the litigation to
protect the interests of the United States.

C. The CARRIER, for itself, personal representatives, successors in interest, and assigns, as a
part of the consideration hereof, does hereby covenant and agree as a covenant running
with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the
Leased Premises for a purpose for which a FAA activity, facility, or program is
extended or for another purpose involving the provision of similar services or
benefits, the CARRIER will maintain and operate such facilities and services in
compliance with all requirements imposed by the Nondiscrimination Acts and
Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may
be amended) such that no person on the grounds of race, color, or national origin,
will be excluded from participation in, denied the benefits of, or be otherwise
subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from
participation in, denied the benefits of, or be otherwise subjected to discrimination
in the use of said facilities.

3) In the construction of any improvements on, over or under the Leased Premises and
the furnishing of services thereon, no person on the grounds of race, creed, color,
sex, national origin, age, or disability shall be excluded from participation in,
denied the benefits of or otherwise be subjected to discrimination.
4) The CARRIER will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. The CARRIER shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. The CARRIER, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d *et seq.* (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.* (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

8) Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12189, as implemented by 28 CFR parts 35 and 36, and 49 CFR parts 37 and 38 (prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);
9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 13.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the CARRIER, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the CARRIER, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the CARRIER in this regard.

SECTION 13.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 13.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The CARRIER agrees that the CARRIER’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.

The CARRIER agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future...
structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 13.05  FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the CARRIER in this LEASE, or any local authorities shall not apply to the CARRIER to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the CARRIER Deregulation Act (49 U.S.C. § 41713).

SECTION 13.06  NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 13.07  RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 13.08  HEIGHT LIMITATION OF STRUCTURES

The CARRIER by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the CARRIER. The CARRIER shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 13.09  NONINTERFERENCE WITH AIRCRAFT

The CARRIER by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid
covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the CARRIER.

SECTION 13.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 13.11 AFFIRMATIVE ACTION REQUIREMENTS

The CARRIER assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The CARRIER assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The CARRIER assures that it will require that its covered suborganizations provide assurances to the CARRIER that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 13.12 AMERICANS WITH DISABILITIES ACT

The CARRIER shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the CARRIER’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the CARRIER’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The CARRIER shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The CARRIER shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the CARRIER’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The CARRIER agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the CARRIER’s failure to comply with the ADA.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

SECTION 14.01 TIME

Time is of the essence in this LEASE.
SECTION 14.02 LEASE ORGANIZATION

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.

SECTION 14.03 AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 14.04 SIGNS

The CARRIER agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the CARRIER. All requests for the approval of signs for the CARRIER shall be accompanied by illustrative drawings and design dimensions along with information about the type of signs proposed, and proposed locations. All promotional signs shall be allowed to remain for ninety (90) days after approval. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the CARRIER’s expense; the COUNTY may dispose of items if they are not promptly claimed by the CARRIER after notice from the COUNTY.

SECTION 14.05 PERMITS AND LICENSES

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

SECTION 14.06 RESERVED

SECTION 14.07 TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the CARRIER, and the CARRIER shall cause said taxes and assessments to be paid promptly.
SECTION 14.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the CARRIER from the prompt payment of any rental or other charge required of the CARRIER except as may be expressly provided elsewhere in this LEASE.

SECTION 14.09 PARTIAL INVALIDITY

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.

SECTION 14.10 WAIVER OF RIGHTS

The failure of the COUNTY or the CARRIER 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 the COUNTY or the CARRIER 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 14.11 RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the CARRIER is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the CARRIER's operations hereunder or to impair the security of any secured creditor of the CARRIER.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by...
the CARRIER, the CARRIER shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the CARRIER's use of the Leased Premises. The CARRIER shall not be entitled to any other form of compensation.

SECTION 14.12 AUTHORITY OF THE CARRIER

If the CARRIER is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she 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.

SECTION 14.13 PUBLIC RECORDS

The CARRIER understands that written information submitted to and/or obtained by the COUNTY from the CARRIER related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (CAL. GOV. CODE §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 14.14 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the CARRIER in the conduct of the CARRIER's business or otherwise, or a joint venturer with the CARRIER; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 14.15 GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
SECTION 14.16  ATTORNEYS’ FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 14.17  EMERGENCY SERVICES

Airport Director has the right to request that the CARRIER’S employees aid in and use CARRIER’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The CARRIER shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.

SECTION 14.18  NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the CARRIER by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:  COUNTY  TO:  CARRIER

John Wayne Airport  Federal Express Corporation
3160 Airway Avenue  3680 Hacks Cross Rd.
Costa Mesa, CA 92626  Bldg. H, 3rd Floor
                             Memphis, TN 38125-7752

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

FEDERAL EXPRESS CORPORATION
By: [Signature]

By: [Signature]

APPROVED AS TO FORM:
County Counsel
By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:
Auditor-Controller
By: [Signature] 10/22/10

RECOMMENDED FOR APPROVAL:
John Wayne Airport
By: [Signature]
Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY
COUNTY OF ORANGE
By: [Signature]
Chairwoman, Board of Supervisors
LEASED PREMISES

Parcel Numbers: PM 1121-330-0029

Project Name: John Wayne Airport

Second Party: Federal Express Corporation

The Leased Premises referred to in this Lease shall mean all the premises shown on a map marked “Exhibit B”, attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 330-0029: Office and parking area containing 10,217 square feet located on Airport Way.

Parcel 330-0029.1 Cargo Operations License Area containing 6,007 square feet located on the southern most portion of south "remain over night" (RON) ramp.

Said Exclusive Use are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lot 135 of Block 7, of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.
SURVEYOR'S NOTES:

AREA CALCULATIONS ARE BASED ON AS-BUILT SURVEYS PERFORMED IN JANUARY 2010 AND ARE CONSISTENT WITH CALCULATIONS PROVIDED BY P. BONELLO DATED 1-06-2009. WITH THE EXCEPTION OF THE AREAS THAT INCLUDE THE FedEx & UPS TRAILERS, WHICH HAVE BEEN MODIFIED IN CONFIGURATION.
AIR CARGO

JWA SURVEY
10-1-2020

= CARGO EQUIPMENT
STORAGE AREA

AIRPORT WAY

EXHIBIT C
CARGO LEASE

Dated ______________

Between

County of Orange

and

United Parcel Service Co.
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LIST OF EXHIBITS

EXHIBIT A  LEASED PREMISES DESCRIPTION –EXCLUSIVE USE AREA
EXHIBIT B  MAP OF LEASED PREMISES –EXCLUSIVE USE AREA
EXHIBIT C  MAP OF CARGO OPERATIONS LICENSE AREA
THIS CARGO LEASE ("LEASE") is made and entered into this ___ day of __________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and UNITED PARCEL SERVICE CO. ("CARRIER").

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the CARRIER is engaged in the business of commercial air transportation of property, cargo, freight and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the CARRIER desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties, to, among other things, increase the number of cargo flights authorized to operate at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the CARRIER mutually desire to enter into a LEASE in order to provide commercial air transportation of property, cargo, freight and mail; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the CARRIER for the operation of the CARRIER's air transportation services; and
WHEREAS, the CARRIER acknowledges that this LEASE is being entered into under the provisions of Cal. Public Util. Code §§21690.5 et seq., and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the John Wayne Airport – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving John Wayne Airport.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving John Wayne Airport.

SECTION 1.03 ACCESS PLAN

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

SECTION 1.04 ADD

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the CARRIER as specified herein.
SECTION 1.06  AIRPORT

"Airport” shall mean the John Wayne Airport, Orange County, California.

SECTION 1.07  AIRPORT DIRECTOR

"Airport Director" shall mean the Director of JWA or his or her duly authorized designee.

SECTION 1.08  AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.09  BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the COUNTY’S governing body.

SECTION 1.10  CERTIFICATED MAXIMUM LANDING WEIGHT

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the CARRIER and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.11  COMMERCIAL CARGO

"Commercial Cargo" shall mean any cargo, freight, packages or other similar items carried to or from JWA by any Air Carrier or Commuter Carrier.

SECTION 1.12  COMMERCIAL CARGO CARRIER

"Commercial Cargo Carrier" shall mean any entity which is an Air Carrier, but which conducts its operations at JWA solely for the purpose of carrying Commercial Cargo with aircraft regularly configured with zero (0) Passenger Seats available to the general public, and which does not offer passenger service to the public in connection with its operations at JWA.

SECTION 1.13  COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.14  DOT

"DOT" shall mean the U.S. Department of Transportation.

SECTION 1.15  ENVIRONMENTAL LAWS
“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.

SECTION 1.16 EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Airport and on the Airfield which the COUNTY has granted the CARRIER the right to use on an exclusive use basis, subject to the Joint Use Requirement, during the term of this LEASE. The CARRIER's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.
SECTION 1.17  FAA

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT OF 1958, or such successor agency as may have similar jurisdiction over the CARRIER or its business, and the Airport.

SECTION 1.18  GSE

"GSE" shall mean Ground Service Equipment and include any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier or ground service provider in support of operations at JWA.

SECTION 1.19  HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.20  LICENSE AREA

"License Area" shall mean the area referred to as the Cargo Operations Area, as further described in Article III, Section 3.01 and shown on Exhibit C.

SECTION 1.21  NON-STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.22  POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:
a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.23 RON

"RON" shall mean the remain overnight positions where the CARRIER's aircraft are required to park when they "remain overnight" at JWA.

SECTION 1.24 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.25 TERMINAL

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LEASE.

SECTION 1.26 TSA

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.
ARTICLE II - TERM OF LEASE

SECTION 2.01  TERM OF LEASE

The term of this LEASE shall commence on January 1, 2021, and expire on December 31, 2025.

SECTION 2.02  HOLDING OVER

In the event the CARRIER shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

SECTION 2.03  TERMINATION FOR CONVENIENCE

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

ARTICLE III – LEASED PREMISES

SECTION 3.01  LEASED PREMISES

The COUNTY leases to the CARRIER that certain property hereinafter referred to as "Leased Premises." Said premises shall consist of the following:

A.  **Leased Premises.** The COUNTY leases to the CARRIER certain property at the Airport, known as the Leased Premises, containing Parcel 330-0030 and Parcel 330-0030.1, both of which are described in Exhibit A and shown on Exhibit B, attached to this LEASE and incorporated herein.

B.  **License Area.** The CARRIER shall also have access to a License Area referred to as the Cargo Operations Area identified as Parcel 330-XXXX. This area shall be used for the purpose of parking the CARRIER's aircraft during loading and unloading operations. The License Area is described and shown on Exhibit C, attached to this LEASE and incorporated herein.

The Airport Director may change the License Area at any time, however, if there is reasonable space available on the Airport that is not used for other aviation purposes, the Airport Director will make reasonable efforts to provide replacement space that will furnish the CARRIER with essentially the same utility as the space replaced for the remainder of the term of this LEASE.

Any and all references to the Leased Premises included in this LEASE, unless otherwise noted, shall include and apply to the License Area, as designated by the Airport Director.
SECTION 3.02  NATURE OF CARRIER'S ESTATE

The CARRIER acknowledges and agrees:

A. That the COUNTY has granted to the CARRIER a leasehold interest in the Leased Premises only.

B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.

C. That the CARRIER has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.

SECTION 3.03  INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

The CARRIER shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director prior to installation.

ARTICLE IV – RENT, FEES AND CHARGES

SECTION 4.01  RENT, FEES AND CHARGES

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the rents, fees, and charges to the AAAC prior to implementation.

A. The CARRIER shall make payment of the following rents, fees and charges, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period, and the CARRIER agrees that the COUNTY will not invoice for such rents, fees and charges.

**Leased Premises.** Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for equipment storage and cargo operations. For purposes of calculating terminal apron rent, the Leased Premises contain the square feet shown on Exhibit A and shown on Exhibit B.
In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

B. The CARRIER shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The CARRIER agrees that the COUNTY will not invoice for the following fees and charges, and may require the CARRIER to submit future monthly reports electronically via JWA’s portal and prescribed format. AIRPORT will make reasonable efforts to develop an electronic format that allows CARRIER to efficiently report the information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Cargo operations fees based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure, and shall cover use of the License Area, which includes aircraft parking fees and the use of the airport access roadways.

(4) **Additional fees.** Additional fees shall be established by the COUNTY for annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by the COUNTY and incorporated into the above mentioned fees.

C. Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications, or such other changes as needed to respond to the CARRIER's use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the CARRIER shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the CARRIER or invoice the CARRIER for any underpayments for the previous period.
Notwithstanding anything in this LEASE to the contrary, all amounts payable by the CARRIER to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The CARRIER shall notify the Airport in writing within thirty (30) days of filing a petition for bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

A. Place of Payment and Filing. Payments and statements required by Sections 4.01 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the CARRIER. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The CARRIER assumes all risk of loss if payments are made by mail.

B. Form of Payment. All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the CARRIER or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LEASE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport's designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to the CARRIER plus a twenty-five dollar $25 processing fee.

C. Penalty for NSF Check In the event a check submitted by the CARRIER is returned for non-sufficient funds (“NSF”), the CARRIER agrees to pay the COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. The CARRIER may also be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.03 CHARGE FOR LATE PAYMENT

The CARRIER hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.
Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The CARRIER and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the CARRIER's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the CARRIER's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.04   PROVISION AGAINST SET-OFFS

It is the obligation of the CARRIER to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the CARRIER desires to contest the validity or amount of any such fees and charges, the CARRIER shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.05   SECURITY DEPOSIT

The CARRIER, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the CARRIER shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the CARRIER of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder.

The security deposit shall take one of the forms set out below and shall guarantee the CARRIER's full and faithful performance of all the terms, covenants, and conditions of this LEASE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LEASE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the CARRIER's performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.
B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the CARRIER, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the CARRIER throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the CARRIER elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the CARRIER, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the CARRIER, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the CARRIER elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the CARRIER shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LEASE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE as per Article X of this LEASE.

The CARRIER shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the CARRIER or order, as applicable, after one hundred twenty (120) days have elapsed, or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LEASE, provided the CARRIER has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

**ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES**

**SECTION 5.01 USE**

The CARRIER's use of the Leased Premises and its operations shall be limited to conducting a cargo air service operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 8.01 in this LEASE, this operation is subject to the following authorized uses:
A. Loading and unloading of property, freight, cargo and mail.

B. The CARRIER shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the CARRIER in the conduct of its air transportation service.

C. Employee training incidental to the other uses permitted under this Section.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the CARRIER a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the CARRIER’s aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 5.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the CARRIER agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and the CARRIER’s rights under this LEASE. Except in the case of emergency, the COUNTY shall give the CARRIER written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the CARRIER’s operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the CARRIER.

The CARRIER’s operations under this LEASE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.
To the fullest extent authorized by law, the CARRIER shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the CARRIER's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to the CARRIER’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the CARRIER, its employees, subtenants, agents or suppliers related to the CARRIER's operation under this LEASE.

The COUNTY shall not be liable to the CARRIER for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the CARRIER be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the CARRIER's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

SECTION 5.04 ACCESS PLAN LIMITATIONS ON USE

The CARRIER agrees that:

A. Notwithstanding any provision in this LEASE to the contrary, the CARRIER shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the CARRIER's activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the CARRIER under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the terms of this LEASE, and that such privileges do not constitute property rights of the CARRIER.

C. The ADD allocations and other operating privileges made to the CARRIER under the Access Plan are not transferable, assignable or delegable by the CARRIER to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the CARRIER at any time for any purpose.

D. The remedies specified in the Access Plan for any Access Plan violation by the CARRIER are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.

E. The CARRIER shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect
inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the CARRIER from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 5.01 and Article X in this LEASE are subject to the terms, provisions and limitations of this Section.

SECTION 5.05 OPERATIONAL REQUIREMENTS

The CARRIER agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the CARRIER under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the CARRIER under the provisions of the Access Plan. The CARRIER shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the CARRIER by action of the Board of Supervisors; the CARRIER conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and, the CARRIER has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the CARRIER's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays), as measured at any JWA noise monitoring station. All times shown are Pacific Time.

The CARRIER acknowledges that the COUNTY may by regulation permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The CARRIER does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the CARRIER agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The CARRIER further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or
other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The CARRIER agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The CARRIER further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Noninterference.** The CARRIER shall cooperate with and not interfere with the COUNTY’s and other CARRIERs’ use of and operations at the Airport. The CARRIER shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

SECTION 5.06 RECORDS AND ACCOUNTS

A. **Records.** The CARRIER shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The CARRIER shall maintain such records for a period of five (5) years beyond the expiration or earlier termination of this LEASE.

B. **Reports.** The CARRIER shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the CARRIER’s operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the CARRIER; the total combined certificated gross landing weight of all such aircraft operations; the weight and balance manifest from each flight; the total number of pounds of property, freight, cargo and mail enplaned and deplaned. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The CARRIER must attest that the list is an accurate representation of the CARRIER’s activity for the month.

The CARRIER shall also provide to the Airport Director, for each day, a copy of the CARRIER’s flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day’s activities by noon (12:00 p.m., local time) of the following day.

C. **Audits.** All the CARRIER’s records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical
limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the CARRIER, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the CARRIER shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the CARRIER if either or both of the following conditions exist:

(1) The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the CARRIER in accordance with this LEASE and the rent due as determined by said audit; and/or

(2) The CARRIER has failed to maintain true and complete records and supporting source documents in accordance with paragraph A. above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the CARRIER, shall be included as rent for the first month following invoice to the CARRIER.

Upon the request of the Auditor-Controller, the CARRIER shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the CARRIER’s use of the Leased Premises.

D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the CARRIER fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY’s option, may:

(1) Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm
the amount of rents, fees and charges payable by the CARRIER under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the CARRIER upon demand.

(2) Require that the CARRIER pay rents and fees based on the COUNTY’s best good faith estimate of the CARRIER’s activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the CARRIER.

Costs payable by the CARRIER pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees’ salaries, including employee taxes and benefits and the COUNTY’s overhead or, at the Auditor-Controller’s option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the CARRIER shall be included as rent for the first month following invoice to the CARRIER.

SECTION 5.07 MAINTENANCE AND OPERATION OF LEASED PREMISES

The CARRIER agrees to maintain the Leased Premises in a safe, clean, sanitary condition and in compliance with all applicable laws. The CARRIER shall be responsible to make all necessary repairs required to maintain the Leased Premises and improvements in good condition. All repairs and improvements made by the CARRIER to the Leased Premises shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.03. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Leased Premises. Any additions, alterations, repairs and changes of use or occupancy in the Leased Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

The CARRIER shall immediately notify the Airport Director and the Airport Operations Center (“AOC”) of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or other any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The CARRIER further agrees to provide approved containers for trash and recycling and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the CARRIER’s Leased Premises and other Airport facilities at any time.
for cleanliness, safety and maintenance inspections as set out herein. The Airport Director shall attempt to provide reasonable notice prior to entering the CARRIER’S leased premises.

The CARRIER shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the CARRIER fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the CARRIER in writing of said failure. Should the CARRIER fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the CARRIER. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the CARRIER within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

If the CARRIER fails to maintain or make repairs or replacements, including removal of all its GSE and/or any CARRIER materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director 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 and equipment shall be charged to the CARRIER. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the CARRIER within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The CARRIER expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the CARRIER's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.

SECTION 5.08 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 5.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.
SECTION 5.09 AIRCRAFT PARKING

The CARRIER shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the CARRIER subject to Section 4.01 in this LEASE.

If, in the judgment of the Airport Director, it becomes necessary to move the CARRIER's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the CARRIER shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the CARRIER, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the CARRIER shall:

   A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

   B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the CARRIER fail to remove said aircraft, or should aircraft owned or operated by the CARRIER be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the CARRIER shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The CARRIER agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the CARRIER's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the CARRIER's use. The CARRIER agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.

SECTION 5.10 FUELING REQUIREMENTS

The CARRIER shall make separate arrangements with an approved on-Airport fuel provider for into-plane fueling on the License Area. A copy of the agreement entered into by the CARRIER shall be delivered to the Airport Director within ten (10) days of execution. No fueling at any other location on the Airport shall be permitted.
ARTICLE VI - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 6.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The CARRIER agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The CARRIER shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the CARRIER’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The CARRIER shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the CARRIER shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The CARRIER shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the CARRIER. In conducting a clean-up of a Hazardous Substance release under this LEASE, the CARRIER shall comply with applicable Environmental Laws. Hazardous waste generated by the CARRIER or its contractors shall be disposed properly and under the CARRIER’s EPA ID number.

The CARRIER shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The CARRIER shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the CARRIER complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The CARRIER shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The CARRIER shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The CARRIER
shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the CARRIER.

SECTION 6.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The CARRIER shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The CARRIER is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the CARRIER for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the CARRIER shall pay to County administrative costs in the amount of one thousand dollars ($1,000) per incident. Said costs shall be paid by the CARRIER within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the CARRIER shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the CARRIER's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to CARRIER’s operation under this LEASE, including, but not limited to, the payment of any fines or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the CARRIER, its employees, subtenants, agents or suppliers related to CARRIER’s operation under this LEASE.

SECTION 6.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the CARRIER shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless from and against any and all applicable
Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the CARRIER, the CARRIER's operations at the Airport or any action arising from and which involve the CARRIER’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

(1) The CARRIER's placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the CARRIER's release of Hazardous Substances on the Airport since the time the CARRIER first occupied the Airport.

(2) The CARRIER's release of Hazardous Substances upon or within the Airport.

(3) The CARRIER's violation of any applicable Environmental Law, except that the CARRIER's obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the CARRIER that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the CARRIER if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the CARRIER or if it is controlled by or under common control with the CARRIER.

(4) The CARRIER's causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 6.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the CARRIER's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.

In the event the indemnitees described hereinafore are named as defendants or respondents in any lawsuit or administrative proceeding, the CARRIER shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the CARRIER because of the concurrent negligence of the COUNTY and the CARRIER or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the CARRIER agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity

obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

SECTION 6.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in this Article shall apply.

SECTION 6.05 ENVIRONMENTAL STEWARDSHIP

A. All CARRIER facilities and improvements shall meet the Airport's Tenant Design and Construction Guidelines as well as Architectural Guidelines, as may be amended from time to time. All structures shall meet the County’s Green Building Ordinance and CALGreen Tier 1. If the CARRIER installs any new infrastructure, the CARRIER is required to use Envision pre-assessment checklist to guide the sustainability efforts early in the project planning and strive to achieve a level of Gold; these projects are not required to obtain Envision certification.

B. The CARRIER shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans as applicable. COUNTY shall provide AIRLINE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

(1) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

(2) Climate Action Plan.

(3) Waste Management Plan.

(4) Storm Water Pollution Prevention Plan.

C. The CARRIER shall implement the following conservation measures and policies:

(1) Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.

(2) Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.
(3) Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.

(4) Install energy-efficient heating and cooling equipment when replacing or upgrading.

(5) Use energy-efficient computers and servers when replacing this equipment.

(6) Select equipment with variable speed motors and fan drives, when possible.

(7) Utilize paperless ticket technology, when possible.

D. The CARRIER shall implement and support the following environmental policies:

(1) Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The CARRIER shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LEASE execution.

(2) The CARRIER shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

(3) The CARRIER has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the CARRIER’s procurement of goods and services as applicable.

(4) The CARRIER shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LEASE execution.

(5) Upon request, the CARRIER shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 6.06 ANTI-IDLING POLICY

Within six months of LEASE execution, CARRIER must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling
ARTICLE VII - CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the CARRIER's Exclusive Use Area. The COUNTY shall provide the CARRIER advance notice of such action and shall make every reasonable effort to provide the CARRIER alternative space that is reasonably comparable for the CARRIER's operations at the same rates and charges that the CARRIER would have paid for the space being surrendered. In the event no alternative space is available, the CARRIER shall surrender its space promptly to the COUNTY, provided that the CARRIER shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the CARRIER's unamortized investment, if any, as documented by the CARRIER to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and the CARRIER. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 7.02 IMPROVEMENTS BY THE CARRIER

The CARRIER shall not perform any construction upon the Leased Premises nor shall the CARRIER modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the CARRIER shall be at the CARRIER's expense.

A. Consent Required From the COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY's discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred twenty five thousand dollars ($125,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

B. Compliance with Plans and Construction Standards. All improvements constructed by the CARRIER within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved
plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The CARRIER shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the CARRIER, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the CARRIER's responsibility. The CARRIER, at its own cost and expense, shall procure all permits necessary for such construction.

C. **Insurance Requirements.** The CARRIER shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the CARRIER and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.

D. **Noninterference.** The CARRIER warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport, except with the prior written approval of the Airport director, as set out herein. The CARRIER agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the CARRIER or its contractor.

E. **Trailers and Modular Structures.** All improvements constructed by the CARRIER shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

F. **The CARRIER's Cost and Expense.** All renovation or construction by the CARRIER pursuant to this Section shall be at the CARRIER's sole cost and expense. The CARRIER shall keep the Leased Premises and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The CARRIER shall have the right to contest any and all liens filed against its existing or future Leased Premises. The CARRIER further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the California Civil Code.

G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the CARRIER must, upon completion, be free and clear of all liens, claims, or liability for labor or material and
at the COUNTY’s option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the CARRIER, at the CARRIER’s cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 7.03   CARRIER’S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities the CARRIER shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the CARRIER and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Completion Bond issued to the COUNTY as obligee.

B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.

C. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to conduct business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the CARRIER of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 7.04   MECHANICS LIENS OR STOP-NOTICES

The CARRIER shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the CARRIER, and from the cost of defending against such claims, including attorneys’ fees and costs.

In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the CARRIER shall either:

A. Record a valid Release of Lien; or

B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.
Should the CARRIER fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

SECTION 7.05 RECORD DOCUMENTS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete package of “As-Built Documents” and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the “As-Built Documents” and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY’s satisfaction, as described below, unless otherwise allowed by the Airport Director.

A. **Drawings and Models:**
   1. All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
   2. All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
   3. All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
   4. In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

B. **Documents and Reports:**
   1. All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance (O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

   *Note:* “Record Documents”, e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the “John Wayne Airport Construction Standards” for additional information.
In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the AIRLINE with the thumb drives containing the “As-Built Documents” and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the AIRLINE shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of acceptance of the “As-Built Documents” and "Record Documents" and the form and content of the itemized statement.

SECTION 7.06 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The CARRIER shall be responsible for any damage caused by the CARRIER, or the CARRIER's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the CARRIER is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the CARRIER. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the CARRIER within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the CARRIER-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the CARRIER-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the CARRIER shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE. Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the CARRIER’s obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the CARRIER waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).
SECTION 7.07    HEALTH AND SAFETY

The CARRIER shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The CARRIER shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The CARRIER shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The CARRIER shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The CARRIER and/or the CARRIER's contractor shall submit, prior to the start of any tenant improvements, the CARRIER or CARRIER's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The CARRIER shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the CARRIER by Cal/OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE VIII - ACCOMMODATION

SECTION 8.01    JOINT USE REQUIREMENT

The CARRIER and/or other CARRIERs may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The CARRIER agrees to make every reasonable effort to offer to any CARRIER initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming CARRIER initiating service at the Airport is reasonable and possible, the CARRIER will have the right to consider the compatibility of the proposed operations of those with whom the CARRIER has subleases or handling arrangements, the CARRIER's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the CARRIER's Leases Premises and the availability of other such space at the Airport. Should the CARRIER deny another CARRIER initiating service at the Airport the opportunity to use the CARRIER's Leased Premises, the COUNTY may review the CARRIER's space usage, and should it reasonably determine, considering all the factors noted herein (including the CARRIER's reasons for such refusal), that the CARRIER unreasonably refused usage by such other CARRIER, it may require the CARRIER to permit the other CARRIER to use the CARRIER's Leased Premises, subject to the initiating CARRIER executing an agreement with the CARRIER acceptable to the COUNTY that complies with the material terms and conditions of this LEASE, including the indemnification and insurance provisions.
The CARRIER shall, by separate agreement with such all-cargo air service airlines as the COUNTY may designate, or by other arrangement as provided by Airport Director, provide space and/or services within Leased Premises to accommodate said airlines’ operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE. The CARRIER agrees that, in the event it subleases its Leased Premises to another the CARRIER, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the CARRIER's actual and direct costs related to said space and shall be based upon the following factors:

A. The square foot per annum rental rate currently paid by the CARRIER to the COUNTY for space to be sublet; and

B. A reasonable square foot charge to compensate the CARRIER for the pro-rata costs per square foot applicable to the CARRIER improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two times the square foot per annum rental rate currently paid by the CARRIER to the COUNTY unless the CARRIER can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

ARTICLE IX - ASSIGNMENT AND SUBLEASE

SECTION 9.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE.

A. Transfers. The CARRIER shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the CARRIER in the Leased Premises without the prior written approval of the COUNTY. The CARRIER shall give the COUNTY thirty (30) days prior written notice of all proposed Transfers. The CARRIER shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the CARRIER is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the CARRIER of any stock or interest in
said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the CARRIER to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default pursuant to Section 10.02.

B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The CARRIER, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.

4. Subtenant’s use is in conflict with the terms of this LEASE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of the CARRIER as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.

7. The CARRIER has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, *etc.*

8. The CARRIER attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain Loan Proceeds necessary to construct new improvements on the Leased Premises.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving
affiliations of commercial CARRIERs operating, or desiring to operate, at the Airport ("the affiliate policy"). The CARRIER acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The CARRIER acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The CARRIER agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the CARRIER and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the CARRIER is initiated, then not later than the time when the affiliate transaction is publicly announced:

1. The CARRIER shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

2. If the affiliate transaction is initiated by the CARRIER, the CARRIER shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the CARRIER, the CARRIER shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the CARRIER.

3. In addition to all other obligations of the CARRIER, if the affiliate transaction involves the CARRIER and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the CARRIER shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the CARRIER without further obligation of the COUNTY, and without any liability of the COUNTY to the CARRIER whatsoever, if:
(1) The CARRIER fails to comply with Paragraph C, of this Section; or if

(2) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the CARRIER and its affiliate(s); or if

(3) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the CARRIER within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the CARRIER assumes this LEASE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the CARRIER and are non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the CARRIER under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

**SECTION 9.02 SUCCESSORS IN INTEREST**

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 parties hereto, all of whom shall be jointly and severally liable hereunder.
ARTICLE X - TERMINATION AND DEFAULT

SECTION 10.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the CARRIER at the Airport.

SECTION 10.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LEASE and all of its obligations hereunder prior written notice to the CARRIER and may exercise all rights of entry for default and breach if the CARRIER fails to perform any of its obligations under this LEASE, including, but not limited to:

A. Payment of rents, fees, and charges;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the CARRIER at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the CARRIER;

D. The voluntary vacation or abandonment by the CARRIER of the conduct of air transportation business at the Airport;

E. The violation by the CARRIER of any of the terms of any insurance policy referred to in the LEASE;

F. If the CARRIER is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the CARRIER’s business;

G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the CARRIER located at the Leased Premises or of the CARRIER’s leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the CARRIER shall have fifteen (15) calendar days to cure any default prior to termination of this LEASE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.
SECTION 10.03  CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise agreed to herein, upon termination of this LEASE, the CARRIER shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the CARRIER'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 expiration.

SECTION 10.04  DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the CARRIER abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the CARRIER and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the CARRIER or to any person claiming under the CARRIER, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the CARRIER possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

SECTION 10.05  THE COUNTY'S RIGHT TO RE-ENTER

The CARRIER agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

Upon giving written notice of termination to the CARRIER, the COUNTY shall have the right to re-enter and take possession of the Leased 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 Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the CARRIER under the LEASE terms and shall not constitute an acceptance or surrender.

The CARRIER 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 Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE XI - SECURITY

SECTION 11.01  AIRPORT SECURITY

The CARRIER shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The CARRIER is responsible for fines imposed by any regulatory agency as a result of the CARRIER’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.
The CARRIER employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work at the Airport under this LEASE. The CARRIER must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential ("Airport ID/Security Credential") process, a list of current Airport ID/Security Credentialized CARRIER employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The CARRIER employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. The CARRIER employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. The CARRIER must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. **Local Security.** The CARRIER shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the CARRIER's constant surveillance. The CARRIER shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The CARRIER shall exercise control over any person or vehicle escorted by the CARRIER onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the CARRIER, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. **Federal Security.** As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The CARRIER may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.

C. **Penalties and Fines.** The CARRIER shall promptly pay any penalties for which the CARRIER is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the CARRIER, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated CARRIER personnel who will be working onsite, and engaged in the performance of work under this Lease, must pass Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and shall pay applicable fees. Upon successful completion of the background checks, CARRIER designated personnel...
will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated CARRIER personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security credential fee for each applicant. The CARRIER should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a USCBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. The CARRIER’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. The CARRIER shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

The CARRIER and all CARRIER personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. CARRIER personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of the CARRIER personnel employment and/or termination of the Lease. The loss of an Airport ID/Security Credential shall be reported within 24 hours to the Sheriff’s Department–Airport Police Services by calling (949) 252-5000. The CARRIER or CARRIER personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.
The Airport ID/Security Credential is nontransferable.

In the event that the CARRIER’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of the CARRIER personnel or contracted personnel, 2) Airport ID badge expiration, or 3) upon termination of the LEASE, the CARRIER shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. The CARRIER’s security deposit may be applied to cover the cost of the fine.

ARTICLE XII - INSURANCE AND INDEMNITY

SECTION 12.01 INSURANCE

The CARRIER agrees to purchase all required insurance at the CARRIER’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.

The CARRIER agrees that the CARRIER shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the CARRIER, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The CARRIER also agrees that upon cancellation, termination, or expiration of the CARRIER’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.

If the CARRIER fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the CARRIER 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 the CARRIER, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the CARRIER’s employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The CARRIER further agrees to hold the 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.
The CARRIER may occupy the Airport Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this LEASE. COUNTY reserves the right to terminate this LEASE at any time the CARRIER’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. CARRIER shall pay COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. CARRIER shall provide to COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the CARRIER pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the CARRIER; excluding General Aviation Liability. All contractors performing work on behalf of the CARRIER pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The CARRIER shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the CARRIER under this LEASE. It is the obligation of the CARRIER 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 Airport Premises. Such proof of insurance must be maintained by the CARRIER 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of CARRIER’s current audited financial report. If CARRIER’s SIR is approved, LESSEE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from CARRIER’s, its agents, employee’s or subcontractor’s performance of this Agreement, CARRIER shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) CARRIER’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 the CARRIER’s SIR provision shall be interpreted as though the CARRIER was an insurer and the COUNTY was the insured.

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

Aviation General Liability $250,000,000 per occurrence
(Including but not limited to General
Liability, Passenger Legal Liability,
Personal Injury, Contractual Liability,
Premises, Products and Completed
Operations, Ground Hangarkeepers and
liability for vehicles and mobile
equipment operated on restricted airport
premises.)

$250,000,000 aggregate

Workers' Compensation Statutory

Employers' Liability Insurance $1,000,000 per occurrence

Pollution Liability Insurance or
Self-Insurance $1,000,000 per claims-made or per
occurrence

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

100% of the Replacement Cost
Value and no coinsurance provision

Required Endorsements

The Aviation General 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 and non-contributing endorsement evidencing that the CARRIER’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.

2. A primary and non-contributing endorsement evidencing that the CARRIER’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 policy 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 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 as respects the COUNTY’S financial interest when applicable.

If the CARRIER’s Pollution Liability policy is a claims-made policy, the CARRIER 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 (NOTICES) below or to an address provided by Airport Director. The CARRIER has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require the CARRIER 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 the COUNTY Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify the CARRIER in writing of changes in the insurance requirements. If the CARRIER does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the CARRIER, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the CARRIER'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.

**SECTION 12.02 INDEMNITY**

The CARRIER agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the CARRIER pursuant to this LEASE. If judgment is entered against the CARRIER and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY.
INDEMNITEES, the CARRIER and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XIII - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 13.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. The CARRIER agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the CARRIER transfers its obligation to another, the transferee is obligated in the same manner as the CARRIER.

B. The CARRIER, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) The CARRIER will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) The CARRIER, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by the CARRIER for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the CARRIER of the CARRIER’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4) The CARRIER will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the CARRIER will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the CARRIER’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding
payments under the contract until the CARRIER complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The CARRIER will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The CARRIER will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if CARRIER becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the CARRIER may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the CARRIER may request the United States to enter into the litigation to protect the interests of the United States.

C. The CARRIER, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the CARRIER will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) The CARRIER will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. The CARRIER shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
E. The CARRIER, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin); 

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964; 

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects); 

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27; 

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age); 

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex); 

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not; 

8) Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12189, as implemented by 28 CFR parts 35 and 36, and 49 CFR parts 37 and 38 (prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities); 

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex); 

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 13.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the CARRIER, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the CARRIER, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the CARRIER in this regard.

SECTION 13.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 13.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The CARRIER agrees that the CARRIER’s use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.

The CARRIER agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 13.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the CARRIER in this LEASE, or any local authorities shall not apply to the CARRIER to the
extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the CARRIER Deregulation Act (49 U.S.C. § 41713).

SECTION 13.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 13.07 RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 13.08 HEIGHT LIMITATION OF STRUCTURES

The CARRIER by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the CARRIER. The CARRIER shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 13.09 NONINTERFERENCE WITH AIRCRAFT

The CARRIER by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the CARRIER.

SECTION 13.10 WAR OR NATIONAL EMERGENCY

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation,
regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 13.11 AFFIRMATIVE ACTION REQUIREMENTS

The CARRIER assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The CARRIER assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The CARRIER assures that it will require that its covered suborganizations provide assurances to the CARRIER that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 13.12 AMERICANS WITH DISABILITIES ACT

The CARRIER shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the CARRIER’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the CARRIER’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The CARRIER shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The CARRIER shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the CARRIER’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The CARRIER agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the CARRIER’s failure to comply with the ADA.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

SECTION 14.01 TIME

Time is of the essence in this LEASE.

SECTION 14.02 LEASE ORGANIZATION

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.
SECTION 14.03  AMENDMENTS

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 14.04  SIGNS

The CARRIER agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by the COUNTY. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the CARRIER. All requests for the approval of signs for the CARRIER shall be accompanied by illustrative drawings and design dimensions along with information about the type of signs proposed, and proposed locations. All promotional signs shall be allowed to remain for ninety (90) days after approval. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the CARRIER’s expense; the COUNTY may dispose of items if they are not promptly claimed by the CARRIER after notice from the COUNTY.

SECTION 14.05  PERMITS AND LICENSES

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

SECTION 14.06  RESERVED

SECTION 14.07  TAXES AND ASSESSMENTS

This LEASE may create a possessory interest that 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) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the CARRIER, and the CARRIER shall cause said taxes and assessments to be paid promptly.

SECTION 14.08  CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the CARRIER from the prompt payment of any
rental or other charge required of the CARRIER except as may be expressly provided elsewhere in this LEASE.

SECTION 14.09 PARTIAL INVALIDITY

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.

SECTION 14.10 WAIVER OF RIGHTS

The failure of the COUNTY or the CARRIER 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 the COUNTY or the CARRIER 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 this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 14.11 RESERVATIONS TO THE COUNTY

The Leased Premises are accepted "AS IS" and the CARRIER is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the CARRIER's operations hereunder or to impair the security of any secured creditor of the CARRIER.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the CARRIER, the CARRIER shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the CARRIER's use of the Leased Premises. The CARRIER shall not be entitled to any other form of compensation.

SECTION 14.12 AUTHORITY OF THE CARRIER

If the CARRIER is a corporation, each individual executing this LEASE on behalf of said
corporation represents and warrants that he or she 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.

SECTION 14.13 PUBLIC RECORDS

The CARRIER understands that written information submitted to and/or obtained by the COUNTY from the CARRIER related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (CAL. GOV. CODE §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 14.14 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the CARRIER in the conduct of the CARRIER's business or otherwise, or a joint venturer with the CARRIER; 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. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 14.15 GOVERNING LAW AND VENUE

This LEASE 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 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 Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 14.16 ATTORNEYS' FEES

In any action or proceeding 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’s fees, costs and expenses.

SECTION 14.17 EMERGENCY SERVICES

Airport Director has the right to request that the CARRIER’S employees aid in and use CARRIER’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The CARRIER shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.
SECTION 14.18   NOTICES

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the CARRIER by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:      COUNTY
  
  John Wayne Airport
  3160 Airway Avenue
  Costa Mesa, CA 92626

TO:      CARRIER

  United Parcel Service Co.
  1400 N. Hurstbourne Parkway
  Louisville, KY 40223

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

UNITED PARCEL SERVICE CO.
By: [Signature]

[Signature]

APPROVED AS TO FORM:
County Counsel
By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:
Auditor-Controller
By: [Signature] 10/22/00

RECOMMENDED FOR APPROVAL:
John Wayne Airport
By: Barry Rondinella
   Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY
COUNTY OF ORANGE

By: Chairwoman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors
of Orange County, California
LEASE DESCRIPTION

Parcel Numbers: PM 1121-330-0030

Project Name: John Wayne Airport


The Leased Premises referred to in this Lease shall mean all the premises shown on a map marked “Exhibit B”, attached hereto and made a part hereof, being those certain Exclusive Use Areas designated as follows:

Parcel 330-0030: Office and parking area containing 9,084 square feet located on Airport Way.

Parcel 330-0030.1 Cargo Operations License Area containing 4,032 square feet located on the southern most portion of south "remain over night” (RON) ramp.

Said Exclusive Use are situated at the Thomas F. Riley Terminal Building, John Wayne Airport, 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lot 135 of Block 7, of the Irvine Subdivision, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.
SURVEYOR’S NOTES:

AREA CALCULATIONS ARE BASED ON AS-BUILT SURVEYS PERFORMED IN JANUARY 2010 AND ARE CONSISTENT WITH CALCULATIONS PROVIDED BY P. BONELLO DATED 1-06-2009, WITH THE EXCEPTION OF THE AREAS THAT INCLUDE THE FedEx & UPS TRAILERS, WHICH HAVE BEEN MODIFIED IN CONFIGURATION.
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE

Dated ______________

Between

County of Orange

and

SkyWest Airlines, Inc.
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THIS CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE is made and entered into this ___ day of ____________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“the COUNTY”), and SKYWEST AIRLINES, INC. (“the LICENSEE”).

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the LICENSEE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the LICENSEE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport’s approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from in the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, “grandfathered” under the AIRPORT NOISE AND CAPACITY ACT OF 1990 (“ANCA”), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the LICENSEE mutually desire to enter into a LICENSE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the LICENSEE for the operation of the LICENSEE’s air transportation services; and
WHEREAS, the LICENSEE acknowledges that this LICENSE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5, et seq., and in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LICENSE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the John Wayne Airport – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving John Wayne Airport.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving John Wayne Airport.

SECTION 1.03 ACCESS PLAN

“Access Plan” shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LICENSE.

SECTION 1.04 ADD

“ADD” shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

“Airline Rates and Charges” shall mean all rates, fees and charges payable to the COUNTY by the LICENSEE as specified herein.

SECTION 1.06 AIRPORT

“Airport” shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

“Airport Director” shall mean the Director of JWA, or his or her duly authorized designee.

SECTION 1.08 APRON AREA

“Apron Area” shall mean the land identified as Apron Area in Exhibit A attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

“Auditor-Controller” shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

“Board of Supervisors” shall mean the COUNTY’S governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

“Certificated Maximum Landing Weight” shall mean the current maximum allowable gross landing weight of aircraft operated by the LICENSEE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

“Common Use Area” shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit B.

SECTION 1.14 COUNTY

“COUNTY” shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

“CUPPS” shall mean the Airport's Common Use Passenger Processing System

SECTION 1.16 CUSS

“CUSS” shall mean Common Use Self Service.
SECTION 1.17  EMV

“EMV” shall mean Europay, Mastercard, or Visa.

SECTION 1.18  DOT

“DOT” shall mean the U.S. Department of Transportation.

SECTION 1.19  ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20  FAA

“FAA” shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may have similar jurisdiction over LICENSEE or its business, and the Airport.

SECTION 1.21  GSE

“GSE” shall mean any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier in support of its operations at JWA.

SECTION 1.22  HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.23  IAF

“IAF” shall mean the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.24  NON STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.25  OPERATING AREA

“Operating Area” shall mean the areas of the Airport available to LICENSEE for the operation of its scheduled airline service.
SECTION 1.26  PFC

“PFC” shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. § 40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LICENSE.

SECTION 1.27  POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28  RON

“RON” shall mean the remain overnight positions where the LICENSEE's aircraft are required to park when they “remain overnight” at JWA.

SECTION 1.29  STORM WATER

“Storm Water” shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.
SECTION 1.30 TERMINAL

“Terminal” shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LICENSE.

SECTION 1.31 TSA

“TSA” shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LICENSE

SECTION 2.01 TERM OF LICENSE

The term of this LICENSE shall commence on January 1, 2021, and shall continue on a month-to-month basis until terminated by either party.

SECTION 2.02 TERMINATION FOR CONVENIENCE

This LICENSE may be terminated for convenience by either party for any reason, and without cause, upon thirty (30) days written notice.

ARTICLE III – FEES AND CHARGES

SECTION 3.01 FEES AND CHARGES

The fees and charges contained in this LICENSE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture, Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the fees and charges to the AAAC prior to implementation.

A. The LICENSEE shall make payment of the following fees and charges which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the LICENSEE agrees that the COUNTY will not invoice for such fees and charges:

   (1) Common Use Areas

      (a) Arrival Level. The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport’s total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial
airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline’s percentage of total deplaned passengers at the Airport including their commuter affiliates.

(b) **Departure Level.** The COUNTY shall establish fees for shared use of departure level common areas including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline’s percentage of total enplaned passengers at the Airport including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline’s percentage of total aircraft departures.

COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the LICENSEE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the LICENSEE or invoice the LICENSEE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LICENSE becomes effective will be payable on such effective date.

(c) **IAF.** Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carrier operating international flights according to the carrier’s ratio of international deplaned passengers and the schedule established by the COUNTY.

(d) **CBP.** Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) **CUPPS.** Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic
upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airlines percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

1) The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

2) In the event LICENSEE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by LICENSEE customers and LICENSEE shall indemnify the COUNTY pursuant to Section 10.02 of this LICENSE for such transactions.

2) Additional Fees

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating Airport’s total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the cost to be shared based on each commercial airlines percentage of total enplaned passengers at Airport including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline’s percentage of total aircraft departures.
B. The LICENSEE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The LICENSEE agrees that the COUNTY will not invoice for the following fees and charges, and may require LICENSEE to submit future monthly report electronically via JWA’s portal and prescribed format. COUNTY will make reasonable efforts to develop and electronic format that allows LICENSEE to efficiently report information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

C. Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the fees and charges described in Paragraphs A and B of section 3.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications or such other changes as needed to respond to the LICENSEE's use of Airport, the need for the COUNTY to receive fair and equitable fees and charges for all uses of Airport and to insure Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable fees and charges, the LICENSEE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the LICENSEE or invoice the LICENSEE for any underpayments for the previous period.

Notwithstanding anything in this LICENSE to the contrary, all amounts payable by the LICENSEE to or on behalf of the COUNTY under this LICENSE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The LICENSEE shall notify Airport in writing within thirty (30) days of filing a petition for Bankruptcy.

SECTION 3.02 PAYMENT PROCEDURE

A. Place of Payment and Filing. Payments and statements required by Sections 3.01 and 4.06 in this LICENSE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the LICENSEE. Payments
may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The LICENSEE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LICENSE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the LICENSEE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LICENSE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to LICENSEE plus a twenty-five dollar ($25) processing fee.

C. **Penalty for NSF Check** In the event a check submitted by LICENSEE is returned for non-sufficient funds (“NSF”), LICENSEE agrees to pay COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. LICENSEE may also be liable for treble damages pursuant to California Civil Code Section 1719.

**SECTION 3.03 CHARGE FOR LATE PAYMENT**

The LICENSEE hereby acknowledges that the late payment of fees and charges or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LICENSE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.

Accordingly, if any payment of fees and charges as specified in Section 3.01 in this LICENSE entitled “FEES AND CHARGES” or of any other sum due to the COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The LICENSEE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the LICENSEE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of LICENSEE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.
SECTION 3.04 PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on LICENSEE's passengers for the use of the Airport in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the “PFC Regulations”).

The LICENSEE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY. For the purposes of this Section 3.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY, reduced by any amount that the LICENSEE is permitted to retain pursuant to 49 U.S.C. § 40117 and the PFC Regulations. Monthly PFCs collected by the LICENSEE shall be remitted to the COUNTY no later than the last day of the following calendar month or if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the LICENSEE shall be remitted to the COUNTY at the address specified in Section 3.02, Part A, “Place of Payment and Filing” or at such other place as designated by the COUNTY.

Should the LICENSEE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the LICENSEE shall be deemed to be in default pursuant to Article VIII hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 3.03 of this LICENSE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFC’s. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.

SECTION 3.05 PROVISION AGAINST SET-OFFS

It is the obligation of the LICENSEE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LICENSE. In the event that the LICENSEE desires to contest the validity or amount of any such fees and charges, the LICENSEE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 3.06 SECURITY DEPOSIT

The LICENSEE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the fees and charges pursuant to the Section 3.01 in this LICENSE, the security deposit to be provided by the LICENSEE shall be adjusted to approximately three (3) times the estimated monthly fees and charges as determined by the
Airport Director to guarantee the faithful performance by the LICENSEE of its obligations under this LICENSE and the payment of all fees and charges due hereunder. PFCs shall be excluded from the fees and charges used to determine the LICENSEE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the LICENSEE’s full and faithful performance of all the terms, covenants, and conditions of this LICENSE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LICENSE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the LICENSEE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the LICENSEE, including the payment of use fees, charges, as well as any and all other payments. Said bond shall be maintained at the cost of the LICENSEE throughout the existence of this LICENSE. Said Surety shall give Airport Director a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's prior written consent shall constitute a default under this LICENSE.

Regardless of the form in which the LICENSEE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LICENSE by the LICENSEE, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the LICENSEE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LICENSE.

Should the LICENSEE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LICENSE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by Airport Director.

In the event Airport Director withdraws all or any portion of the security deposit as provided herein, the LICENSEE shall, within ten (10) days of any withdrawal by Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LICENSE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LICENSE, as per article VIII of this LICENSE.
The LICENSEE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LICENSE.

The security deposit, after deduction of all amounts due to the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the LICENSEE or order, as applicable, after one hundred twenty (120) days have elapsed or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LICENSE, provided the LICENSEE has fully and faithfully performed each and every term, covenant, and condition of this LICENSE.

SECTION 3.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of Five Hundred Thousand Dollars ($500,000.00) shall be provided by a new entrant LICENSEE prior to the commencement of operations.

This deposit shall be returned to the new entrant LICENSEE after six (6) months of continuous operation.

ARTICLE IV - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 4.01 USE

The COUNTY hereby grants to the LICENSEE the authorization to conduct a scheduled commercial airline operation at the Airport and for no other purpose whatsoever. Said operation shall be conducted in accordance with an agreement between the LICENSEE and another commercial airline(s) and subject to the terms and conditions of the Certificated Passenger Airline Lease between the COUNTY and such other commercial airline(s). The terms and conditions of this LICENSE shall prevail in the event of any conflict with said agreement between the LICENSEE and another commercial airline(s) and subject to the limitations set forth in the Sections 4.03 and 4.05 in this LICENSE, this operation may include any or all of the following uses and no other uses whatsoever:

AUTHORIZED USES:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The LICENSEE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all
other materials and supplies and services required by the LICENSEE in the conduct of its air transportation service.

F. Mail, freight and cargo operations but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The LICENSEE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the LICENSEE’s employees at the Airport and in-flight catering services in support of the LICENSEE’s air operations at the Airport. This does not permit the LICENSEE to conduct commissary or in-flight services for any other LICENSEE or other person at Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.

I. Employee training incidental to the other uses permitted under this Section.

J. Other uses as authorized by the Airport Director.

SECTION 4.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the LICENSEE a LICENSE for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the LICENSEE’s aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of Airport Director.

This LICENSE for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 4.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the LICENSEE agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall...
not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and LICENSEE’s rights under this LICENSE. Except in the case of emergency, the COUNTY shall give the LICENSEE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the LICENSEE’s operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the LICENSEE.

The LICENSEE’s operation under the LICENSE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to LICENSEE’s operation under this LICENSE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers related to LICENSEE’s operation under this LICENSE.

The COUNTY shall not be liable to the LICENSEE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LICENSE, nor shall the LICENSEE be entitled to terminate the whole or any portion of the operating area herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the LICENSEE’s use and occupancy of the Operating Area so as to constitute a termination in whole or in part of this LICENSE by operation of law in accordance with the laws of the State of California.

SECTION 4.04 ACCESS PLAN LIMITATIONS ON USE

The LICENSEE agrees that:

A. Notwithstanding any provision in this LICENSE to the contrary, the LICENSEE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the LICENSEE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time
during the terms of this LICENSE, and that such privileges do not constitute property rights of the LICENSEE.

C. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are not transferable, assignable or delegable by the LICENSEE to any other person or entity, by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the LICENSEE at any time for any purpose.

D. That the remedies specified in the Access Plan for any Access Plan violation by the LICENSEE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LICENSE.

E. That LICENSEE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect inconsistent with the terms and provisions of this Section; except that nothing in this Section shall prevent the LICENSEE from making any argument or asserting any position to the COUNTY as applicable in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 4.01 and 8.02 in this LICENSE are subject to the terms, provisions and limitations of this Section.

SECTION 4.05 OPERATIONAL REQUIREMENTS

The LICENSEE agrees to abide by the following operational conditions and requirements:

A. Flight Operations and Reallocations. The number of allocated ADDs, including “regularly scheduled,” “charter,” “maintenance” and “cargo” shall not exceed the number of departures authorized and allocated to the LICENSEE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LICENSE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the LICENSEE under the provisions of the Access Plan. The LICENSEE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the LICENSEE by action of the Board of Supervisors; the LICENSEE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and the LICENSEE has met all other applicable COUNTY requirements.

B. Hours of Operation. Except as expressly authorized, the LICENSEE’s aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) (local time) and shall not arrive at the Airport between the hours of 11:00 p.m.
and 7:00 a.m. (8:00 a.m. Sundays) (local time), as measured at any JWA noise monitoring station.

The LICENSEE acknowledges that the COUNTY may by regulation permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as “Class E” aircraft, as that term is defined in the Access Plan. The LICENSEE does now, or may during the term of this LICENSE, operate Class E aircraft at the Airport; nevertheless, the LICENSEE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The LICENSEE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LICENSE shall be included in all Licenses, operating agreements or other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. Aircraft Types. The LICENSEE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The LICENSEE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. Gate Management. LICENSEE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by LICENSEE.

E. Noninterference. The LICENSEE shall cooperate with and not interfere with the COUNTY’s and other airlines’ use of and operations at the Airport. The LICENSEE shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

F. Disposal of Refuse from International Operations. Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.
SECTION 4.06    RECORDS AND ACCOUNTS

A. **Records.** The LICENSEE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LICENSE. The LICENSEE shall maintain such records for a period of five years beyond the expiration or earlier termination of this LICENSE.

B. **Reports.** The LICENSEE shall provide to Auditor-Controller and Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the LICENSEE's operations at Airport including, but not limited to, the total number of all aircraft operations conducted by the LICENSEE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The LICENSEE must attest that the list is an accurate representation of the LICENSEE's activity for the month.

The LICENSEE shall also provide to the Airport Director, for each day, a copy of the LICENSEE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., local time) of the following day.

C. **Audits.** All the LICENSEE's records and supporting source documents related to rates and fees in this LICENSE or to business operations conducted within or from the Operating Area shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the LICENSEE, may authorize the above referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the LICENSEE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the LICENSEE if either or both of the following conditions exist:
(1) The audit reveals an underpayment of more than two percent (2%) between the fees and charges due as reported and paid by the LICENSEE in accordance with this LICENSE and the fees and charges due as determined by said audit; and/or

(2) The LICENSEE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A. above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the LICENSEE, shall be included as fees and charges for the first month following invoice to LICENSEE.

Upon the request of Auditor-Controller, the LICENSEE shall promptly provide, necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LICENSE and to the LICENSEE's use of the Operating Area.

D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LICENSE, at law or in equity, in the event that the LICENSEE fails to maintain and keep records and accounts from business operations conducted on or from the Operating Area and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LICENSE, the COUNTY, at the COUNTY’s option, may:

(1) Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of fees and charges payable by the LICENSEE under this LICENSE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the LICENSEE upon demand.

(2) Require that the LICENSEE pay fees and charges based on the COUNTY's best good faith estimate of the LICENSEE's activities from business operations conducted on or from the Operating Area and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the LICENSEE.

Costs payable by the LICENSEE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits and the COUNTY's overhead or, at Auditor-Controller’s option, may be the rate for such services that would be charged by a qualified third party or parties, approved by Auditor-
Controller, if engaged by the COUNTY to perform such services. Said costs payable by the LICENSEE shall be included as fees and charges for the first month following invoice to the LICENSEE.

SECTION 4.07 MAINTENANCE AND OPERATION

The LICENSEE agrees to provide approved containers for trash and recycling and to keep the Operating Area free and clear of rubbish and litter. Airport Director shall have the right to enter upon and inspect the LICENSEE’S Operating Area and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein.

The LICENSEE shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

The LICENSEE shall immediately notify the Airport Director and the Airport Operations Center (“AOC”) of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The LICENSEE agrees to maintain or make repairs or replacements, including removal of all its GSE and/or any of the LICENSEE materials at its loading and unloading operations at the end of its approved hours of operation. If the LICENSEE fails to maintain, make repairs, replacements or removals, as required herein, the Airport Director shall notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The LICENSEE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the LICENSEE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Operating Area, except to the extent caused by the COUNTY’s negligence or willful misconduct.

SECTION 4.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other
airlines and other aircraft owners shall vest in the LICENSEE by reason of proximity of such facilities to the LICENSEE’s gate loading positions.

The LICENSEE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. LICENSEE shall promptly remove all oil and grease spillage attributable to the LICENSEE’s aircraft or equipment.

If the LICENSEE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 4.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the LICENSEE, may take into account the needs and requirements of the LICENSEE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 4.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 4.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause
of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 4.11  AIRCRAFT PARKING

The LICENSEE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the LICENSEE subject to the Section 3.01 in this LICENSE.

If, in the judgment of the Airport Director, it becomes necessary to move the LICENSEE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then LICENSEE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the LICENSEE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at Airport, the LICENSEE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting there from to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from Airport or stored at a location approved by Airport Director.

Should the LICENSEE fail to remove said aircraft, or should aircraft owned or operated by the LICENSEE be abandoned on Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the LICENSEE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefore. The LICENSEE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the LICENSEE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the LICENSEE's use. The LICENSEE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.
SECTION 4.12 PORTER SERVICES

The LICENSEE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The LICENSEE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the LICENSEE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines’ podiums. The LICENSEE’s plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

ARTICLE V - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 5.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The LICENSEE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The LICENSEE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the LICENSEE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The LICENSEE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LICENSE, the LICENSEE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The LICENSEE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the LICENSEE. In conducting a clean-up of a Hazardous Substance release under this LICENSE, the LICENSEE shall comply with applicable Environmental Laws. Hazardous waste generated by the LICENSEE or its contractors shall be disposed properly and under the LICENSEE’s EPA ID number.

The LICENSEE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport’s Storm Water Discharge Permit. The LICENSEE shall not allow or cause
the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the LICENSEE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport’s Storm Water Discharge Permit requirements. The LICENSEE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The LICENSEE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The LICENSEE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the LICENSEE.

SECTION 5.02  SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The LICENSEE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The LICENSEE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the LICENSEE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the LICENSEE shall pay to County administrative costs in the amount of five thousand dollars ($5,000) per incident. Said costs shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted.
related to LICENSEE’s operation under this LICENSE, including, but not limited to, the payment of any fines or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers related to LICENSEE’s operation under this LICENSE.

SECTION 5.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the LICENSEE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless, from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the LICENSEE, the LICENSEE’s operations at the Airport or any action arising from and which involve the LICENSEE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

1. The LICENSEE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the LICENSEE’s release of Hazardous Substances on the Airport since the time the LICENSEE first occupied the Airport.

2. The LICENSEE’s release of Hazardous Substances upon or within the Airport.

3. The LICENSEE’s violation of any applicable Environmental Law, except that the LICENSEE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LICENSE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the LICENSEE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the LICENSEE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the LICENSEE or if it is controlled by or under common control with the LICENSEE.

4. The LICENSEE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 6.01 of this LICENSE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the LICENSEE’s indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.
In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the LICENSEE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the LICENSEE because of the concurrent negligence of the COUNTY and the LICENSEE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the LICENSEE agree that neither party shall request a jury apportionment. Nothing stated in this LICENSE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LICENSE.

The rights and obligations set forth in this indemnification shall survive the termination of this LICENSE.

SECTION 5.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LICENSE, the environmental requirements contained in this Article shall apply.

SECTION 5.05 ENVIRONMENTAL STEWARDSHIP

The LICENSEE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans, as applicable. COUNTY shall provide LICENSEE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

A. Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

B. Climate Action Plan.

C. Waste Management Plan.

D. Storm Water Pollution Prevention Plan.

The LICENSEE shall implement and support the following environmental policies:

A. Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The LICENSEE shall develop and
provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LICENSE execution.

B. The LICENSEE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

C. The LICENSEE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the LICENSEE’s procurement of goods and services as applicable.

D. The LICENSEE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LICENSE execution.

E. Upon request, the LICENSEE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 5.06 ANTI-IDLING POLICY

Within six months of LICENSE execution, LICENSEE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. LICENSEE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the LICENSEE.

ARTICLE VI - CONSTRUCTION AND IMPROVEMENTS

SECTION 6.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate LICENSEE's Operating Area. The COUNTY shall provide the LICENSEE advance notice of such action and shall make every reasonable effort to provide the LICENSEE alternative space that is reasonably to provide comparable for the LICENSEE’s operations at the same rates and charges that the LICENSEE would have paid for the space being surrendered. In the event no alternative space is available, the LICENSEE shall surrender its space promptly to the COUNTY, provided that the LICENSEE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the LICENSEE's unamortized investment, if any, as documented by the LICENSEE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and LICENSEE. All of such costs, as well as the COUNTY’s cost of providing the
alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 6.02 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The LICENSEE shall be responsible for any damage caused by the LICENSEE, or the LICENSEE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the LICENSEE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the LICENSEE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the Airport Director. Except as otherwise provided herein, termination of this LICENSE shall not reduce or nullify the LICENSEE's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, the LICENSEE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 6.03 HEALTH AND SAFETY

The LICENSEE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The LICENSEE shall post on the Operating Area and at all construction sites a copy of “Construction Safety Orders” and “General Industry Safety Orders” issued by the California State Division of Industrial Safety.

The LICENSEE shall, within thirty (30) days after the execution of this LICENSE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The LICENSEE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The LICENSEE and/or LICENSEE's contractor shall submit, prior to the start of any tenant improvements, the LICENSEE or LICENSEE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The LICENSEE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the LICENSEE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.
ARTICLE VII - ASSIGNMENT

SECTION 7.01 ASSIGNING AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 4.04 of this LICENSE.

A. **Transfers.** The LICENSEE shall not transfer or assign (hereinafter referred to as “Transfer”) any interest of the LICENSEE in the LICENSE without the prior written approval of the COUNTY. The LICENSEE shall give the COUNTY thirty (30) days prior written notice of all proposed Transfers. The LICENSEE shall not make any such Transfers for a period longer than the remaining term of the LICENSE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LICENSE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LICENSE, and in the event of any inconsistency, the provisions of this LICENSE shall govern.

If the LICENSEE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the LICENSEE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the LICENSEE to obtain the prior written approval by the COUNTY of any Transfer of the LICENSE or the Operating Area shall constitute a material breach of this LICENSE by, and shall not confer any rights to the Operating Area upon the transferee. Such failure shall be grounds for termination of this LICENSE for default pursuant to Section 8.02.

B. **Conditions of COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The LICENSEE, its successors or assigns are in default of any term, covenant or condition of this LICENSE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LICENSE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LICENSE obligations, as determined by the Airport Director.

4. Subtenant’s use is in conflict with the terms of this LICENSE.
(5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

(6) Any construction required of LICENSEE as a condition of this LICENSE has not been completed to the satisfaction of COUNTY.

(7) The LICENSEE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations with respect to transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport (“the affiliate policy”). The LICENSEE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of COUNTY’s regulation of the Airport.

The LICENSEE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The LICENSEE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and or this LICENSE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of paragraph A, above. In the event an affiliate transaction involving the LICENSEE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The LICENSEE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the LICENSEE, the LICENSEE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with Federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the LICENSEE, the LICENSEE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the LICENSEE.
(3) In addition to all other obligations of the LICENSEE, if the affiliate transaction involves the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the LICENSEE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LICENSE, or a Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and COUNTY.

Notwithstanding any other provision of this LICENSE, the LICENSE may be terminated by COUNTY on thirty (30) days' notice to LICENSEE without further obligation of COUNTY, and without any liability of the COUNTY to the LICENSEE whatsoever, if:

(4) The LICENSEE fails to comply with paragraph C. of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the LICENSEE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the LICENSEE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. Bankruptcy Transaction. If the LICENSEE assumes this LICENSE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

(1) The name and address of proposed assignee;

(2) All of the terms and conditions of such offer; and

(3) Adequate assurance to COUNTY of the proposed assignee's future performance under the LICENSE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LICENSE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LICENSE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. Non-Transferable Privileges. Aircraft operations and ADDs authorized by the Section 4.05 in this LICENSE and the Access Plan are not property interests of the LICENSEE and are non-transferable in any form, and as such, are not subject to sale, assignment, and
transfer by the LICENSEE under the terms of this Section. Any such attempted assignment, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LICENSE.

SECTION 7.02  SUCCESSORS IN INTEREST

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

ARTICLE VIII - TERMINATION AND DEFAULT

SECTION 8.01  TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LICENSE shall terminate and supersede any prior Licenses or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the LICENSEE at the Airport.

SECTION 8.02  TERMINATION FOR DEFAULT

The COUNTY may terminate this LICENSE and all of its obligations hereunder with or without prior notice to the LICENSEE and may exercise all rights of entry for default and breach, if the LICENSEE fails to perform on any of its obligations under this LICENSE, including, but not limited to:

A.  Payment of fees, charges and PFCs;

B.  A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C.  The issuance of any execution or attachment against the LICENSEE at the Airport which is undischarged within sixty (60) days of levy or seizure or if the operating area are occupied by someone other than the LICENSEE;

D.  The voluntary vacation or abandonment by the LICENSEE of the conduct of air transportation business at the Airport;

E.  The violation by the LICENSEE of any of the terms of any insurance policy referred to in the LICENSE;

F.  If the LICENSEE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the LICENSEE's business;

G.  The violation or breach of any provision of the Access Plan;
H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the LICENSEE located at the Airport.

Where applicable, and unless otherwise stated in this LICENSE, or by written notice, the LICENSEE shall have fifteen (15) calendar days to cure any default prior to termination of this LICENSE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 8.03 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the LICENSEE abandons or terminates its operation or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the LICENSEE and left on the Airport fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the LICENSEE or to any person claiming under LICENSEE, and shall have no need to account therefor. Personal property left on the operating area after termination, expiration, or abandonment of the LICENSEE shall not be construed as giving LICENSEE possession of the Operating Area during the fifteen (15) days after termination, expiration or abandonment of the LICENSE.

ARTICLE IX - SECURITY

SECTION 9.01 AIRPORT SECURITY

The LICENSEE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The LICENSEE is responsible for fines imposed by any regulatory agency as a result of the LICENSEE’s failure to comply with applicable rules regulations, orders, plans, and procedures regarding airport security.

The LICENSEE employees subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LICENSE. The LICENSEE must maintain a current, updated list of Authorized Signatures responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialized LICENSEE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The LICENSEE employees applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. LICENSEE employees must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. LICENSEE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.
A. **Local Security.** The LICENSEE shall be responsible for the security of gates or doors that are utilized during their operations. Said gates and/or doors permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the LICENSEE’s constant surveillance. The LICENSEE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The LICENSEE shall exercise control over any person or vehicle escorted by the LICENSEE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the LICENSEE, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. **Federal Security.** As of the date of this LICENSE, the TSA provides for all passenger and baggage screening conducted at the Airport. The LICENSEE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LICENSE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.

C. **Penalties and Fines.** The LICENSEE shall promptly pay any penalties for which the LICENSEE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or LICENSEE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Badge Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated LICENSEE Authorized Signatories who will be working onsite, and engaged in the performance of work under this LICENSE, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the LICENSEE shall pay applicable fees. Upon successful completion of the background checks, LICENSEE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated LICENSEE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security Credential fee for each applicant. LICENSEE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. LICENSEE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the
E. Airport ID/Security Credential Applicant Requirements and Responsibilities. The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

LICENSEE and all LICENSEE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. LICENSEE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of LICENSEE personnel employment and/or termination of the LICENSE. The loss of a Airport ID/Security Credential shall be reported within 24 hours to the Sheriff’s Department–Airport Police Services by calling (949) 252-5000. LICENSEE or LICENSEE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport security badge is nontransferable.

In the event that LICENSEE’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of LICENSEE personnel or contracted personnel, 2) Airport ID badge expiration or 3) upon termination of the LICENSE, the LICENSEE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. LICENSEE’s security deposit may be applied to cover the cost of the fine.
ARTICLE X - INSURANCE AND INDEMNITY

SECTION 10.01 INSURANCE

The LICENSEE agrees to purchase all required insurance at the LICENSEE’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.

The LICENSEE agrees that the LICENSEE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the LICENSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The LICENSEE also agrees that upon cancellation, termination, or expiration of the LICENSEE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.

If the LICENSEE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the LICENSEE 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 the LICENSEE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the LICENSEE’s employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The LICENSEE further agrees to hold the 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.

The LICENSEE may occupy the Airport Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this LEASE. COUNTY reserves the right to terminate this LEASE at any time the LICENSEE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. LICENSEE shall pay COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. LICENSEE shall provide to COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the LICENSEE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the LICENSEE; excluding General Aviation Liability. All contractors performing work on behalf of the LICENSEE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000
aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The LICENSEE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the LICENSEE under this LEASE. It is the obligation of the LICENSEE 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 Airport Premises. Such proof of insurance must be maintained by the LICENSEE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of LICENSEE’s current audited financial report. If LICENSEE’s SIR is approved, LESSEE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from LICENSEE’s, its agents, employee’s or subcontractor’s performance of this Agreement, LICENSEE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) LICENSEE’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 the LICENSEE’s SIR provision shall be interpreted as though the LICENSEE was an insurer and the COUNTY was the insured.

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

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<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td>(Including but not limited to General Liability, Passenger</td>
<td>$250,000,000 aggregate</td>
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<td>Legal Liability, Personal Injury, Contractual Liability,</td>
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<td>Premises, Products and Completed Operations, Ground Ground</td>
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<td>Hangarkeepers and liability for vehicles and mobile equipment</td>
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<td>operated on restricted airport premises.)</td>
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Coverages

Workers' Compensation
Employers' Liability Insurance
Pollution Liability Insurance or Self-Insurance
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

Minimum Limits

Statutory
$1,000,000 per occurrence
$1,000,000 per claims-made or per occurrence
100% of the Replacement Cost Value and no coinsurance provision

Required Endorsements

The Aviation General 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 and non-contributing endorsement evidencing that the LICENSEE’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.
2. A primary and non-contributing endorsement evidencing that the LICENSEE’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 policy 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 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 as respects the COUNTY’s financial interest when applicable.
If the LICENSEE’s Pollution Liability policy is a claims-made policy, the LICENSEE 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 (NOTICES) below or to an address provided by Airport Director. The LICENSEE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require the LICENSEE 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 the COUNTY Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify the LICENSEE in writing of changes in the insurance requirements. If the LICENSEE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the LICENSEE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the LICENSEE'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.

SECTION 10.02  INDEMNITY

The LICENSEE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the LICENSEE pursuant to this LICENSE. If judgment is entered against the LICENSEE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the LICENSEE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XI

FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01  CIVIL RIGHTS AND NONDISCRIMINATION

A. LICENSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If LICENSEE transfers its obligation to another, the transferee is obligated in the same manner as LICENSEE.
B. LICENSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) LICENSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) LICENSEE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by LICENSEE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by LICENSEE of the LICENSEE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4) LICENSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, LICENSEE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the LICENSEE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the LICENSEE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The LICENSEE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The LICENSEE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if LICENSEE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the LICENSEE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY.
In addition, the LICENSEE may request the United States to enter into the litigation to protect the interests of the United States.

C. LICENSEE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, LICENSEE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) LICENSEE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. LICENSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. LICENSEE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

8) Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12189, as implemented by 28 CFR parts 35 and 36, and 49 CFR parts 37 and 38 (prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.
SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the LICENSEE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the LICENSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the LICENSEE in this regard.

SECTION 11.03 LICENSE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LICENSE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The LICENSEE agrees that the LICENSEE's use of the Operating Area, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.

The LICENSEE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Operating Area or in the event of any planned modification or alteration of any present or future building or structure situated on the Operating Area.

SECTION 11.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LICENSE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the LICENSEE in this LICENSE, or any local authorities shall not apply to the LICENSEE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 11.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 11.07 RESERVATION OF AVIGATION EASEMENT
The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Operating Area, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 11.08    HEIGHT LIMITATION OF STRUCTURES

The LICENSEE by accepting this LICENSE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land Licensed hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land Licensed Area hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the LICENSEE. The LICENSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 11.09    NONINTERFERENCE WITH AIRCRAFT

The LICENSEE by accepting this LICENSE agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Operating Area and hereby cause the abatement of such interference at the expense of the LICENSEE.

SECTION 11.10    WAR OR NATIONAL EMERGENCY

This LICENSE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 11.11    AFFIRMATIVE ACTION REQUIREMENTS

The LICENSEE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The LICENSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The LICENSEE assures that it will require that its covered suborganizations provide assurances to the LICENSEE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.
SECTION 11.12     AMERICANS WITH DISABILITIES ACT

The LICENSEE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the LICENSEE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the LICENSEE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The LICENSEE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The LICENSEE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the LICENSEE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. The LICENSEE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the LICENSEE’s failure to comply with the ADA.

SECTION 11.13     BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the LICENSEE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The LICENSEE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the LICENSEE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The LICENSEE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the LICENSEE owns and operates additional ramps, the LICENSEE shall maintain those ramps in proper working condition. The LICENSEE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01     TIME

Time is of the essence in this LICENSE.

SECTION 12.02     LICENSE ORGANIZATION

The various headings and numbers herein, the grouping of provisions of this LICENSE into separate sections and paragraphs, and the organization hereof, are for the purpose of convenience
SECTION 12.03 AMENDMENTS

This LICENSE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 12.04 SIGNS

LICENSEE agrees not to construct, maintain or allow any sign upon the Operating Area except as approved by COUNTY. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the LICENSEE.

LICENSEE will not place any signs or advertising materials in any location within the Licensed area or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of promotional signs for the LICENSEE shall be accompanied by illustrative drawings and design dimensions along with information about the type of signs proposed, and proposed locations. All approved signs shall be allowed to remain in the terminal for ninety (90) days. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the LICENSEE's expense; COUNTY may dispose of items if they are not promptly claimed by the LICENSEE after notice from the COUNTY.

SECTION 12.05 PERMITS AND LICENSES

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

SECTION 12.06 RESERVED

SECTION 12.07 TAXES AND ASSESSMENTS

This LICENSE may create a possessory interest that 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) that become due and payable upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the LICENSEE, and the LICENSEE shall cause said taxes and assessments to be paid promptly.

SECTION 12.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the LICENSEE from the prompt payment of any rental or other charge required of the LICENSEE except as may be expressly provided elsewhere in this LICENSE.

SECTION 12.09  PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this LICENSE 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.

SECTION 12.10  WAIVER OF RIGHTS

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

SECTION 12.11  RESERVATIONS TO THE COUNTY

The Operating Area is accepted "AS IS" and the LICENSEE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Operating Area or any part thereof; and to enter the Operating Area for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Operating Area. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the LICENSEE's operations hereunder or to impair the security of any secured creditor of the LICENSEE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Operating Area by the LICENSEE, the LICENSEE shall only be entitled to a reduction in the fees and charges payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the LICENSEE's use of the Operating Area. The LICENSEE shall not be entitled to any other form of compensation.
SECTION 12.12    AUTHORITY OF LICENSEE

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

SECTION 12.13    PUBLIC RECORDS

The LICENSEE understands that written information submitted to and/or obtained by the COUNTY from the LICENSEE related to this LICENSE and/or the Operating Area, either pursuant to this LICENSE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 12.14    RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of Licensor and Licensee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the LICENSEE in the conduct of the LICENSEE's business or otherwise, or a joint venturer with the LICENSEE; and the provisions of this LICENSE and the agreements relating to fees and charges payable hereunder are included solely for the purpose of providing a method by which fees and charges payments are to be measured and ascertained. This LICENSE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 12.15    GOVERNING LAW AND VENUE

This LICENSE 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 LICENSE, 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. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 12.16    ATTORNEYS’ FEES

In any action or proceeding to enforce or interpret any provision of this LICENSE, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.
SECTION 12.17  EMERGENCY SERVICES

Airport Director has the right to request that the LICENSEE’S employees aid in and use LICENSEE’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The LICENSEE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.

SECTION 12.18  NOTICES

All notices pursuant to this LICENSE shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above COUNTY may also provide notices to the LICENSEE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:  COUNTY

John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, CA  92626

TO:  LICENSEE

SkyWest Airlines, Inc.  
Director of Properties  
444 N. River Road  
St. George, UT  84770-2085

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
IN WITNESS WHEREOF, the parties have executed this LICENSE the day and year first above written.

SKYWEST AIRLINES, INC.
By: [Signature]
By: [Signature]

APPROVED AS TO FORM:
County Counsel
By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:
Auditor-Controller
By: [Signature]

RECOMMENDED FOR APPROVAL:
John Wayne Airport
By: [Signature]
Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY
COUNTY OF ORANGE
By: [Signature]
Chairwoman, Board of Supervisors

Robin Stieler,
Interim Clerk of the Board of Supervisors of Orange County, California
COMMUTER AIRLINE OPERATING LICENSE

Dated _______________

Between

County of Orange

and

SkyWest Airlines, Inc.
# JOHN WAYNE AIRPORT
## COMMUTER AIRLINE OPERATING LICENSE

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**COMMUTER AIRLINE OPERATING LICENSE**

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EXHIBIT B  MAP – APRON AREA
THIS COMMUTER AIRLINE OPERATING LICENSE is made and entered into this ___ day of __________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“the COUNTY”), and SKYWEST AIRLINES, INC. (“the LICENSEE”).

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “the Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the LICENSEE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the LICENSEE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport’s approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from in the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, “grandfathered” under the AIRPORT NOISE AND CAPACITY ACT OF 1990 (“ANCA”), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the LICENSEE mutually desire to enter into a LICENSE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the LICENSEE for the operation of the LICENSEE's air transportation services; and
WHEREAS, the LICENSEE acknowledges that this LICENSE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5, et seq., and in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LICENSE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the John Wayne Airport – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving John Wayne Airport.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving John Wayne Airport.

SECTION 1.03 ACCESS PLAN

“Access Plan” shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LICENSE.

SECTION 1.04 ADD

“ADD” shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

“Airline Rates and Charges” shall mean all rates, fees and charges payable to the COUNTY by the LICENSEE as specified herein.

SECTION 1.06 AIRPORT

“Airport” shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

“Airport Director” shall mean the Director of JWA, or his or her duly authorized designee.

SECTION 1.08 APRON AREA

“Apron Area” shall mean the land identified as Apron Area in Exhibit A attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

“Auditor-Controller” shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

“Board of Supervisors” shall mean the COUNTY’S governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

“Certificated Maximum Landing Weight” shall mean the current maximum allowable gross landing weight of aircraft operated by the LICENSEE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

“Common Use Area” shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit B.

SECTION 1.14 COUNTY

“COUNTY” shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

“CUPPS” shall mean the Airport's Common Use Passenger Processing System

SECTION 1.16 CUSS

“CUSS” shall mean Common Use Self Service.
SECTION 1.17  EMV

“EMV” shall mean Europay, Mastercard, or Visa.

SECTION 1.18  DOT

“DOT” shall mean the U.S. Department of Transportation.

SECTION 1.19  ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 *et seq*.; (ii) Clean Water Act, 33 U.S.C. § 1251 *et seq*.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 *et seq*.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 *et seq*.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq*.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 *et seq*.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 *et seq*.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 *et seq*.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq*.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, *et seq*.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20  FAA

“FAA” shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may have similar jurisdiction over LICENSEE or its business, and the Airport.

SECTION 1.21  GSE

“GSE” shall mean any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier in support of its operations at JWA.

SECTION 1.22  HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.23  IAF

“IAF” shall mean the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.24  NON STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.25  OPERATING AREA

“Operating Area” shall mean the areas of the Airport available to LICENSEE for the operation of its scheduled airline service.
SECTION 1.26  PFC

“PFC” shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. § 40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LICENSE.

SECTION 1.27  POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);
b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
g. Materials which contain base/neutral or acid extractable organic compounds;
h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28  RON

“RON” shall mean the remain overnight positions where the LICENSEE's aircraft are required to park when they “remain overnight” at JWA.

SECTION 1.29  STORM WATER

“Storm Water” shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.
SECTION 1.30 TERMINAL

“Terminal” shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LICENSE.

SECTION 1.31 TSA

“TSA” shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LICENSE

SECTION 2.01 TERM OF LICENSE

The term of this LICENSE shall commence on January 1, 2021, and shall continue on a month-to-month basis until terminated by either party.

SECTION 2.02 TERMINATION FOR CONVENIENCE

This LICENSE may be terminated for convenience by either party for any reason, and without cause, upon thirty (30) days written notice.

ARTICLE III – FEES AND CHARGES

SECTION 3.01 FEES AND CHARGES

The fees and charges contained in this LICENSE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture, Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the fees and charges to the AAAC prior to implementation.

A. The LICENSEE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The LICENSEE agrees that the COUNTY will not invoice for the following fees and charges, and may require LICENSEE to submit future monthly report electronically via JWA’s portal and prescribed format. COUNTY will make reasonable efforts to develop and electronic format that allows LICENSEE to efficiently report information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.
(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

B. Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the fees and charges described in Paragraphs A and B of section 3.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications or such other changes as needed to respond to the LICENSEE's use of Airport, the need for the COUNTY to receive fair and equitable fees and charges for all uses of Airport and to insure Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable fees and charges, the LICENSEE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the LICENSEE or invoice the LICENSEE for any underpayments for the previous period.

Notwithstanding anything in this LICENSE to the contrary, all amounts payable by the LICENSEE to or on behalf of the COUNTY under this LICENSE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The LICENSEE shall notify Airport in writing within thirty (30) days of filing a petition for Bankruptcy.

SECTION 3.02 PAYMENT PROCEDURE

A. **Place of Payment and Filing.** Payments and statements required by Sections 3.01 and 4.06 in this LICENSE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the LICENSEE. Payments may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The LICENSEE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LICENSE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the LICENSEE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the
amount due or pursue any other remedy in this LICENSE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to LICENSEE plus a twenty-five dollar ($25) processing fee.

C. **Penalty for NSF Check** In the event a check submitted by LICENSEE is returned for non-sufficient funds (“NSF”), LICENSEE agrees to pay COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. LICENSEE may also be liable for treble damages pursuant to California Civil Code Section 1719.

**SECTION 3.03 CHARGE FOR LATE PAYMENT**

The LICENSEE hereby acknowledges that the late payment of fees and charges or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LICENSE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.

Accordingly, if any payment of fees and charges as specified in Section 3.01 in this LICENSE entitled “FEES AND CHARGES” or of any other sum due to the COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The LICENSEE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the LICENSEE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of LICENSEE’s default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

**SECTION 3.04 PASSENGER FACILITY CHARGE**

The COUNTY expressly reserves the right to impose PFCs on LICENSEE’s passengers for the use of the Airport in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the “PFC Regulations”).

The LICENSEE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY. For the purposes of this Section 3.04, net principal amount shall mean the total principal amount of all PFCs that are
collected by the LICENSEE or its agents on behalf of the COUNTY, reduced by any amount that the LICENSEE is permitted to retain pursuant to 49 U.S.C. § 40117 and the PFC Regulations. Monthly PFCs collected by the LICENSEE shall be remitted to the COUNTY no later than the last day of the following calendar month or if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the LICENSEE shall be remitted to the COUNTY at the address specified in Section 3.02, Part A, “Place of Payment and Filing” or at such other place as designated by the COUNTY.

Should the LICENSEE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the LICENSEE shall be deemed to be in default pursuant to Article VIII hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 3.03 of this LICENSE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFC’s. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.

SECTION 3.05 PROVISION AGAINST SET-OFFS

It is the obligation of the LICENSEE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LICENSE. In the event that the LICENSEE desires to contest the validity or amount of any such fees and charges, the LICENSEE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 3.06 SECURITY DEPOSIT

The LICENSEE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the fees and charges pursuant to the Section 3.01 in this LICENSE, the security deposit to be provided by the LICENSEE shall be adjusted to approximately three (3) times the estimated monthly fees and charges as determined by the Airport Director to guarantee the faithful performance by the LICENSEE of its obligations under this LICENSE and the payment of all fees and charges due hereunder. PFCs shall be excluded from the fees and charges used to determine the LICENSEE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the LICENSEE's full and faithful performance of all the terms, covenants, and conditions of this LICENSE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary
to secure performance of the terms, covenants, and conditions of this LICENSE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the LICENSEE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the LICENSEE, including the payment of use fees, charges, as well as any and all other payments. Said bond shall be maintained at the cost of the LICENSEE throughout the existence of this LICENSE. Said Surety shall give Airport Director a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's prior written consent shall constitute a default under this LICENSE.

Regardless of the form in which the LICENSEE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LICENSE by the LICENSEE, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the LICENSEE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LICENSE.

Should the LICENSEE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LICENSE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by Airport Director.

In the event Airport Director withdraws all or any portion of the security deposit as provided herein, the LICENSEE shall, within ten (10) days of any withdrawal by Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LICENSE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LICENSE, as per article VIII of this LICENSE.

The LICENSEE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LICENSE.

The security deposit, after deduction of all amounts due to the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the LICENSEE or order, as applicable, after one hundred twenty (120) days have elapsed or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LICENSE, provided the LICENSEE has fully and faithfully performed each and every term, covenant, and condition of this LICENSE.
SECTION 3.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of Five Hundred Thousand Dollars ($500,000.00) shall be provided by a new entrant LICENSEE prior to the commencement of operations.

This deposit shall be returned to the new entrant LICENSEE after six (6) months of continuous operation.

ARTICLE IV - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 4.01 USE

The COUNTY hereby grants to the LICENSEE the authorization to conduct a scheduled commercial airline operation at the Airport and for no other purpose whatsoever. Said operation shall be conducted in accordance with an agreement between the LICENSEE and another commercial airline(s) and subject to the terms and conditions of the Certificated Passenger Airline Lease between the COUNTY and such other airline(s). The terms and conditions of this LICENSE shall prevail in the event of any conflict with said agreement between the LICENSEE and another commercial airline(s) and subject to the limitations set forth in the Sections 4.03 and 4.05 in this LICENSE, this operation may include any or all of the following uses and no other uses whatsoever:

AUTHORIZED USES:

A. Loading and unloading of passengers.
B. Loading and unloading of baggage.
C. Passenger processing operations.
D. Flight operations office.
E. The LICENSEE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the LICENSEE in the conduct of its air transportation service.
F. Mail, freight and cargo operations but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The LICENSEE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or
2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the LICENSEE's employees at the Airport and in-flight catering services in support of the LICENSEE's air operations at the Airport. This does not permit the LICENSEE to conduct commissary or in-flight services for any other LICENSEEE or other person at Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.

I. Employee training incidental to the other uses permitted under this Section.

J. Other uses as authorized by the Airport Director.

SECTION 4.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the LICENSEE a LICENSE for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the LICENSEE's aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of Airport Director.

This LICENSE for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 4.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the LICENSEE agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and LICENSEE’s rights under this LICENSE. Except in the case of emergency, the COUNTY shall give the LICENSEE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the LICENSEE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the LICENSEE.
The LICENSEE’s operation under the LICENSE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to LICENSEE’s operation under this LICENSE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers related to LICENSEE’s operation under this LICENSE.

The COUNTY shall not be liable to the LICENSEE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LICENSE, nor shall the LICENSEE be entitled to terminate the whole or any portion of the operating area herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the LICENSEE's use and occupancy of the Operating Area so as to constitute a termination in whole or in part of this LICENSE by operation of law in accordance with the laws of the State of California.

SECTION 4.04 ACCESS PLAN LIMITATIONS ON USE

The LICENSEE agrees that:

A. Notwithstanding any provision in this LICENSE to the contrary, the LICENSEE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the LICENSEE’s activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the terms of this LICENSE, and that such privileges do not constitute property rights of the LICENSEE.

C. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are not transferable, assignable or delegable by the LICENSEE to any other person or entity, by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the LICENSEE at any time for any purpose.
D. That the remedies specified in the Access Plan for any Access Plan violation by the LICENSEE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LICENSE.

E. That LICENSEE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect inconsistent with the terms and provisions of this Section; except that nothing in this Section shall prevent the LICENSEE from making any argument or asserting any position to the COUNTY as applicable in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 4.01 and 8.02 in this LICENSE are subject to the terms, provisions and limitations of this Section.

SECTION 4.05 OPERATIONAL REQUIREMENTS

The LICENSEE agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including “regularly scheduled,” “charter,” “maintenance” and “cargo” shall not exceed the number of departures authorized and allocated to the LICENSEE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LICENSE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the LICENSEE under the provisions of the Access Plan. The LICENSEE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the LICENSEE by action of the Board of Supervisors; the LICENSEE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and the LICENSEE has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the LICENSEE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) (local time) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays) (local time), as measured at any JWA noise monitoring station.

The LICENSEE acknowledges that the COUNTY may by regulation permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as “Class E” aircraft, as that term is defined in the Access Plan. The LICENSEE does now, or may during the term of this LICENSE, operate Class E aircraft at the Airport; nevertheless, the
LICENSEE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The LICENSEE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LICENSE shall be included in all Licenses, operating agreements or other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. Aircraft Types. The LICENSEE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The LICENSEE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. Gate Management. LICENSEE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by LICENSEE.

E. Noninterference. The LICENSEE shall cooperate with and not interfere with the COUNTY’s and other airlines’ use of and operations at the Airport. The LICENSEE shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

F. Disposal of Refuse from International Operations. Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

SECTION 4.06 RECORDS AND ACCOUNTS

A. Records. The LICENSEE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LICENSE. The LICENSEE shall maintain such records for a period of five years beyond the expiration or earlier termination of this LICENSE.

B. Reports. The LICENSEE shall provide to Auditor-Controller and Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the LICENSEE’s operations at Airport including, but not limited to, the total number of all aircraft operations conducted by the LICENSEE; the total
combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The LICENSEE must attest that the list is an accurate representation of the LICENSEE’s activity for the month.

The LICENSEE shall also provide to the Airport Director, for each day, a copy of the LICENSEE’s flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., local time) of the following day.

C. **Audits.** All the LICENSEE’s records and supporting source documents related to rates and fees in this LICENSE or to business operations conducted within or from the Operating Area shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the LICENSEE, may authorize the above referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the LICENSEE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the LICENSEE if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the fees and charges due as reported and paid by the LICENSEE in accordance with this LICENSE and the fees and charges due as determined by said audit; and/or

2. The LICENSEE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A, above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost
of said audit, if due from the LICENSEE, shall be included as fees and charges for the first month following invoice to LICENSEE.

Upon the request of Auditor-Controller, the LICENSEE shall promptly provide, necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LICENSE and to the LICENSEE’s use of the Operating Area.

D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LICENSE, at law or in equity, in the event that the LICENSEE fails to maintain and keep records and accounts from business operations conducted on or from the Operating Area and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LICENSE, the COUNTY, at the COUNTY’s option, may:

1. Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of fees and charges payable by the LICENSEE under this LICENSE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the LICENSEE upon demand.

2. Require that the LICENSEE pay fees and charges based on the COUNTY’s best good faith estimate of the LICENSEE’s activities from business operations conducted on or from the Operating Area and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the LICENSEE.

Costs payable by the LICENSEE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees’ salaries, including employee taxes and benefits and the COUNTY’s overhead or, at Auditor-Controller’s option, may be the rate for such services that would be charged by a qualified third party or parties, approved by Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the LICENSEE shall be included as fees and charges for the first month following invoice to the LICENSEE.

**SECTION 4.07 MAINTENANCE AND OPERATION**

The LICENSEE agrees to provide approved containers for trash and recycling and to keep the Operating Area free and clear of rubbish and litter. Airport Director shall have the right to enter upon and inspect the LICENSEE’S Operating Area and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein.
The LICENSEE shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

The LICENSEE shall immediately notify the Airport Director and the Airport Operations Center (“AOC”) of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The LICENSEE agrees to maintain or make repairs or replacements, including removal of all its GSE and/or any of the LICENSEE materials at its loading and unloading operations at the end of its approved hours of operation. If the LICENSEE fails to maintain, make repairs, replacements or removals, as required herein, the Airport Director shall notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The LICENSEE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the LICENSEE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Operating Area, except to the extent caused by the COUNTY’s negligence or willful misconduct.

SECTION 4.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the LICENSEE by reason of proximity of such facilities to the LICENSEE's gate loading positions.

The LICENSEE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. LICENSEE shall promptly remove all oil and grease spillage attributable to the LICENSEE’s aircraft or equipment.

If the LICENSEE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall
notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 4.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the LICENSEE, may take into account the needs and requirements of the LICENSEE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 4.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 4.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

SECTION 4.11 AIRCRAFT PARKING

The LICENSEE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the LICENSEE subject to the Section 3.01 in this LICENSE.

If, in the judgment of the Airport Director, it becomes necessary to move the LICENSEE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then
LICENSEE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the LICENSEE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at Airport, the LICENSEE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting there from to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from Airport or stored at a location approved by Airport Director.

Should the LICENSEE fail to remove said aircraft, or should aircraft owned or operated by the LICENSEE be abandoned on Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the LICENSEE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefore. The LICENSEE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the LICENSEE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the LICENSEE's use. The LICENSEE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.

SECTION 4.12 PORTER SERVICES

The LICENSEE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The LICENSEE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the LICENSEE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines’ podiums. The LICENSEE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.
ARTICLE V - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 5.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

The LICENSEE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The LICENSEE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the LICENSEE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The LICENSEE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LICENSE, the LICENSEE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The LICENSEE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the LICENSEE. In conducting a clean-up of a Hazardous Substance release under this LICENSE, the LICENSEE shall comply with applicable Environmental Laws. Hazardous waste generated by the LICENSEE or its contractors shall be disposed properly and under the LICENSEE’s EPA ID number.

The LICENSEE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport’s Storm Water Discharge Permit. The LICENSEE shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the LICENSEE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport’s Storm Water Discharge Permit requirements. The LICENSEE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The LICENSEE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The LICENSEE
shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the LICENSEE.

SECTION 5.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The LICENSEE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The LICENSEE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the LICENSEE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the LICENSEE shall pay to County administrative costs in the amount of five thousand dollars ($1,000) per incident. Said costs shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to LICENSEE’s operation under this LICENSE, including, but not limited to, the payment of any fines or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers related to LICENSEE’s operation under this LICENSE.

SECTION 5.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the LICENSEE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless, from and against any and all applicable
Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the LICENSEE, the LICENSEE’s operations at the Airport or any action arising from and which involve the LICENSEE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

(1) The LICENSEE’s placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the LICENSEE’s release of Hazardous Substances on the Airport since the time the LICENSEE first occupied the Airport.

(2) The LICENSEE’s release of Hazardous Substances upon or within the Airport.

(3) The LICENSEE’s violation of any applicable Environmental Law, except that the LICENSEE’s obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LICENSE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the LICENSEE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the LICENSEE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the LICENSEE or if it is controlled by or under common control with the LICENSEE.

(4) The LICENSEE’s causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 6.01 of this LICENSE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the LICENSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the LICENSEE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the LICENSEE because of the concurrent negligence of the COUNTY and the LICENSEE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the LICENSEE agree that neither party shall request a jury apportionment. Nothing stated in this LICENSE and in this
The indemnity obligation shall be construed as authorizing any award of attorney’s fees/costs in any action to enforce the terms of this LICENSE.

The rights and obligations set forth in this indemnification shall survive the termination of this LICENSE.

SECTION 5.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LICENSE, the environmental requirements contained in this Article shall apply.

SECTION 5.05 ENVIRONMENTAL STEWARDSHIP

The LICENSEE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans, as applicable. COUNTY shall provide LICENSEE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

A. Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

B. Climate Action Plan.

C. Waste Management Plan.

D. Storm Water Pollution Prevention Plan.

The LICENSEE shall implement and support the following environmental policies:

A. Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The LICENSEE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LICENSE execution.

B. The LICENSEE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

C. The LICENSEE has been provided a copy of the COUNTY’s Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the LICENSEE’s procurement of goods and services as applicable.
D. The LICENSEE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LICENSE execution.

E. Upon request, the LICENSEE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 5.06  ANTI-IDLING POLICY

Within six months of LICENSE execution, LICENSEE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. LICENSEE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the LICENSEE.

ARTICLE VI - CONSTRUCTION AND IMPROVEMENTS

SECTION 6.01  CONSTRUCTION AND/OR ALTERATION BY COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate LICENSEE’s Operating Area. The COUNTY shall provide the LICENSEE advance notice of such action and shall make every reasonable effort to provide the LICENSEE alternative space that is reasonably to provide comparable for the LICENSEE’s operations at the same rates and charges that the LICENSEE would have paid for the space being surrendered. In the event no alternative space is available, the LICENSEE shall surrender its space promptly to the COUNTY, provided that the LICENSEE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the LICENSEE’s unamortized investment, if any, as documented by the LICENSEE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and LICENSEE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 6.02  DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The LICENSEE shall be responsible for any damage caused by the LICENSEE, or the LICENSEE’s aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the LICENSEE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any
necessary repairs or replacements and the cost thereof shall be paid by the LICENSEE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the Airport Director. Except as otherwise provided herein, termination of this LICENSE shall not reduce or nullify the LICENSEE's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, the LICENSEE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 6.03 HEALTH AND SAFETY

The LICENSEE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The LICENSEE shall post on the Operating Area and at all construction sites a copy of “Construction Safety Orders” and “General Industry Safety Orders” issued by the California State Division of Industrial Safety.

The LICENSEE shall, within thirty (30) days after the execution of this LICENSE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The LICENSEE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The LICENSEE and/or LICENSEE's contractor shall submit, prior to the start of any tenant improvements, the LICENSEE or LICENSEE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The LICENSEE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the LICENSEE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE VII - ASSIGNMENT

SECTION 7.01 ASSIGNING AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 4.04 of this LICENSE.

A. Transfers. The LICENSEE shall not transfer or assign (hereinafter referred to as “Transfer”) any interest of the LICENSEE in the LICENSE without the prior written approval of the COUNTY. The LICENSEE shall give the COUNTY thirty (30) days prior written notice of all proposed Transfers. The LICENSEE shall not make any such Transfers for a period longer than the remaining term of the LICENSE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LICENSE. All Transfer documents shall be consistent with the
terms, covenants, and conditions of the LICENSE, and in the event of any inconsistency, the provisions of this LICENSE shall govern.

If the LICENSEE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the LICENSEE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the LICENSEE to obtain the prior written approval by the COUNTY of any Transfer of the LICENSE or the Operating Area shall constitute a material breach of this LICENSE by, and shall not confer any rights to the Operating Area upon the transferee. Such failure shall be grounds for termination of this LICENSE for default pursuant to Section 8.02.

B. **Conditions of COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The LICENSEE, its successors or assigns are in default of any term, covenant or condition of this LICENSE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LICENSE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LICENSE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LICENSE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of LICENSEE as a condition of this LICENSE has not been completed to the satisfaction of COUNTY.

7. The LICENSEE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations with respect to transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport (“the affiliate policy”). The LICENSEE acknowledges that the COUNTY considers the
affiliate policy to be an important and significant policy in support of COUNTY’s regulation of the Airport.

The LICENSEE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The LICENSEE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and or this LICENSE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of paragraph A, above. In the event an affiliate transaction involving the LICENSEE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The LICENSEE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the LICENSEE, the LICENSEE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with Federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the LICENSEE, the LICENSEE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the LICENSEE.

(3) In addition to all other obligations of the LICENSEE, if the affiliate transaction involves the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the LICENSEE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LICENSE, or a Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and COUNTY.

Notwithstanding any other provision of this LICENSE, the LICENSE may be terminated by COUNTY on thirty (30) days' notice to LICENSEE without further obligation of COUNTY, and without any liability of the COUNTY to the LICENSEE whatsoever, if:

(4) The LICENSEE fails to comply with paragraph C. of this Section; or if
(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the LICENSEE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the LICENSEE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the LICENSEE assumes this LICENSE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

1. The name and address of proposed assignee;
2. All of the terms and conditions of such offer; and
3. Adequate assurance to COUNTY of the proposed assignee's future performance under the LICENSE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LICENSE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, shall be deemed without further act or deed to have assumed all of the obligations arising under this LICENSE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by the Section 4.05 in this LICENSE and the Access Plan are not property interests of the LICENSEE and are non-transferable in any form, and as such, are not subject to sale, assignment, and transfer by the LICENSEE under the terms of this Section. Any such attempted assignment, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LICENSE.

**SECTION 7.02 SUCCESSORS IN INTEREST**

Unless otherwise provided in this LICENSE, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.
ARTICLE VIII - TERMINATION AND DEFAULT

SECTION 8.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LICENSE shall terminate and supersede any prior Licenses or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the LICENSEE at the Airport.

SECTION 8.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this LICENSE and all of its obligations hereunder with or without prior notice to the LICENSEE and may exercise all rights of entry for default and breach, if the LICENSEE fails to perform on any of its obligations under this LICENSE, including, but not limited to:

A. Payment of fees, charges and PFCs;

B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;

C. The issuance of any execution or attachment against the LICENSEE at the Airport which is undischarged within sixty (60) days of levy or seizure or if the operating area are occupied by someone other than the LICENSEE;

D. The voluntary vacation or abandonment by the LICENSEE of the conduct of air transportation business at the Airport;

E. The violation by the LICENSEE of any of the terms of any insurance policy referred to in the LICENSE;

F. If the LICENSEE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the LICENSEE's business;

G. The violation or breach of any provision of the Access Plan;

H. The violation of any written directions of the Airport Director;

I. The appointment of a receiver to take possession of all, or substantially all, the assets of the LICENSEE located at the Airport.

Where applicable, and unless otherwise stated in this LICENSE, or by written notice, the LICENSEE shall have fifteen (15) calendar days to cure any default prior to termination of this LICENSE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.
SECTION 8.03 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the LICENSEE abandons or terminates its operation or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the LICENSEE and left on the Airport fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the LICENSEE or to any person claiming under LICENSEE, and shall have no need to account therefor. Personal property left on the operating area after termination, expiration, or abandonment of the LICENSE shall not be construed as giving LICENSEE possession of the Operating Area during the fifteen (15) days after termination, expiration or abandonment of the LICENSE.

ARTICLE IX - SECURITY

SECTION 9.01 AIRPORT SECURITY

The LICENSEE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The LICENSEE is responsible for fines imposed by any regulatory agency as a result of the LICENSEE’s failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

The LICENSEE employees subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LICENSE. The LICENSEE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialed LICENSEE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The LICENSEE employees applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. LICENSEE employees must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. LICENSEE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. Local Security. The LICENSEE shall be responsible for the security of gates or doors that are utilized during their operations. Said gates and/or doors permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the LICENSEE’s constant surveillance. The LICENSEE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The LICENSEE shall exercise control over any person or vehicle escorted by the LICENSEE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the LICENSEE, and ensure that such person or vehicle shall comply with all Airport security regulations.
B. **Federal Security.** As of the date of this LICENSE, the TSA provides for all passenger and baggage screening conducted at the Airport. The LICENSEE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LICENSE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.

C. **Penalties and Fines.** The LICENSEE shall promptly pay any penalties for which the LICENSEE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or LICENSEE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. **Badge Airport ID/Security Credential Application and Lifecycle.** Prior to issuance of an Airport ID/Security Credential(s), designated LICENSEE Authorized Signatories who will be working onsite, and engaged in the performance of work under this LICENSE, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the LICENSEE shall pay applicable fees. Upon successful completion of the background checks, LICENSEE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated LICENSEE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security Credential fee for each applicant. LICENSEE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. LICENSEE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. LICENSEE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. **Airport ID/Security Credential Applicant Requirements and Responsibilities.** The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport. LICENSEE and all LICENSEE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with
escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. LICENSEE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of LICENSEE personnel employment and/or termination of the LICENSE. The loss of a Airport ID/Security Credential shall be reported within 24 hours to the Sheriff’s Department–Airport Police Services by calling (949) 252-5000. LICENSEE or LICENSEE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport security badge is nontransferable.

In the event that LICENSEE’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of LICENSEE personnel or contracted personnel, 2) Airport ID badge expiration or 3) upon termination of the LICENSE, the LICENSEE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. LICENSEE’s security deposit may be applied to cover the cost of the fine.

ARTICLE X - INSURANCE AND INDEMNITY

SECTION 10.01 INSURANCE

The LICENSEE agrees to purchase all required insurance at the LICENSEE’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.

The LICENSEE agrees that the LICENSEE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the LICENSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The LICENSEE also agrees that upon cancellation, termination,
or expiration of the LICENSEE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.

If the LICENSEE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the LICENSEE 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 the LICENSEE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the LICENSEE’s employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The LICENSEE further agrees to hold the 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.

The LICENSEE may occupy the Airport Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this LEASE. COUNTY reserves the right to terminate this LEASE at any time the LICENSEE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. LICENSEE shall pay COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. LICENSEE shall provide to COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the LICENSEE pursuant to this LEASE shall provide to COUNTY the required insurance subject to the same terms and conditions as set forth herein for the LICENSEE; excluding General Aviation Liability. All contractors performing work on behalf of the LICENSEE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The LICENSEE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the LICENSEE under this LEASE. It is the obligation of the LICENSEE 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 Airport Premises. Such proof of insurance must be maintained by the LICENSEE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of LICENSEE’s current audited financial report. If LICENSEE’s SIR is approved, LESSEE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from LICENSEE’s, its agents, employee’s or subcontractor’s performance of this Agreement, LICENSEE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2) LICENSEE’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 the LICENSEE’s SIR provision shall be interpreted as though the LICENSEE was an insurer and the COUNTY was the insured.

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

**Coverages**

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation General Liability (Including but not limited to General Liability, Passenger Legal Liability, Personal Injury, Contractual Liability, Premises, Products and Completed Operations, Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td></td>
<td>$250,000,000 aggregate</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims-made or per occurrence</td>
</tr>
<tr>
<td>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</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**
The Aviation General 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 and non-contributing endorsement evidencing that the LICENSEE’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.
2. A primary and non-contributing endorsement evidencing that the LICENSEE’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 policy 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 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 as respects the COUNTY’s financial interest when applicable.

If the LICENSEE’s Pollution Liability policy is a claims-made policy, the LICENSEE 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 (NOTICES) below or to an address provided by Airport Director. The LICENSEE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require the LICENSEE 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 the COUNTY Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify the LICENSEE in writing of changes in the insurance requirements. If the LICENSEE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the LICENSEE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the LICENSEE'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.
SECTION 10.02 INDEMNITY

The LICENSEE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the LICENSEE pursuant to this LICENSE. If judgment is entered against the LICENSEE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the LICENSEE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XI

FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. LICENSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If LICENSEE transfers its obligation to another, the transferee is obligated in the same manner as LICENSEE.

B. LICENSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) LICENSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) LICENSEE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by LICENSEE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by LICENSEE of the LICENSEE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4) LICENSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its
books, records, accounts, other sources of information, and its facilities as may be

determined by the COUNTY or the FAA to be pertinent to ascertain compliance

with such Nondiscrimination Acts and Authorities and instructions. Where

information required of a contractor is in the exclusive possession of another who

fails or refuses to furnish the information, LICENSEE will so certify to the

COUNTY or the FAA, as appropriate, and will set forth what efforts it has made

to obtain this information.

5) In the event of the LICENSEE’s noncompliance with the non-discrimination

provisions of this Lease, the COUNTY will impose such sanctions as it or the

FAA may determine to be appropriate, including, but not limited to: withholding

payments under the contract until the LICENSEE complies, and/or cancelling,

terminating, or suspending a contract, in whole or in part.

6) The LICENSEE will include the provisions of paragraphs one through six in

every sublease or subcontract, including procurements of materials and leases of

equipment, unless exempt by the Acts, the Regulations, and directives issued

pursuant thereto. The LICENSEE will take action with respect to any sublease,

subcontract or procurement as the COUNTY or FAA may direct as a means of

enforcing such provisions including sanctions for noncompliance. Provided, that

if LICENSEE becomes involved in, or is threatened with litigation by a subtenant,

subcontractor, or supplier because of such direction, the LICENSEE may request

the COUNTY to enter into any litigation to protect the interests of the COUNTY.

In addition, the LICENSEE may request the United States to enter into the

litigation to protect the interests of the United States.

C. LICENSEE, for itself, personal representatives, successors in interest, and assigns, as a

part of the consideration hereof, does hereby covenant and agree as a covenant running

with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the

Leased Premises for a purpose for which a FAA activity, facility, or program is

extended or for another purpose involving the provision of similar services or

benefits, LICENSEE will maintain and operate such facilities and services in

compliance with all requirements imposed by the Nondiscrimination Acts and

Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may

be amended) such that no person on the grounds of race, color, or national origin,

will be excluded from participation in, denied the benefits of, or be otherwise

subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from

participation in, denied the benefits of, or be otherwise subjected to discrimination

in the use of said facilities.

3) In the construction of any improvements on, over or under the Leased Premises

and the furnishing of services thereon, no person on the grounds of race, creed,
color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) LICENSEE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. LICENSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. LICENSEE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

8) Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12189, as implemented by 28 CFR parts 35 and 36, and 49 CFR parts 37 and 38 (prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public
accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the LICENSEE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the LICENSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the LICENSEE in this regard.

SECTION 11.03 LICENSE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LICENSE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The LICENSEE agrees that the LICENSEE's use of the Operating Area, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.

The LICENSEE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time
to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Operating Area or in the event of any planned modification or alteration of any present or future building or structure situated on the Operating Area.

SECTION 11.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LICENSE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the LICENSEE in this LICENSE, or any local authorities shall not apply to the LICENSEE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 11.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 11.07 RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Operating Area, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 11.08 HEIGHT LIMITATION OF STRUCTURES

The LICENSEE by accepting this LICENSE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land Licensed hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land Licensed Area hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the LICENSEE. The LICENSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 11.09 NONINTERFERENCE WITH AIRCRAFT

The LICENSEE by accepting this LICENSE agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Operating Area and hereby cause the abatement of such interference at the expense of the LICENSEE.

SECTION 11.10 WAR OR NATIONAL EMERGENCY

This LICENSE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 11.11 AFFIRMATIVE ACTION REQUIREMENTS

The LICENSEE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The LICENSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The LICENSEE assures that it will require that its covered suborganizations provide assurances to the LICENSEE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 11.12 AMERICANS WITH DISABILITIES ACT

The LICENSEE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the LICENSEE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the LICENSEE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The LICENSEE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The LICENSEE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the LICENSEE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The LICENSEE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the LICENSEE’s failure to comply with the ADA.
SECTION 11.13  BOARDING ASSISTANCE FOR AIRCRAFT

In accordance with 49 C.F.R. § 27.72, the LICENSEE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The LICENSEE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the LICENSEE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The LICENSEE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the LICENSEE owns and operates additional ramps, the LICENSEE shall maintain those ramps in proper working condition. The LICENSEE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01  TIME

Time is of the essence in this LICENSE.

SECTION 12.02  LICENSE ORGANIZATION

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

SECTION 12.03  AMENDMENTS

This LICENSE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 12.04  SIGNS

LICENSEE agrees not to construct, maintain or allow any sign upon the Operating Area except as approved by COUNTY. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the LICENSEE.

LICENSEE will not place any signs or advertising materials in any location within the Licensed area or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of promotional signs for the LICENSEE shall be accompanied by illustrative drawings and design dimensions along with information about the type of signs proposed, and proposed locations. All approved signs shall be allowed to remain in the terminal...
for ninety (90) days. The COUNTY may without notice remove any unauthorized signs or advertising materials, and may store them at the LICENSEE’s expense; COUNTY may dispose of items if they are not promptly claimed by the LICENSEE after notice from the COUNTY.

SECTION 12.05 PERMITS AND LICENSES

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

SECTION 12.06 RESERVED

SECTION 12.07 TAXES AND ASSESSMENTS

This LICENSE may create a possessory interest that 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) that become due and payable upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the LICENSEE, and the LICENSEE shall cause said taxes and assessments to be paid promptly.

SECTION 12.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the LICENSEE from the prompt payment of any rental or other charge required of the LICENSEE except as may be expressly provided elsewhere in this LICENSE.

SECTION 12.09 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this LICENSE 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.

SECTION 12.10 WAIVER OF RIGHTS

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

SECTION 12.11 RESERVATIONS TO THE COUNTY

The Operating Area is accepted "AS IS" and the LICENSEE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Operating Area or any part thereof; and to enter the Operating Area for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Operating Area. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the LICENSEE's operations hereunder or to impair the security of any secured creditor of the LICENSEE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Operating Area by the LICENSEE, the LICENSEE shall only be entitled to a reduction in the fees and charges payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the LICENSEE's use of the Operating Area. The LICENSEE shall not be entitled to any other form of compensation.

SECTION 12.12 AUTHORITY OF LICENSEE

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

SECTION 12.13 PUBLIC RECORDS

The LICENSEE understands that written information submitted to and/or obtained by the COUNTY from the LICENSEE related to this LICENSE and/or the Operating Area, either pursuant to this LICENSE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.
SECTION 12.14  RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of Licensor and Licensee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the LICENSEE in the conduct of the LICENSEE's business or otherwise, or a joint venturer with the LICENSEE; and the provisions of this LICENSE and the agreements relating to fees and charges payable hereunder are included solely for the purpose of providing a method by which fees and charges payments are to be measured and ascertained. This LICENSE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 12.15  GOVERNING LAW AND VENUE

This LICENSE 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 LICENSE, 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. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 12.16  ATTORNEYS’ FEES

In any action or proceeding to enforce or interpret any provision of this LICENSE, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.

SECTION 12.17  EMERGENCY SERVICES

Airport Director has the right to request that the LICENSEE’S employees aid in and use LICENSEE’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The LICENSEE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.

SECTION 12.18  NOTICES

All notices pursuant to this LICENSE shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above COUNTY may also provide notices to the LICENSEE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date
of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO:  COUNTY
     John Wayne Airport
     3160 Airway Avenue
     Costa Mesa, CA  92626

TO:  LICENSEE
     SkyWest Airlines, Inc.
     Director of Properties
     444 S. River Road
     St. George, UT  84770-2085

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
IN WITNESS WHEREOF, the parties have executed this LICENSE the day and year first above written.

SKYWEST AIRLINES, INC.
By: [Signature]
By: [Signature]

APPROVED AS TO FORM:
County Counsel
By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:
Auditor-Controller
By: [Signature] 10/27/20

RECOMMENDED FOR APPROVAL:
John Wayne Airport
By: [Signature]
Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY
COUNTY OF ORANGE
By: [Signature]
Chairwoman, Board of Supervisors

Robin Stieler,
Interim Clerk of the Board of Supervisors
of Orange County, California
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE

Dated ____________

Between

County of Orange

and

Horizon Air Industries, Inc.
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THIS CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE is made and entered into this ___ day of __________, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“the COUNTY”), and HORIZON AIR INDUSTRIES, INC. (“the LICENSEE”).

RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “the Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the LICENSEE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the LICENSEE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport’s approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions derive from in the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, and are implemented through ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as they may be amended from time to time; and

WHEREAS, the 1985 Settlement Agreement has been periodically amended by its parties to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, “grandfathered” under the AIRPORT NOISE AND CAPACITY ACT OF 1990 (“ANCA”), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, nighttime operational restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the LICENSEE mutually desire to enter into a LICENSE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the LICENSEE for the operation of the LICENSEE’s air transportation services; and
WHEREAS, the LICENSEE acknowledges that this LICENSE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5, et seq., and in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this LICENSE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AAAC

“AAAC” shall mean the John Wayne Airport – Airport Airline Affairs Committee. The AAAC is composed of the airline property representatives for the carriers serving John Wayne Airport.

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving John Wayne Airport.

SECTION 1.03 ACCESS PLAN

“Access Plan” shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LICENSE.

SECTION 1.04 ADD

“ADD” shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

SECTION 1.05 AIRLINE RATES AND CHARGES

“Airline Rates and Charges” shall mean all rates, fees and charges payable to the COUNTY by the LICENSEE as specified herein.

SECTION 1.06 AIRPORT

“Airport” shall mean the John Wayne Airport, Orange County, California.
SECTION 1.07 AIRPORT DIRECTOR

“Airport Director” shall mean the Director of JWA, or his or her duly authorized designee.

SECTION 1.08 APRON AREA

“Apron Area” shall mean the land identified as Apron Area in Exhibit A attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

SECTION 1.09 AUDITOR-CONTROLLER

“Auditor-Controller” shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.10 BOARD OF SUPERVISORS

“Board of Supervisors” shall mean the COUNTY’S governing body.

SECTION 1.11 CBP


SECTION 1.12 CERTIFICATED MAXIMUM LANDING WEIGHT

“Certificated Maximum Landing Weight” shall mean the current maximum allowable gross landing weight of aircraft operated by the LICENSEE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

SECTION 1.13 COMMON USE AREA

“Common Use Area” shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit B.

SECTION 1.14 COUNTY

“COUNTY” shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.15 CUPPS

“CUPPS” shall mean the Airport's Common Use Passenger Processing System

SECTION 1.16 CUSS

“CUSS” shall mean Common Use Self Service.
SECTION 1.17 EMV

“EMV” shall mean Europay, Mastercard, or Visa.

SECTION 1.18 DOT

“DOT” shall mean the U.S. Department of Transportation.

SECTION 1.19 ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (ii) Clean Water Act, 33 U.S.C. § 1251 et seq.; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq.; (iv) 49 C.F.R. Parts 173 and 175; (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 et seq.; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 et seq.; (viii) the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 et seq.; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, et seq.; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Arealwide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Substances into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.
SECTION 1.20 FAA

“FAA” shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may have similar jurisdiction over LICENSEE or its business, and the Airport.

SECTION 1.21 GSE

“GSE” shall mean any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier in support of its operations at JWA.

SECTION 1.22 HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Substances” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.23 IAF

“IAF” shall mean the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

SECTION 1.24 NON STORM WATER DISCHARGE

"Non-Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non-Storm Water Discharge," includes "Unauthorized Non-Storm Water Discharges" and "Authorized Non-Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board's National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.25 OPERATING AREA

“Operating Area” shall mean the areas of the Airport available to LICENSEE for the operation of its scheduled airline service.
SECTION 1.26 PFC

“PFC” shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. § 40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LICENSE.

SECTION 1.27 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);

b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);

c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;

d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);

e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;

f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;

g. Materials which contain base/neutral or acid extractable organic compounds;

h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;

i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and

j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.28 RON

“RON” shall mean the remain overnight positions where the LICENSEE's aircraft are required to park when they “remain overnight” at JWA.

SECTION 1.29 STORM WATER

“Storm Water” shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.
SECTION 1.30 TERMINAL

“Terminal” shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LICENSE.

SECTION 1.31 TSA

“TSA” shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

ARTICLE II – TERM OF LICENSE

SECTION 2.01 TERM OF LICENSE

The term of this LICENSE shall commence on January 1, 2021, and shall continue on a month-to-month basis until terminated by either party.

SECTION 2.02 TERMINATION FOR CONVENIENCE

This LICENSE may be terminated for convenience by either party for any reason, and without cause, upon thirty (30) days written notice.

ARTICLE III – FEES AND CHARGES

SECTION 3.01 FEES AND CHARGES

The fees and charges contained in this LICENSE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, Fourth Supplemental, Fifth Supplemental, and Sixth Supplemental Indenture, Series 1993, 1997, 2003, 2009 and 2019. The Airport Director and the AAAC Chair shall present any modifications to the fees and charges to the AAAC prior to implementation.

A. The LICENSEE shall make payment of the following fees and charges which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the LICENSEE agrees that the COUNTY will not invoice for such fees and charges:

(1) Common Use Areas

(a) Arrival Level. The COUNTY shall establish fees for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial
airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline’s percentage of total deplaned passengers at the Airport including their commuter affiliates.

(b) Departure Level. The COUNTY shall establish fees for shared use of departure level common areas including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline’s percentage of total enplaned passengers at the Airport including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline’s percentage of total aircraft departures.

COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 3.01. Said modification of rates and charges may not occur more often than every six (6) months. Modifications may include fee revisions, the establishment of new fee classifications, or such other changes as needed to respond to the LICENSEE's use of the Airport. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the LICENSEE or invoice the LICENSEE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use based on a thirty (30) day month. The fees for any partial calendar month during which this LICENSE becomes effective will be payable on such effective date.

(c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established based on the Airport's total costs and expenses associated with the IAF area. The IAF shall be allocated to commercial carrier operating international flights according to the carrier’s ratio of international deplaned passengers and the schedule established by the COUNTY.

(d) CBP. Costs shall be passed-through to commercial carriers operating international flights based on international deplaned passengers at JWA and the schedule established by the COUNTY.

(e) CUPPS. Fees shall be established by the COUNTY for the implementation, maintenance, support, services and supplies, and periodic
upgrades of the Common Use Passenger Processing System (CUPPS). Said fees shall be established and allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

In the event of future CUPPS upgrade implementation due to technological requirement or regulatory compliance, the cost of CUPPS upgrade shall be amortized over three years, allocated according to departure activities allocation methodology, as follows: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each airlines percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

(1) The JWA CUPPS has EMV credit card capability. JWA will not activate this capability until the JWA AAAC agrees to its activation, in whole or in part, using a processing system acceptable to the affected airlines and JWA.

(2) In the event LICENSEE does not use JWA’s installed EMV chip credit card processing system, the COUNTY will not be liable for fraudulent credit card transactions by LICENSEE customers and LICENSEE shall indemnify the COUNTY pursuant to Section 10.02 of this LICENSE for such transactions.

(2) Additional Fees

The COUNTY shall establish additional fees including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating Airport’s total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the cost to be shared based on each commercial airlines percentage of total enplaned passengers at Airport including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline’s percentage of total aircraft departures.
B. The LICENSEE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The LICENSEE agrees that the COUNTY will not invoice for the following fees and charges, and may require LICENSEE to submit future monthly report electronically via JWA’s portal and prescribed format. COUNTY will make reasonable efforts to develop and electronic format that allows LICENSEE to efficiently report information requested.

(1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.

(2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.

(3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.

C. Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the fees and charges described in Paragraphs A and B of section 3.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications or such other changes as needed to respond to the LICENSEE's use of Airport, the need for the COUNTY to receive fair and equitable fees and charges for all uses of Airport and to insure Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable fees and charges, the LICENSEE shall first exhaust all remedies provided by applicable federal law and FAA regulations. At the end of each modification period, the COUNTY shall establish monthly fees and issue credits for any overpayments by the LICENSEE or invoice the LICENSEE for any underpayments for the previous period.

Notwithstanding anything in this LICENSE to the contrary, all amounts payable by the LICENSEE to or on behalf of the COUNTY under this LICENSE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The LICENSEE shall notify Airport in writing within thirty (30) days of filing a petition for Bankruptcy.

SECTION 3.02 PAYMENT PROCEDURE

A. Place of Payment and Filing. Payments and statements required by Sections 3.01 and 4.06 in this LICENSE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the LICENSEE. Payments
may be remitted by automated clearing house (ACH)/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The LICENSEE assumes all risk of loss if payments are made by mail.

B. **Form of Payment.** All sums due under this LICENSE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the LICENSEE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LICENSE. All electronic payments must be remitted by Automated Clearing House (ACH)/direct deposit to the Airport’s designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY’s bank account due to the use of other form of payment (e.g., wire transfer) not prescribed or approved by the COUNTY, shall be passed-through to LICENSEE plus a twenty-five dollar ($25) processing fee.

C. **Penalty for NSF Check** In the event a check submitted by LICENSEE is returned for non-sufficient funds (“NSF”), LICENSEE agrees to pay COUNTY a service charge in the amount of twenty-five dollars ($25) for the first returned check, and thirty-five dollars ($35) for each subsequent check. LICENSEE may also be liable for treble damages pursuant to California Civil Code Section 1719.

**SECTION 3.03 CHARGE FOR LATE PAYMENT**

The LICENSEE hereby acknowledges that the late payment of fees and charges or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LICENSE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, or lost interest income.

Accordingly, if any payment of fees and charges as specified in Section 3.01 in this LICENSE entitled “FEES AND CHARGES” or of any other sum due to the COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars ($100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The LICENSEE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the LICENSEE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of LICENSEE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.
SECTION 3.04  PASSENGER FACILITY CHARGE

The COUNTY expressly reserves the right to impose PFCs on LICENSEE’s passengers for the use of the Airport in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, including 14 C.F.R. Part 158, as they may be amended from time to time (the “PFC Regulations”).

The LICENSEE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY. For the purposes of this Section 3.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY, reduced by any amount that the LICENSEE is permitted to retain pursuant to 49 U.S.C. § 40117 and the PFC Regulations. Monthly PFCs collected by the LICENSEE shall be remitted to the COUNTY no later than the last day of the following calendar month or if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the LICENSEE shall be remitted to the COUNTY at the address specified in Section 3.02, Part A, “Place of Payment and Filing” or at such other place as designated by the COUNTY.

Should the LICENSEE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the LICENSEE shall be deemed to be in default pursuant to Article VIII hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars ($100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 3.03 of this LICENSE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFC’s. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.

SECTION 3.05  PROVISION AGAINST SET-OFFS

It is the obligation of the LICENSEE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LICENSE. In the event that the LICENSEE desires to contest the validity or amount of any such fees and charges, the LICENSEE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

SECTION 3.06  SECURITY DEPOSIT

The LICENSEE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

Concurrently with each revision of the fees and charges pursuant to the Section 3.01 in this LICENSE, the security deposit to be provided by the LICENSEE shall be adjusted to approximately three (3) times the estimated monthly fees and charges as determined by the
Airport Director to guarantee the faithful performance by the LICENSEE of its obligations under this LICENSE and the payment of all fees and charges due hereunder. PFCs shall be excluded from the fees and charges used to determine the LICENSEE’s security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the LICENSEE’s full and faithful performance of all the terms, covenants, and conditions of this LICENSE:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the terms, covenants, and conditions of this LICENSE are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the LICENSEE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the LICENSEE, including the payment of use fees, charges, as well as any and all other payments. Said bond shall be maintained at the cost of the LICENSEE throughout the existence of this LICENSE. Said Surety shall give Airport Director a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's prior written consent shall constitute a default under this LICENSE.

Regardless of the form in which the LICENSEE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LICENSE by the LICENSEE, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the LICENSEE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LICENSE.

Should the LICENSEE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LICENSE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by Airport Director.

In the event Airport Director withdraws all or any portion of the security deposit as provided herein, the LICENSEE shall, within ten (10) days of any withdrawal by Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the term of this LICENSE. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LICENSE, as per article VIII of this LICENSE.
The LICENSEE shall be obligated to maintain the security deposit in effect until the expiration date or earlier termination of this LICENSE.

The security deposit, after deduction of all amounts due to the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the LICENSEE or order, as applicable, after one hundred twenty (120) days have elapsed or at an earlier time to be determined by the Airport Director, following the expiration date of the term of this LICENSE, provided the LICENSEE has fully and faithfully performed each and every term, covenant, and condition of this LICENSE.

SECTION 3.07 NEW ENTRANT DEPOSIT

A cash security deposit in the sum of Five Hundred Thousand Dollars ($500,000.00) shall be provided by a new entrant LICENSEE prior to the commencement of operations.

This deposit shall be returned to the new entrant LICENSEE after six (6) months of continuous operation.

ARTICLE IV - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 4.01 USE

The COUNTY hereby grants to the LICENSEE the authorization to conduct a scheduled commercial airline operation at the Airport and for no other purpose whatsoever. Said operation shall be conducted in accordance with an agreement between the LICENSEE and another commercial airline(s) and subject to the terms and conditions of the Certificated Passenger Airline Lease between the COUNTY such other commercial airline(s). The terms and conditions of this LICENSE shall prevail in the event of any conflict with said agreement between the LICENSEE another commercial airline(s) and subject to the limitations set forth in the Sections 4.03 and 4.05 in this LICENSE, this operation may include any or all of the following uses and no other uses whatsoever:

AUTHORIZED USES:

A. Loading and unloading of passengers.

B. Loading and unloading of baggage.

C. Passenger processing operations.

D. Flight operations office.

E. The LICENSEE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the LICENSEE in the conduct of its air transportation service.
F. Mail, freight and cargo operations but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The LICENSEE shall not conduct any operations at the Airport with aircraft which are:

1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or

2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.

G. Air charter activities in compliance with Access Plan.

H. Commissary services for the LICENSEE's employees at the Airport and in-flight catering services in support of the LICENSEE's air operations at the Airport. This does not permit the LICENSEE to conduct commissary or in-flight services for any other LICENSEE or other person at Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.

I. Employee training incidental to the other uses permitted under this Section.

J. Other uses as authorized by the Airport Director.

SECTION 4.02 USE OF PUBLIC AIRPORT FACILITIES

The COUNTY grants the LICENSEE a LICENSE for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the LICENSEE's aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of Airport Director.

This LICENSE for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

SECTION 4.03 RULES AND REGULATIONS

The COUNTY may adopt and enforce “Airport Rules and Regulations” that the LICENSEE agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and LICENSEE’s rights under this LICENSE. Except in the case of emergency, the COUNTY shall
give the LICENSEE written notice and opportunity to comment on any proposed changes or additions to the Airport Rules and Regulations that could impact the LICENSEE’s operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such Airport Rules and Regulations to the LICENSEE.

The LICENSEE’s operation under the LICENSE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE's violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to LICENSEE’s operation under this LICENSE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers related to LICENSEE’s operation under this LICENSE.

The COUNTY shall not be liable to the LICENSEE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LICENSE, nor shall the LICENSEE be entitled to terminate the whole or any portion of the operating area herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the LICENSEE's use and occupancy of the Operating Area so as to constitute a termination in whole or in part of this LICENSE by operation of law in accordance with the laws of the State of California.

SECTION 4.04 ACCESS PLAN LIMITATIONS ON USE

The LICENSEE agrees that:

A. Notwithstanding any provision in this LICENSE to the contrary, the LICENSEE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the LICENSEE's activities and operations at the Airport.

B. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are a privilege that may be revoked or modified by the COUNTY at any time during the terms of this LICENSE, and that such privileges do not constitute property rights of the LICENSEE.
C. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are not transferable, assignable or delegable by the LICENSEE to any other person or entity, by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the LICENSEE at any time for any purpose.

D. That the remedies specified in the Access Plan for any Access Plan violation by the LICENSEE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LICENSE.

E. That LICENSEE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect inconsistent with the terms and provisions of this Section; except that nothing in this Section shall prevent the LICENSEE from making any argument or asserting any position to the COUNTY as applicable in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.

F. All provisions of Section 4.01 and 8.02 in this LICENSE are subject to the terms, provisions and limitations of this Section.

SECTION 4.05 OPERATIONAL REQUIREMENTS

The LICENSEE agrees to abide by the following operational conditions and requirements:

A. **Flight Operations and Reallocations.** The number of allocated ADDs, including “regularly scheduled,” “charter,” “maintenance” and “cargo” shall not exceed the number of departures authorized and allocated to the LICENSEE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LICENSE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the LICENSEE under the provisions of the Access Plan. The LICENSEE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the LICENSEE by action of the Board of Supervisors; the LICENSEE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and the LICENSEE has met all other applicable COUNTY requirements.

B. **Hours of Operation.** Except as expressly authorized, the LICENSEE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) (local time) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays) (local time), as measured at any JWA noise monitoring station.
The LICENSEE acknowledges that the COUNTY may by regulation permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as “Class E” aircraft, as that term is defined in the Access Plan. The LICENSEE does now, or may during the term of this LICENSE, operate Class E aircraft at the Airport; nevertheless, the LICENSEE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The LICENSEE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LICENSE shall be included in all Licenses, operating agreements or other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

C. **Aircraft Types.** The LICENSEE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The LICENSEE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.

D. **Gate Management.** LICENSEE agrees to utilize gate management software, access/equipment provided by AIRPORT, to upload and maintain current daily arrival and departure information for aircraft operations to jetbridge/hardstand gates and RONs utilized by LICENSEE.

E. **Noninterference.** The LICENSEE shall cooperate with and not interfere with the COUNTY’s and other airlines’ use of and operations at the Airport. The LICENSEE shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

F. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

**SECTION 4.06 RECORDS AND ACCOUNTS**

A. **Records.** The LICENSEE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LICENSE. The LICENSEE shall maintain such
records for a period of five years beyond the expiration or earlier termination of this LICENSE.

B. **Reports.** The LICENSEE shall provide to Auditor-Controller and Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the LICENSEE's operations at Airport including, but not limited to, the total number of all aircraft operations conducted by the LICENSEE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The LICENSEE must attest that the list is an accurate representation of the LICENSEE's activity for the month.

The LICENSEE shall also provide to the Airport Director, for each day, a copy of the LICENSEE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., local time) of the following day.

C. **Audits.** All the LICENSEE's records and supporting source documents related to rates and fees in this LICENSE or to business operations conducted within or from the Operating Area shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after written notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times, as set out herein, for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the LICENSEE, may authorize the above referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the LICENSEE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the LICENSEE if either or both of the following conditions exist:

(1) The audit reveals an underpayment of more than two percent (2%) between the fees and charges due as reported and paid by the LICENSEE in accordance with this LICENSE and the fees and charges due as determined by said audit; and/or
(2) The LICENSEE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A, above. The adequacy of records shall be determined at the sole discretion of the COUNTY’s Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the LICENSEE, shall be included as fees and charges for the first month following invoice to LICENSEE.

Upon the request of Auditor-Controller, the LICENSEE shall promptly provide, necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LICENSE and to the LICENSEE’s use of the Operating Area.

D. Failure to Maintain Adequate Records. In addition to any other remedies available to the COUNTY under this LICENSE, at law or in equity, in the event that the LICENSEE fails to maintain and keep records and accounts from business operations conducted on or from the Operating Area and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LICENSE, the COUNTY, at the COUNTY’s option, may:

(1) Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of fees and charges payable by the LICENSEE under this LICENSE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the LICENSEE upon demand.

(2) Require that the LICENSEE pay fees and charges based on the COUNTY’s best good faith estimate of the LICENSEE’s activities from business operations conducted on or from the Operating Area and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the LICENSEE.

Costs payable by the LICENSEE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY’s employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits and the COUNTY’s overhead or, at Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the LICENSEE shall be included as fees and charges for the first month following invoice to the LICENSEE.
SECTION 4.07 MAINTENANCE AND OPERATION

The LICENSEE agrees to provide approved containers for trash and recycling and to keep the Operating Area free and clear of rubbish and litter. Airport Director shall have the right to enter upon and inspect the LICENSEE’s Operating Area and other Airport facilities at any time for cleanliness, safety and maintenance inspections as set out herein.

The LICENSEE shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

The LICENSEE shall immediately notify the Airport Director and the Airport Operations Center (“AOC”) of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

The LICENSEE agrees to maintain or make repairs or replacements, including removal of all its GSE and/or any of the LICENSEE materials at its loading and unloading operations at the end of its approved hours of operation. If the LICENSEE fails to maintain, make repairs, replacements or removals, as required herein, the Airport Director shall notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

The LICENSEE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the LICENSEE’s property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Operating Area, except to the extent caused by the COUNTY’s negligence or willful misconduct.

SECTION 4.08 APRONS, GATE POSITIONS AND LOADING BRIDGES

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the LICENSEE by reason of proximity of such facilities to the LICENSEE’s gate loading positions.

The LICENSEE shall maintain, at its sole expense, apron, aircraft gate positions and aircraft
loading bridges in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers. LICENSEE shall promptly remove all oil and grease spillage attributable to the LICENSEE’s aircraft or equipment.

If the LICENSEE fails to perform its obligations in such regard, to perform such as maintenance, cleaning, or repair as the COUNTY reasonably deems necessary, the Airport Director shall notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the time specified in the notice, the Airport Director 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 and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at his or her option, choose other remedies available herein, or as provided by law.

SECTION 4.09 ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES

All assignment of gate positions (i.e., aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he may determine is appropriate. The Airport Director, in making assignments of gate (i.e., loading bridge and hardstand) positions to the LICENSEE, may take into account the needs and requirements of the LICENSEE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

SECTION 4.10 VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 4.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. Vehicles and equipment used upon, over and across the apron and around the passenger terminal building should be in good working order and free of leaks. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.
SECTION 4.11 AIRCRAFT PARKING

The LICENSEE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the LICENSEE subject to the Section 3.01 in this LICENSE.

If, in the judgment of the Airport Director, it becomes necessary to move the LICENSEE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then LICENSEE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the LICENSEE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at Airport, the LICENSEE shall:

A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and

B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting there from to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from Airport or stored at a location approved by Airport Director.

Should the LICENSEE fail to remove said aircraft, or should aircraft owned or operated by the LICENSEE be abandoned on Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the LICENSEE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefore. The LICENSEE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the LICENSEE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the LICENSEE's use. The LICENSEE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in his or her sole discretion.

SECTION 4.12 PORTER SERVICES

The LICENSEE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The LICENSEE shall provide the Airport Director a plan which enumerates the salient features.
of its porter services arrangements and a copy of its agreement if service is provided by other than the LICENSEE’s employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines’ podiums. The LICENSEE’s plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

**ARTICLE V - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION**

**SECTION 5.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE**

The LICENSEE agrees that it shall abide with all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 et seq. The LICENSEE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the LICENSEE’s business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The LICENSEE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LICENSE, the LICENSEE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The LICENSEE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the LICENSEE. In conducting a clean-up of a Hazardous Substance release under this LICENSE, the LICENSEE shall comply with applicable Environmental Laws. Hazardous waste generated by the LICENSEE or its contractors shall be disposed properly and under the LICENSEE’s EPA ID number.

The LICENSEE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport’s Storm Water Discharge Permit. The LICENSEE shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the LICENSEE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The LICENSEE shall bear all costs and
any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The LICENSEE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 et seq. The LICENSEE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the LICENSEE.

SECTION 5.02 SPILL RESPONSE PLAN

Airlines and fueling companies are required to provide (separately or collectively) a Local Spill Response Action Plan to address specific spill response management. Airlines are encouraged to coordinate response efforts between the airlines and fueling contractors. At a minimum, the plan should address the following:

a) Response team organization, members, and responsibilities;
b) Spill response procedures (including notifications);
c) Personnel training;
d) Personal protective equipment; and
e) Spill kit inventory and management

The LICENSEE shall immediately notify the Airport Director and the AOC of any emergency posing a threat to the safety or security of any persons or property at the Airport, including but not limited to any fire, accident, serious injury or property damage, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, or any Non-Storm Water Discharge. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings. The LICENSEE is responsible to mitigate such spills and perform any remediation necessary to satisfy the applicable federal, state, or local oversight agencies. If the COUNTY personnel, equipment, or third party services are needed to support mitigation, the COUNTY will be reimbursed by the LICENSEE for labor, equipment, and third party costs for all services provided. In addition to reimbursing the COUNTY for the costs of all services provided by third parties to mitigate such spills, the LICENSEE shall pay to County administrative costs in the amount of five thousand dollars ($5,000) per incident. Said costs shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the COUNTY.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE’s violation of any governmental rules, environmental laws, regulations or standards as now or may hereafter be promulgated or enacted, related to LICENSEE’s operation under this LICENSE, including, but not limited to, the payment of any fines or penalties arising from any breach of security, fire, emergency, accident, or spill or release of fuel, lubricants, solvents, sewage, Hazardous Substances, Non-Storm Water Discharge, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers related to LICENSEE’s operation under this LICENSE.
SECTION 5.03 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the LICENSEE shall indemnify, defend, and hold the COUNTY, its officers, and employees harmless, from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions or inaction by the LICENSEE, the LICENSEE's operations at the Airport or any action arising from and which involve the LICENSEE’s officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

(1) The LICENSEE's placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the LICENSEE's release of Hazardous Substances on the Airport since the time the LICENSEE first occupied the Airport.

(2) The LICENSEE's release of Hazardous Substances upon or within the Airport.

(3) The LICENSEE's violation of any applicable Environmental Law, except that the LICENSEE's obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LICENSE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the LICENSEE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the LICENSEE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the LICENSEE or if it is controlled by or under common control with the LICENSEE.

(4) The LICENSEE's causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 6.01 of this LICENSE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the LICENSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors who are directly responsible to the COUNTY.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the LICENSEE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the LICENSEE because of the concurrent negligence of the COUNTY and the LICENSEE or their respective
officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the LICENSEE agree that neither party shall request a jury apportionment. Nothing stated in this LICENSE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LICENSE.

The rights and obligations set forth in this indemnification shall survive the termination of this LICENSE.

SECTION 5.04 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LICENSE, the environmental requirements contained in this Article shall apply.

SECTION 5.05 ENVIRONMENTAL STEWARDSHIP

The LICENSEE shall support the COUNTY’s Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans, as applicable. COUNTY shall provide LICENSEE advance notice of any proposed changes to the following plans that may affect AIRLINE operations:

A. Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District.

B. Climate Action Plan.

C. Waste Management Plan.

D. Storm Water Pollution Prevention Plan.

The LICENSEE shall implement and support the following environmental policies:

A. Adopt and adhere to at least one of the following GSE requirements: (1) GSE electrification requirement of a 35% increase above baseline by 2021 and 50% increase above baseline by 2026. The baseline electrification conditions are established by reference to calendar year 2013. Or (2) GSE associated with commercial operations achieve a fleet average NOx emission factors of 1.7 and 0.9 grams per brake horsepower hour (g/bhp-hr) in 2023 and 2031, respectively. The LICENSEE shall develop and provide to JWA a GSE improvement plan to demonstrate how the GSE requirement will be met within 6 months of LICENSE execution.

B. The LICENSEE shall utilize single/reduced engine taxiing procedures, when feasible and appropriate under the circumstances.

C. The LICENSEE has been provided a copy of the COUNTY’s Environmentally Preferable
Purchasing Policy (2012) and shall consider developing a similar policy that addresses the LICENSEE’s procurement of goods and services as applicable.

D. The LICENSEE shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 6 months of LICENSE execution.

E. Upon request, the LICENSEE shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations including but not limited to GSE data, fuel usage, spills, and business emergency plans.

SECTION 5.06 ANTI-IDLING POLICY

Within six months of LICENSE execution, LICENSEE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. LICENSEE’s policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the LICENSEE.

ARTICLE VI - CONSTRUCTION AND IMPROVEMENTS

SECTION 6.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate LICENSEE's Operating Area. The COUNTY shall provide the LICENSEE advance notice of such action and shall make every reasonable effort to provide the LICENSEE alternative space that is reasonably to provide comparable for the LICENSEE’s operations at the same rates and charges that the LICENSEE would have paid for the space being surrendered. In the event no alternative space is available, the LICENSEE shall surrender its space promptly to the COUNTY, provided that the LICENSEE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the LICENSEE’s unamortized investment, if any, as documented by the LICENSEE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and LICENSEE. All of such costs, as well as the COUNTY’s cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

SECTION 6.02 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The LICENSEE shall be responsible for any damage caused by the LICENSEE, or the LICENSEE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access
roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the LICENSEE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the LICENSEE. Said cost shall include all labor, materials, equipment costs and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the Airport Director. Except as otherwise provided herein, termination of this LICENSE shall not reduce or nullify the LICENSEE's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, the LICENSEE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

SECTION 6.03 HEALTH AND SAFETY

The LICENSEE shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The LICENSEE shall post on the Operating Area and at all construction sites a copy of “Construction Safety Orders” and “General Industry Safety Orders” issued by the California State Division of Industrial Safety.

The LICENSEE shall, within thirty (30) days after the execution of this LICENSE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The LICENSEE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The LICENSEE and/or LICENSEE's contractor shall submit, prior to the start of any tenant improvements, the LICENSEE or LICENSEE's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The LICENSEE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the LICENSEE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

ARTICLE VII - ASSIGNMENT

SECTION 7.01 ASSIGNING AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 4.04 of this LICENSE.

A. Transfers. The LICENSEE shall not transfer or assign (hereinafter referred to as “Transfer”) any interest of the LICENSEE in the LICENSE without the prior written approval of the COUNTY. The LICENSEE shall give the COUNTY thirty (30) days prior written notice of all proposed Transfers. The LICENSEE shall not make any such Transfers for a period longer than the remaining term of the LICENSE.
If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LICENSE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LICENSE, and in the event of any inconsistency, the provisions of this LICENSE shall govern.

If the LICENSEE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the LICENSEE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the LICENSEE to obtain the prior written approval by the COUNTY of any Transfer of the LICENSE or the Operating Area shall constitute a material breach of this LICENSE by, and shall not confer any rights to the Operating Area upon the transferee. Such failure shall be grounds for termination of this LICENSE for default pursuant to Section 8.02.

B. **Conditions of COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

1. The LICENSEE, its successors or assigns are in default of any term, covenant or condition of this LICENSE, whether notice of default has or has not been given by the COUNTY.

2. The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LICENSE.

3. The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LICENSE obligations, as determined by the Airport Director.

4. Subtenant's use is in conflict with the terms of this LICENSE.

5. All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.

6. Any construction required of LICENSEE as a condition of this LICENSE has not been completed to the satisfaction of COUNTY.

7. The LICENSEE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, etc.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations with respect to transactions and aircraft operations at the Airport involving
affiliations of commercial airlines operating, or desiring to operate, at the Airport (“the affiliate policy”). The LICENSEE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of COUNTY’s regulation of the Airport.

The LICENSEE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The LICENSEE agrees to comply fully and completely with the affiliate policy and all related regulations that appear in the Access Plan and or this LICENSE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of paragraph A, above. In the event an affiliate transaction involving the LICENSEE is initiated, then not later than the time when the affiliate transaction is publicly announced:

(1) The LICENSEE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.

(2) If the affiliate transaction is initiated by the LICENSEE, the LICENSEE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with Federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the LICENSEE, the LICENSEE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the LICENSEE.

(3) In addition to all other obligations of the LICENSEE, if the affiliate transaction involves the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the LICENSEE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LICENSE, or a Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and COUNTY.

Notwithstanding any other provision of this LICENSE, the LICENSE may be terminated by COUNTY on thirty (30) days' notice to LICENSEE without further obligation of COUNTY, and without any liability of the COUNTY to the LICENSEE whatsoever, if:
(4) The LICENSEE fails to comply with paragraph C. of this Section; or if

(5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the LICENSEE and its affiliate(s); or if

(6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the LICENSEE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the LICENSEE assumes this LICENSE or proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, et seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

1. The name and address of proposed assignee;

2. All of the terms and conditions of such offer; and

3. Adequate assurance to COUNTY of the proposed assignee’s future performance under the LICENSE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LICENSE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this LICENSE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by the Section 4.05 in this LICENSE and the Access Plan are not property interests of the LICENSEE and are non-transferable in any form, and as such, are not subject to sale, assignment, and transfer by the LICENSEE under the terms of this Section. Any such attempted assignment, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LICENSE.

SECTION 7.02 SUCCESSORS IN INTEREST

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

ARTICLE VIII - TERMINATION AND DEFAULT
SECTION 8.01    TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LICENSE shall terminate and supersede any prior Licenses or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the LICENSEE at the Airport.

SECTION 8.02    TERMINATION FOR DEFAULT

The COUNTY may terminate this LICENSE and all of its obligations hereunder with or without prior notice to the LICENSEE and may exercise all rights of entry for default and breach, if the LICENSEE fails to perform on any of its obligations under this LICENSE, including, but not limited to:

A. Payment of fees, charges and PFCs;  
B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;  
C. The issuance of any execution or attachment against the LICENSEE at the Airport which is undischarged within sixty (60) days of levy or seizure or if the operating area are occupied by someone other than the LICENSEE;  
D. The voluntary vacation or abandonment by the LICENSEE of the conduct of air transportation business at the Airport;  
E. The violation by the LICENSEE of any of the terms of any insurance policy referred to in the LICENSE;  
F. If the LICENSEE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the LICENSEE's business;  
G. The violation or breach of any provision of the Access Plan;  
H. The violation of any written directions of the Airport Director;  
I. The appointment of a receiver to take possession of all, or substantially all, the assets of the LICENSEE located at the Airport.

Where applicable, and unless otherwise stated in this LICENSE, or by written notice, the LICENSEE shall have fifteen (15) calendar days to cure any default prior to termination of this LICENSE, or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the Airport Director’s discretion.

SECTION 8.03    DISPOSITION OF ABANDONED PERSONAL PROPERTY
If the LICENSEE abandons or terminates its operation or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the LICENSEE and left on the Airport fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the LICENSEE or to any person claiming under LICENSEE, and shall have no need to account therefor. Personal property left on the operating area after termination, expiration, or abandonment of the LICENSEE shall not be construed as giving LICENSEE possession of the Operating Area during the fifteen (15) days after termination, expiration or abandonment of the LICENSEE.

ARTICLE IX - SECURITY

SECTION 9.01 AIRPORT SECURITY

The LICENSEE shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. The LICENSEE is responsible for fines imposed by any regulatory agency as a result of the LICENSEE’s failure to comply with applicable rules regulations, orders, plans, and procedures regarding airport security.

The LICENSEE employees subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this LICENSE. The LICENSEE must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential (“Airport ID/Security Credential”) process, a list of current Airport ID/Security Credentialized LICENSEE employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. The LICENSEE employees applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check (CHRC) and a Security Threat Assessment (STA) in accordance with current regulations. LICENSEE employees must also attend and successfully pass all related Security Identification Display Area (SIDA) classes and tests for access to secure areas and a driver’s permit with an appropriate and valid California Driver’s License to drive on the airfield. LICENSEE must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. Local Security. The LICENSEE shall be responsible for the security of gates or doors that are utilized during their operations. Said gates and/or doors permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the LICENSEE's constant surveillance. The LICENSEE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The LICENSEE shall exercise control over any person or vehicle escorted by the LICENSEE onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of the LICENSEE, and ensure that such person or vehicle shall comply with all Airport security regulations.
B. Federal Security. As of the date of this LICENSE, the TSA provides for all passenger and baggage screening conducted at the Airport. The LICENSEE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LICENSE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.

C. Penalties and Fines. The LICENSEE shall promptly pay any penalties for which the LICENSEE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or LICENSEE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. Badge Airport ID/Security Credential Application and Lifecycle. Prior to issuance of an Airport ID/Security Credential(s), designated LICENSEE Authorized Signatories who will be working onsite, and engaged in the performance of work under this LICENSE, must pass the Airport’s background check requirements, which includes an F.B.I. Criminal History Records Check (CHRC) and a TSA Security Threat Assessment (STA), and the LICENSEE shall pay applicable fees. Upon successful completion of the background checks, LICENSEE’s designated personnel will be required to attend a SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver’s Training class and written test. Airport ID/Security Credentials are not issued until designated LICENSEE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate training and 4) paid an Airport ID/Security Credential fee for each applicant. LICENSEE should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport’s control can contribute to longer durations. If an applicant is applying for a CBP Seal due to their operational need to work international air service operations, this process may take longer. Authorized Signatories must be in constant contact with the Airport’s ID/Access Control Office. LICENSEE’s designated personnel must successfully complete the Airport ID/Security Credential acquisition process, unless other arrangements have been approved by the Airport. LICENSEE shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

E. Airport ID/Security Credential Applicant Requirements and Responsibilities. The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

LICENSEE and all LICENSEE personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with...
escort privileges. When working in a secure area, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. LICENSEE personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must immediately be referred to the Sheriff’s Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of LICENSEE personnel employment and/or termination of the LICENSE. The loss of a Airport ID/Security Credential shall be reported within 24 hours to the Sheriff’s Department–Airport Police Services by calling (949) 252-5000. LICENSEE or LICENSEE personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

The Airport security badge is nontransferable.

In the event that LICENSEE’s Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of LICENSEE personnel or contracted personnel, 2) Airport ID badge expiration or 3) upon termination of the LICENSE, the LICENSEE shall be liable to the County of Orange for a fine in the amount of $250.00 per unreturned Airport ID/Security Credential. The amount of the fine is subject to change without notice. LICENSEE’s security deposit may be applied to cover the cost of the fine.

ARTICLE X - INSURANCE AND INDEMNITY

SECTION 10.01 INSURANCE

The LICENSEE agrees to purchase all required insurance at the LICENSEE’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.

The LICENSEE agrees that the LICENSEE shall not operate on the Airport 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 Airport Director. In no cases shall assurances by the LICENSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The LICENSEE also agrees that upon cancellation, termination,
or expiration of the LICENSEE’s insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.

If the LICENSEE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the LICENSEE 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 the LICENSEE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and the LICENSEE’s employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. The LICENSEE further agrees to hold the 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.

The LICENSEE may occupy the Airport Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this LEASE. COUNTY reserves the right to terminate this LEASE at any time the LICENSEE’s insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. LICENSEE shall pay COUNTY a fee of $300.00 for processing the reinstatement of the LEASE. LICENSEE shall provide to COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of the LICENSEE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the LICENSEE; excluding General Aviation Liability. All contractors performing work on behalf of the LICENSEE pursuant to this LEASE shall obtain insurance subject to the following required minimum limits: Commercial General Liability $1,000,000 per occurrence with a $2,000,000 aggregate; Commercial Auto Liability $1,000,000 per occurrence for non-commercial ramp operations; and, $10,000,000 per occurrence for commercial ramp operations. Pollution Liability will be required when hazardous materials or waste are involved with limits commensurate with the exposure. The LICENSEE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the LICENSEE under this LEASE. It is the obligation of the LICENSEE 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 Airport Premises. Such proof of insurance must be maintained by the LICENSEE 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 self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of LICENSEE’s current audited financial report. If LICENSEE’s SIR is approved, LESSEE, 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 the COUNTY harmless against any and all liability, claim, demand or suit resulting from LICENSEE’s, its agents, employee’s or subcontractor’s performance of this Agreement, LICENSEE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) LICENSEE’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 the LICENSEE’s SIR provision shall be interpreted as though the LICENSEE was an insurer and the COUNTY was the insured.

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

**Coverages**  
**Minimum Limits**

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation General Liability</td>
<td>$250,000,000 per occurrence</td>
</tr>
<tr>
<td>(Including but not limited to General Liability, Passenger Legal Liability, Personal Injury, Contractual Liability, Premises, Products and Completed Operations, Ground Hangarkeepers and liability for vehicles and mobile equipment operated on restricted airport premises.)</td>
<td>$250,000,000 aggregate</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Pollution Liability Insurance or Self-Insurance</td>
<td>$1,000,000 per claims-made or per occurrence</td>
</tr>
<tr>
<td>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</td>
<td>100% of the Replacement Cost Value and no coinsurance provision</td>
</tr>
</tbody>
</table>

**Required Endorsements**

The Aviation General 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 and non-contributing endorsement evidencing that the LICENSEE’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.
2. A primary and non-contributing endorsement evidencing that the LICENSEE’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 policy 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 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 as respects the COUNTY’s financial interest when applicable.

If the LICENSEE’s Pollution Liability policy is a claims-made policy, the LICENSEE 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 (NOTICES) below or to an address provided by Airport Director. The LICENSEE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.

The COUNTY expressly retains the right to require the LICENSEE 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 the COUNTY Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify the LICENSEE in writing of changes in the insurance requirements. If the LICENSEE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the LICENSEE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the LICENSEE’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.
SECTION 10.02 INDEMNITY

The LICENSEE agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the LICENSEE pursuant to this LICENSE. If judgment is entered against the LICENSEE and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY or the COUNTY INDEMNITEES, the LICENSEE and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ARTICLE XI
FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION

A. LICENSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If LICENSEE transfers its obligation to another, the transferee is obligated in the same manner as LICENSEE.

B. LICENSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) LICENSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) LICENSEE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

3) In all solicitations, either by competitive bidding or negotiation made by LICENSEE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by LICENSEE of the LICENSEE’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4) LICENSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, LICENSEE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

5) In the event of the LICENSEE’s noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the LICENSEE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.

6) The LICENSEE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The LICENSEE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if LICENSEE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the LICENSEE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the LICENSEE may request the United States to enter into the litigation to protect the interests of the United States.

C. LICENSEE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, LICENSEE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

4) LICENSEE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. LICENSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. LICENSEE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:

1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);

2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effection of Title VI of the Civil Rights Act of 1964;

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;

5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;

and 38 (prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);

9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and

12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the LICENSEE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the LICENSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the LICENSEE in this regard.

SECTION 11.03 LICENSE SUBORDINATE TO AGREEMENT WITH U.S.A.

This LICENSE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

The LICENSEE agrees that the LICENSEE's use of the Operating Area, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.
The LICENSEE agrees to comply with the applicable notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Operating Area or in the event of any planned modification or alteration of any present or future building or structure situated on the Operating Area.

SECTION 11.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LICENSE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the LICENSEE in this LICENSE, or any local authorities shall not apply to the LICENSEE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 11.06 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 11.07 RESERVATION OF AVIGATION EASEMENT

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Operating Area, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 11.08 HEIGHT LIMITATION OF STRUCTURES

The LICENSEE by accepting this LICENSE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land Licensed hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land Licensed Area hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the LICENSEE. The LICENSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
SECTION 11.09  NONINTERFERENCE WITH AIRCRAFT

The LICENSEE by accepting this LICENSE agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Operating Area and hereby cause the abatement of such interference at the expense of the LICENSEE.

SECTION 11.10  WAR OR NATIONAL EMERGENCY

This LICENSE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 11.11  AFFIRMATIVE ACTION REQUIREMENTS

The LICENSEE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The LICENSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The LICENSEE assures that it will require that its covered suborganizations provide assurances to the LICENSEE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

SECTION 11.12  AMERICANS WITH DISABILITIES ACT

The LICENSEE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, the LICENSEE’s furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the LICENSEE’s furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. The LICENSEE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. The LICENSEE shall deliver to the COUNTY, upon the COUNTY’s request, a copy of each report and work plan. The COUNTY’s approval of or acceptance of any aspect of the LICENSEE’s activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. The LICENSEE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the LICENSEE’s failure to comply with the ADA.

SECTION 11.13  BOARDING ASSISTANCE FOR AIRCRAFT
In accordance with 49 C.F.R. § 27.72, the LICENSEE shall ensure the provision of boarding equipment for passengers with mobility impairment, including, but not limited to, aircraft boarding chairs used to transfer passengers from their wheelchair or other apparatus to their seat in the aircraft cabin. The LICENSEE shall provide all related passenger assistance with this equipment. The equipment shall be provided and maintained in accordance with 49 C.F.R. § 27.72 and the applicable FAA Advisory Circulars, including AC 150/5220-21C.

The COUNTY owns and maintains ramps for utilization by the LICENSEE on the airport apron in the event a ramp is needed for boarding or deplaning of the aircraft. The LICENSEE shall promptly notify the COUNTY if COUNTY owned ramps require maintenance. If the LICENSEE owns and operates additional ramps, the LICENSEE shall maintain those ramps in proper working condition. The LICENSEE shall provide assistance to passengers with mobility impairment when ramps are used for boarding or deplaning of the aircraft.

ARTICLE XII
MISCELLANEOUS PROVISIONS

SECTION 12.01 TIME

Time is of the essence in this LICENSE.

SECTION 12.02 LICENSE ORGANIZATION

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

SECTION 12.03 AMENDMENTS

This LICENSE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 12.04 SIGNS

LICENSEE agrees not to construct, maintain or allow any sign upon the Operating Area except as approved by COUNTY. Unapproved signs, banners, flags, etc., may be removed by the COUNTY without prior notice to the LICENSEE.

LICENSEE will not place any signs or advertising materials in any location within the Licensed area or within any common use area of the Terminal without the prior consent of the COUNTY. All requests for the approval of promotional signs for the LICENSEE shall be accompanied by illustrative drawings and design dimensions along with information about the type of signs proposed, and proposed locations. All approved signs shall be allowed to remain in the terminal for ninety (90) days. The COUNTY may without notice remove any unauthorized signs or
advertising materials, and may store them at the LICENSEE’s expense; COUNTY may dispose of items if they are not promptly claimed by the LICENSEE after notice from the COUNTY.

SECTION 12.05 PERMITS AND LICENSES

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

SECTION 12.06 RESERVED

SECTION 12.07 TAXES AND ASSESSMENTS

This LICENSE may create a possessory interest that 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) that become due and payable upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the LICENSEE, and the LICENSEE shall cause said taxes and assessments to be paid promptly.

SECTION 12.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto 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. However, nothing in this Section shall excuse the LICENSEE from the prompt payment of any rental or other charge required of the LICENSEE except as may be expressly provided elsewhere in this LICENSE.

SECTION 12.09 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this LICENSE 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.

SECTION 12.10 WAIVER OF RIGHTS

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

SECTION 12.11 RESERVATIONS TO THE COUNTY

The Operating Area is accepted "AS IS" and the LICENSEE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate 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, under and along the Operating Area or any part thereof; and to enter the Operating Area for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Operating Area. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the LICENSEE's operations hereunder or to impair the security of any secured creditor of the LICENSEE.

The COUNTY 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. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Operating Area by the LICENSEE, the LICENSEE shall only be entitled to a reduction in the fees and charges payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the LICENSEE's use of the Operating Area. The LICENSEE shall not be entitled to any other form of compensation.

SECTION 12.12 AUTHORITY OF LICENSEE

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

SECTION 12.13 PUBLIC RECORDS

The LICENSEE understands that written information submitted to and/or obtained by the COUNTY from the LICENSEE related to this LICENSE and/or the Operating Area, either pursuant to this LICENSE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (Cal. Gov. Code §§6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 12.14 RELATIONSHIP OF PARTIES
The relationship of the parties hereto is that of Licensor and Licensee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the LICENSEE in the conduct of the LICENSEE’s business or otherwise, or a joint venturer with the LICENSEE; and the provisions of this LICENSE and the agreements relating to fees and charges payable hereunder are included solely for the purpose of providing a method by which fees and charges payments are to be measured and ascertained. This LICENSE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 12.15 GOVERNING LAW AND VENUE

This LICENSE 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 LICENSE, 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. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 12.16 ATTORNEYS’ FEES

In any action or proceeding to enforce or interpret any provision of this LICENSE, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.

SECTION 12.17 EMERGENCY SERVICES

Airport Director has the right to request that the LICENSEE’S employees aid in and use LICENSEE’s inventory of goods in an emergency to assist in maintaining the welfare of persons at or near the Airport. The LICENSEE shall be reimbursed by the COUNTY for the cost of goods as soon as practicable at a rate not to exceed costs as existed immediately prior to the emergency.

SECTION 12.18 NOTICES

All notices pursuant to this LICENSE shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above COUNTY may also provide notices to the LICENSEE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.
TO: COUNTY
John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO: LICENSEE
Alaska Airlines, Inc.
On behalf of Horizon Air Industries, Inc.
P.O. Box 68900-SEAPZ
Seattle, WA 98168-0900

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.
IN WITNESS WHEREOF, the parties have executed this LICENSE the day and year first above written.

HORIZON AIR INDUSTRIES, INC.

By: ____________________________

By: ____________________________

APPROVED AS TO FORM:

County Counsel

By: ____________________________

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: ____________________________

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: ____________________________

Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

______________________________
Robin Stieler,
Interim Clerk of the Board of Supervisors of Orange County, California

COUNTY

COUNTY OF ORANGE

By: ____________________________

Chairwoman, Board of Supervisors
John Wayne Airport
Airline Common Use Areas

DEPARTURE LEVEL

Holdrooms
Airside Concourses
Security Area

ARRIVAL LEVEL

Baggage Make-up
Baggage Claim
October 29, 2020

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 3, 2020, Board Hearing.

Agency: Sheriff-Coroner
Subject: Approve Contract with PVP Communications Inc.
Districts: All Districts

Reason for supplemental: The County Executive Office is requesting this Supplemental Item be added to the November 3, 2020, Board agenda in order to have the contract in place as of November 16, 2020. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur: ___

Michelle Steel, Chairwoman of the Board of Supervisors

cc: Board of Supervisors
    County Executive Office
    County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/03/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Sheriff-Coroner

DEPARTMENT HEAD REVIEW: [Signature]

DEPARTMENT CONTACT PERSON(S):
   Jeff Hallock (714) 647-1804
   Jeff Puckett (949) 425-1818

SUBJECT: Approve Contract with PVP Communications Inc.

CEO CONCUR  COUNTY COUNSEL REVIEW  CLERK OF THE BOARD

Budgeted: Yes  Approved Agreement as to Form  Discussion

Current Year Cost: $96,397  3 Votes Board Majority

Staffing Impact: N/A  # of Positions: Sole Source: Yes
Current Fiscal Year Revenue: N/A
Funding Source: State: 100% (Proposition 172) County Audit in last 3 years No

Prior Board Action: 9/10/2019 #12, 9/25/2018 #21, 5/22/2018 #18, 9/12/2017 #18

RECOMMENDED ACTION(S):
Authorize the County Procurement Officer or authorized Deputy to execute the sole source contract with PVP Communications Inc. for motorcycle helmet communications equipment, for the term of November 16, 2020, through November 15, 2023, in the annual not to exceed amount of $155,000, for a cumulative contract amount not to exceed $465,000, for a three year term.

SUMMARY:
Approval of sole source contract with PVP Communications Inc. for specialized motorcycle helmet communications equipment will allow the Sheriff-Coroner Department to renew the contract to improve communications by replacing outdated equipment, ensuring the safety and efficiency of deputies patrolling by motorcycle.
BACKGROUND INFORMATION:
The Sheriff-Coroner Department (Sheriff) requires specialized motorcycle helmet equipment, which will provide the highest level of functionality and safety to ensure the safety and effective communications with its motorcycle deputies. PVP Communications Inc. offers specialized motorcycle helmet equipment, which functions as both a motor headset for law enforcement use and as a Bluetooth® cell phone interface, simultaneously presenting two-way radio traffic and cellular calls to the rider. This offers the ability to answer a cell phone call while simultaneously listening to the two-way radio. If using the equipment to listen to the two-way radio, the audio is heard from both earphones.

Sheriff requires this specialized motorcycle helmet equipment, which integrates cell phone access with a two-way radio for law enforcement, to ensure the safety of its officers. Additionally, this provides the safety to the public as well to ensure that officers are able to communicate vital information through the two-way radio. PVP Communications Inc. pioneered this system and is the sole provider of its software. The proposed contract is a sole source contract and a completed Sole Source Request Form is attached to this Agenda Staff Report (Attachment B).

The following table details the contract history with PVP Communications Inc.

<table>
<thead>
<tr>
<th>Board of Supervisors (Board) Approved</th>
<th>Amendment Number or Contract</th>
<th>Contract Term</th>
<th>Contract Amount</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>n/a</td>
<td>Contract</td>
<td>11/16/15 - 11/15/17</td>
<td>$50,000</td>
<td>New contract approved administratively based on the delegated authority granted by the Board as reflected in the County's Contract Policy Manual, Section 3.1-115(1)</td>
</tr>
<tr>
<td>2/23/16</td>
<td>1</td>
<td>11/16/15 - 11/15/17</td>
<td>$133,000</td>
<td>Increased contract by $83,000 to add Sheriff’s Southeast and Southwest Divisions and added installation services, which changed the contract into a service contract requiring Board approval</td>
</tr>
<tr>
<td>6/28/16</td>
<td>2</td>
<td>11/16/15 - 11/15/17</td>
<td>$140,500</td>
<td>Increased not to exceed amount by $7,500 to add two additional ordering locations</td>
</tr>
<tr>
<td>9/12/17</td>
<td>3</td>
<td>11/16/17 - 11/15/18</td>
<td>$136,500</td>
<td>Renewed contract</td>
</tr>
<tr>
<td>5/22/18</td>
<td>4</td>
<td>11/16/17 - 11/15/18</td>
<td>$206,500</td>
<td>Increased contract by $70,000 to add Sheriff’s Quartermaster unit as an ordering location</td>
</tr>
<tr>
<td>9/25/18</td>
<td>5</td>
<td>11/16/18 - 11/15/19</td>
<td>$227,500</td>
<td>Renewed contract and increased contract by $21,000 to allow for replacement of damaged helmets and an increase in supply cost for the vendor (cost of painting, cost of copper to make the wiring and</td>
</tr>
<tr>
<td>Date</td>
<td>Amount</td>
<td>Duration</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>--------</td>
<td>-------------------</td>
<td>--------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>9/10/19</td>
<td>6</td>
<td>11/16/19 - 11/15/20</td>
<td>$153,000 Renewed contract, the not to exceed amount was reduced from the previous year to reflect the anticipated utilization</td>
<td></td>
</tr>
</tbody>
</table>

Contractor performance has been confirmed as at least satisfactory. The Department has verified that there are no concerns that must be addressed with respect to contractor's ownership/name, litigation status or conflicts with County interests.

Sheriff now requests Board approval of the sole source PVP Communications Inc. contract, for the term of November 16, 2020, through November 15, 2023, in the annual not to exceed contract amount of $155,000, for a cumulative contract amount of $465,000. This contract does not currently include subcontractors or pass through to other providers. See Attachment C for the Contract Summary Form.

**FINANCIAL IMPACT:**
 Appropriations for this contract are included in the Sheriff-Coroner’s FY 2020-21 Budget for Budget Control 060, and will be included in the budgeting process for future years. The contract contains language allowing the Sheriff-Coroner Department to terminate the contract without penalty with cause or after 30 days of written notice without cause in the event that funding is reduced and/or not available to continue funding the contract.

**STAFFING IMPACT:**
N/A

**ATTACHMENT(S):**
Attachment A - PVP Communications Inc. Contract MA-060-21010113
Attachment B - Sole Source Request Form
Attachment C - Contract Summary Form
Contract MA-060-21010113
with
PVP Communications Inc.
for
Helmet Communication Kits and Installation Services

This Contract MA-060-21010113 is for the Helmet Communication Kits and Installation Services (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (hereinafter referred to as "County") and PVP Communications Inc., with a place of business at 2310 W. 205th Street, Torrance, CA 90501 (hereinafter referred to as "Contractor"), with a County and Contractor sometimes referred to as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this documents and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Compensation and Pricing Provision

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Helmet Communication Kits and Installation Services under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide Helmet Communication Kits and Installation Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Compensation and Pricing Provision, attached hereto as Attachment B; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for with the Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

A. Governing Law and Venue: This Contract 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 Contract, 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. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

B. Entire Contract: This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those
set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor’s expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance Payment: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor’s part to indemnify, defend and hold County and its indemnities as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all
costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney’s fees.

I. Assignment: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. Termination: In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Independent Contractor: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers’ compensation or other fringe benefits of any kind through County.

N. Performance Warranty: Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County’s satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. Insurance Provisions: Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor’s expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors
performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to
the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to
this Contract shall be covered under Contractor’s insurance as an Additional Insured or maintain
insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall
not allow subcontractors to work if subcontractors have less than the level of coverage required by
County from Contractor under this Contract. It is the obligation of Contractor to provide notice of
the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing
any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through
the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-
insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically
be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited
financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation
of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all
liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or
subcontractor’s performance of this Contract, Contractor shall defend the County at its sole
cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’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 the Contractor’s SIR provision shall be
interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract,
the County may terminate this Contract.

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 Contractor shall provide the minimum limits
and coverage as set forth below:
## Coverage

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td></td>
<td>$2,000,000 aggregate</td>
</tr>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
</tbody>
</table>

## 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 0012, CA 00 20, or a substitute form providing 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, agents and employees* as Additional Insured’s, or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN CONTRACT*.

2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

3) The Workers’ Compensation policy 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* or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN CONTRACT*.

All insurance policies required by this Contract 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.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten
(10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interest's clause also known as a "separation of insured's" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor 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, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflict with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and Contractor obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that
could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. Force Majeure: Contractor shall not be assessed or be found in breach during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITIES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. Freight: Prior to the County’s express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

V. Severability: If any term, covenant, condition or provision of this Contract 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.

W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney’s fees, costs and expenses.

X. Interpretation: This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
Y. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this agreement shall be forwarded to the County’s project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract.
such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions

1. Scope of Contract: This Contract specifies the contractual terms and conditions by which County will procure and receive goods/services from Contractor as set forth in the Scope of Work, which is attached hereto as Attachment A and incorporated by this reference.

2. Term of Contract: This Contract shall commence upon execution of all necessary signatures and continue for three (3) calendar year from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.

3. Renewal: This Contract may be renewed by mutual written agreement of both Parties for two (2) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.

4. Adjustments – Scope of Work: No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.

5. Breach of Contract: The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   a) Terminate the Contract immediately, pursuant to Section K herein;

   b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

   d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

6. Civil Rights: Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

7. Conflict of Interest – County Personnel: The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
8. Contractor's Project Manager and Key Personnel: Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project timelines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

9. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

10. Cooperative Agreement: The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

11. Data – Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
12. Default – Reprocurement Costs: In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

13. Drug-Free Workplace: The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
   a. The dangers of drug abuse in the workplace;
   b. The organization’s policy of maintaining a drug-free workplace;
   c. Any available counseling, rehabilitation and employee assistance programs; and
   d. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
   a. Will receive a copy of the company’s drug-free policy statement; and
   b. Will agree to abide by the terms of the company’s statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or

2. The Contractor violates the certification by failing to carry out the requirements as noted above.

14. EDD Independent Contractor Reporting Requirements: Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a “service provider” to whom the County pays $600 or more or with whom the County enters into a contract for $600 or more within a single calendar year. The purpose
of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a contract for services performed for that government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm

15. Errors and Omissions: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

16. Equal Employment Opportunity: The Contractor shall comply with U.S. Executive Order 11246 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.
Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

17. News/Information Release: The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.

18. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: PVP Communications Kits
2310 W 205th St.
Torrance, CA 90501-1436
Attn: Jay Calzada
Ph: 310-212-5432
Email: jay@pvpcom.com

County: Sheriff-Coroner Department/Southwest Operations
11 Journey
Aliso Viejo, CA 92626
Attn: Robin Seruggs
Ph: 949-425-1959
Email: rsruggs@ocsd.org

Assigned DPA: County of Orange
Sheriff-Coroner Department/Purchasing Services Unit
320 N. Flower Street, 2nd Floor
Santa Ana, CA 92703
Attn: Gina Lozares
Ph: 714-834-2284
Email: glozares@ocsd.org

19. Precedence: The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

County of Orange
Sheriff-Coroner Department

Motorcycle Helmet Communication Kits

MA-060-21010113
Page 13 of 22
File No.: C028682

Revised 6/17/20
20. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

21. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.

22. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.

23. **Sub-Contracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

24. **Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.

-Signature Page to Follow-
The Parties hereto have executed this Contract MA-060-21010113 forHelmet Communication Kits andInstallation Services on the dates shown opposite their respective signatures below.

**Contractor**: PVP Communications Inc.

**By**: [Signature]

**Print Name**: Michael Diener

**Date**: 10-08-20

**Title**: President

---

**Contractor**: PVP Communications Inc.

**By**: [Signature]

**Print Name**: Michael Diener

**Date**: 10-08-20

**Title**: Secretary

---

*If the contracting party is a corporation, (2) two signatures are required: (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

**County Of Orange**

A political subdivision of the State of California

**Sheriff-Coroner Department**

**By**: [Signature]

**Print Name**: [Name]

**Date**: [Date]

Approved by the Board of Supervisors:

Approved as to Form
Office of the County Counsel
Orange County, California

**By**: [Signature]

**County of Orange**

**Sheriff-Coroner Department**

**MA-060-21010113**

Motorcycle Helmet Communication Kits

**File No.: C028682**

*Revised 6/17/20*
ATTACHMENT A

Scope of Work

1. Contractor shall provide Helmet Communication Kits and Installation Services to the Orange County Sheriff-Coroner Department as specified in Attachment B.

Requirements:

a. All freight, delivery, shipping and handling charges shall be included in the unit cost. Prices are to be F.O.B. destination. Pick up at contractor location shall also be available upon request.

b. Orders shall be placed at the convenience of each department and on an as needed basis.

c. Contractor shall provide a packing list, bill of lading and/or invoice which correctly identifies each product and quantities that are received. Invoices must be submitted within two (2) days of shipping merchandise or accompany the shipment.

d. Contractor shall supply only items specified in this Contract. No substitutions shall be accepted.

e. Delivery shall be within forty five (45) calendar days from receipt of order. Prompt delivery of products is of the essence in this Contract. Repeated delays in delivery of products shall be subjected to termination of Contract.

f. County may cancel an order before delivery without any penalty or charge, provided the Contractor has not incurred any special production costs in fulfilling the order. Contractor shall provide proof of any such special production costs.

g. Restocking charge does not apply to items shipped due to the Contractor error, and Contractor pays for all shipping and return costs. Restocking charge does not apply if new, unused, in original packing and shipped back with (30) days of receipt.

h. Installation services include helmet communication kits installed (e.g., boom microphone, wiring harness) into the helmets and all necessary accessories (e.g., screws, clamps, ties) needed for completion for the installation. All installs will be performed at Contractor’s location by Contractor technician.

2. Delivery Instruction and Locations:

a. Delivery Instructions:

Contractor shall make deliveries Monday through Friday, between the hours of 7:00 a.m. to 3:00 p.m.

No holiday or weekend deliveries will be accepted. County holidays are as follows:

<table>
<thead>
<tr>
<th>New Year’s Day</th>
<th>Martin Luther King’s Birthday</th>
<th>Lincoln’s Birthday</th>
</tr>
</thead>
<tbody>
<tr>
<td>President’s Day</td>
<td>Memorial Day</td>
<td>July 4th Independence Day</td>
</tr>
<tr>
<td>Labor Day</td>
<td>Columbus Day</td>
<td>Veterans’s Day</td>
</tr>
<tr>
<td>Thanksgiving and Friday</td>
<td>Christmas Day</td>
<td></td>
</tr>
</tbody>
</table>

b. Delivery Locations:

County of Orange
Sheriff-Coroner Department
Motorcycle Helmet Communication Kits

File No.: C028682
Revised 03/17/20
<table>
<thead>
<tr>
<th>County of Orange Communication Division</th>
<th>County of Orange Southeast Operations</th>
<th>County of Orange Southwest Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>840 North Bckhoff Street Ste 104</td>
<td>20202 Windrow Drive</td>
<td>11 Journey</td>
</tr>
<tr>
<td>Orange, CA 92868</td>
<td>Lake Forest, CA 92630</td>
<td>Aliso Viejo, CA 92626</td>
</tr>
<tr>
<td>Attn: Sue Saythavi</td>
<td>Attn: Chelsea Van De Kreeke</td>
<td>Attn: Robin Scruggs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>County of Orange Stanton Police Services</th>
<th>County of Orange Yorba Linda Police Services</th>
<th>County of Orange Stanton Police Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>11100 Cedar St.</td>
<td>20994 Yorba Linda Blvd.</td>
<td>11100 Cedar St.</td>
</tr>
<tr>
<td>Stanton, CA 92608</td>
<td>Yorba Linda, CA 92887</td>
<td>Stanton, CA 92608</td>
</tr>
<tr>
<td>Attn: Candi Aubuchon</td>
<td>Attn: Candi Aubuchon</td>
<td>Attn: Candi Aubuchon</td>
</tr>
<tr>
<td>Ph: 714-647-1850</td>
<td>Ph: 714-647-1850</td>
<td>Ph: 714-647-1850</td>
</tr>
</tbody>
</table>
ATTACHMENT B

Compensation and Pricing Provisions

1. Compensation: This is a firm-fixed fee Contract between the County and Contractor for Helmet Communication Kits and Installation Services as set forth in Attachment A, “Scope of Work”.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C. Amendments of the County Contract Terms and Conditions.

2. Fees and Charges: County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>U/M</th>
<th>ITEM DESCRIPTION</th>
<th>UNIT COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>EA</td>
<td>MISCELLANEOUS ITEMS, NOT TO EXCEED UNIT COST EACH</td>
<td>$700.00</td>
</tr>
<tr>
<td>2.</td>
<td>EA</td>
<td>SWITCHES, PART AND ACCESSORIES; MISCELLANEOUS ITEMS NOT TO EXCEED UNIT COST EACH</td>
<td>$125.00</td>
</tr>
<tr>
<td>3.</td>
<td>EA</td>
<td>BRACKET, PVHARPTT-02, F/HARLEY DAVIDSON, PTT, PV</td>
<td>$26.00</td>
</tr>
<tr>
<td>4.</td>
<td>EA</td>
<td>BRACKET, P7T, F/BMW RT1200P, PVP, PVRT12PTT-02</td>
<td>$25.00</td>
</tr>
<tr>
<td>5.</td>
<td>EA</td>
<td>JACF, CET-101, PMC-10, 1/4&quot; FEM. F/CYCLEHEADS</td>
<td>$15.00</td>
</tr>
<tr>
<td>6.</td>
<td>EA</td>
<td>ADAPTER, PVJD-385/C, F/PORTABLE RADIO WITH SPEAKER</td>
<td>$359.00</td>
</tr>
<tr>
<td>7.</td>
<td>EA</td>
<td>PLUG, PVP105P, HEADSET, MILITARY 5/PIN, PVP COMM.</td>
<td>$33.00</td>
</tr>
<tr>
<td>8.</td>
<td>EA</td>
<td>JACF, PV105J, F/5 PIN MILITARY HEADSET, FEMALE</td>
<td>$33.00</td>
</tr>
<tr>
<td>9.</td>
<td>EA</td>
<td>ADAPTER, PVJD-105NP/C, F/XTS3000 RADIO</td>
<td>$196.00</td>
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<tr>
<td>10.</td>
<td>EA</td>
<td>BRACKET, PVST13PTT-02, PTT BRACKET F/HONDA 1300, P</td>
<td>$126.00</td>
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<tr>
<td>11.</td>
<td>EA</td>
<td>SWITCH, PVPIT2, B02-A, F/BMW MOTORCYCLE, PTT, PVP</td>
<td>$125.00</td>
</tr>
<tr>
<td>12.</td>
<td>EA</td>
<td>CABLE, PV85-054, F/HELMET 54&quot;/4.5&quot; LONG, PVP</td>
<td>$66.00</td>
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<tr>
<td>13.</td>
<td>EA</td>
<td>CABLE, PV8584-060, 5' F/HELMET, PVP COMM.</td>
<td>$96.00</td>
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<tr>
<td>14.</td>
<td>EA</td>
<td>CABLE, PV1084KS, 5/PIN/SHORT, BREAKAWAY COIL, PV</td>
<td>$86.00</td>
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<tr>
<td>15.</td>
<td>EA</td>
<td>WINDSCREEN, PVMW734, F/HELMET MICROPHONES PVP</td>
<td>$3.25</td>
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<tr>
<td>16.</td>
<td>EA</td>
<td>HARNESS, PVMIH-M3P-D/C 3 SHELL, HELMET</td>
<td>$129.00</td>
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<tr>
<td>17.</td>
<td>EA</td>
<td>WINDSCREEN, PVMW-733, F/MODEL # PV56U-R6 MIC, PVP</td>
<td>$1.95</td>
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<tr>
<td>18.</td>
<td>EA</td>
<td>KIT, INTERFACE F/HONDA, PVP PVSP-STA-U8/C</td>
<td>$539.00</td>
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<tr>
<td>19.</td>
<td>EA</td>
<td>INTERFACE KIT, F/BMW PRE-2105, PVP, PVSP-RT12AC3/C</td>
<td>$539.00</td>
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<tr>
<td>20.</td>
<td>EA</td>
<td>HELMET KIT, FOR SHOEH HELMET, PVHK-736MR10-D/C PVP</td>
<td>$239.00</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Price</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>EARPHONE RETRO KIT, PVH144-RETRO, UPGRADED</td>
<td>$22.00</td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>MICROPHONE, INTERIOR MNT W/WINDSCREEN PVA 736M-R10</td>
<td>$115.00</td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>HARNESS, WIRING F/HONDA PVSP-A-U8/H01</td>
<td>$199.00</td>
<td></td>
</tr>
<tr>
<td>24.</td>
<td>HARNESS, WIRING F/BMW PVSP-A-C3/H01</td>
<td>$199.00</td>
<td></td>
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<tr>
<td>25.</td>
<td>MODULE, PREAMP PVPCB-BMW-01</td>
<td>$251.00</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>BRACKET, ASSY/PTT DUAL POSITION AMP CONN. HONDA PVPTT2-STOR-A</td>
<td>$125.00</td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>SWITCH, PTT ¼ BLACK, NX3216B1B</td>
<td>$19.00</td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>SWITCH, PTT ¼ RED, NX3216B1R</td>
<td>$19.00</td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>SWITCH, PTT, ¼ BOOT 120-006</td>
<td>$3.00</td>
<td></td>
</tr>
<tr>
<td>30.</td>
<td>SWITCH, PTT ¼ BEZEL 210-0001</td>
<td>$3.50</td>
<td></td>
</tr>
<tr>
<td>31.</td>
<td>MICROPHONE EXTERIOR MOUNT FOR SHOEI RJ HELMET PV736M-R10</td>
<td>$115.00</td>
<td></td>
</tr>
<tr>
<td>32.</td>
<td>HELMET KIT, INTERIOR MOUNT, PVHKA-736MR10-D/C</td>
<td>$239.00</td>
<td></td>
</tr>
<tr>
<td>33.</td>
<td>INTERFACE KIT, F/BMW 2015-2016, PVP, PVSP-RT12A-15/C</td>
<td>$539.00</td>
<td></td>
</tr>
<tr>
<td>34.</td>
<td>HELMET SHOEI NEOTEC, OC SHERIFF GREEN/GOLD</td>
<td>$649.00</td>
<td></td>
</tr>
<tr>
<td>35.</td>
<td>HELMET, SHOEI RJ-PLATINUM LE, OC SHERIFF GREEN/GOLD</td>
<td>$599.00</td>
<td></td>
</tr>
<tr>
<td>36.</td>
<td>HELMET, SHARK EVO3, OC SHERIFF GREEN/GOLD</td>
<td>$679.00</td>
<td></td>
</tr>
<tr>
<td>37.</td>
<td>HELMET, NOLAN N-104, OC SHERIFF GREEN/GOLD</td>
<td>$599.00</td>
<td></td>
</tr>
<tr>
<td>38.</td>
<td>HELMET, HARK EVO3, OC SHERIFF GREEN/GOLD</td>
<td>$679.00</td>
<td></td>
</tr>
<tr>
<td>39.</td>
<td>HELMET, NOLAN N-104, O SHERIFF GREEN/GOLD</td>
<td>$549.00</td>
<td></td>
</tr>
<tr>
<td>40.</td>
<td>FLAT RATE HELMET KIT INSTALLATION – PVHK1</td>
<td>$45.00</td>
<td></td>
</tr>
<tr>
<td>41.</td>
<td>MOTOR-ONE WIRELESS SHOLDER MIC, AUTOSWITCHING FOR MOTOROLA JEDI SERIES RADIOS (XTS SERIES) INCLUDES 3.7 V CHARGER</td>
<td>$629.00</td>
<td></td>
</tr>
<tr>
<td>42.</td>
<td>ADAPTER CABLE, TJ101 TO HIROSE</td>
<td>$55.00</td>
<td></td>
</tr>
<tr>
<td>43.</td>
<td>HELMET, SHOE NEOTEC II, OC SHERIFF GREEN/GOLD</td>
<td>$799.00</td>
<td></td>
</tr>
<tr>
<td>44.</td>
<td>HELMET, NOLAN N100.5, OC SHERIFF GREEN/GOLD</td>
<td>$599.00</td>
<td></td>
</tr>
<tr>
<td>45.</td>
<td>HELMET, SHARK EVO-ONE, OC GREEN/GOLD</td>
<td>$799.00</td>
<td></td>
</tr>
<tr>
<td>46.</td>
<td>FLAT RATE HELMET KITS INSTALLATION – PVHK2</td>
<td>$65.00</td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>FLAT RATE HELMET KITS INSTALLATION – PVHK3</td>
<td>$95.00</td>
<td></td>
</tr>
<tr>
<td>48.</td>
<td>HELMET KIT, EXTERIOR MOUNT FOR RJ HELMETS, FOR WIRELESS SYSTEM – PVHK – 736MR10 – D/M</td>
<td>$249.00</td>
<td></td>
</tr>
<tr>
<td>49.</td>
<td>HELMET KIT, INTERIOR MOUN, FOR WIRELESS SYSTEM – PVHK – 736MR10 – D/M</td>
<td>$249.00</td>
<td></td>
</tr>
<tr>
<td>50.</td>
<td>HELMET KIT, EXTERIOR MOUNT FOR RJ HELMETS, FOR WIRELESS SYSTEM, WITH BLUETOOTH (CELL PHONE OPERATION) – PVHK – 736MR10 – B/M</td>
<td>$459.00</td>
<td></td>
</tr>
<tr>
<td>51.</td>
<td>HELMET KIT, INTERIOR MOUNT FOR RJ HELMETS, FOR WIRELESS SYSTEM, WITH BLUETOOTH (CELL PHONE OPERATION) – PVHK – 736MR10 – B/M</td>
<td>$459.00</td>
<td></td>
</tr>
<tr>
<td>52.</td>
<td>HELMET KIT, EXTERIOR MOUNT FOR RJ HELMETS, FOR WIRELESS SYSTEM, WITH BLUETOOTH (CELL PHONE OPERATION) – PVHK – 736MR10 – B/C</td>
<td>$449.00</td>
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</tr>
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<td>53.</td>
<td>HELMET KIT, INTERIOR MOUNT FOR RJ HELMETS, FOR WIRELESS SYSTEM, WITH BLUETOOTH (CELL PHONE OPERATION) – PVHK – 736MR10 – B/C</td>
<td>$449.00</td>
<td></td>
</tr>
<tr>
<td>54.</td>
<td>WINDSCREEN, PVWM736</td>
<td>$3.25</td>
<td></td>
</tr>
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<td>55.</td>
<td>MOTOR-ONE SCHOLDER MIC, WIRELESS SYSTEM, FOR MOTOROLA AXP/XPR SERIES RADIOS</td>
<td>$629.00</td>
<td></td>
</tr>
<tr>
<td>56.</td>
<td>INTERFACE KIT, MOTOR-ONE WIRELESS, FOR 2015+ BMW, MOTOROLA XTL/APX SERIES MOBILE RADIOS, PVXTL-RT12-15/XT</td>
<td>$829.00</td>
<td></td>
</tr>
</tbody>
</table>
57. EA  INTERFACE KIT, MOTOR-ONE WIRELESS, FOR HONDA ST1300, MOTOROLA XTL/APX SERIES MOBILE RADIO, PVXTL-ST13A-U8/XT  $829.00
58. EA  HARNESS, MOTOR KIT, FOR 2015+ BMW, HARNESS ONLY, RT12A-15/H01  $349.00
59. EA  ADAPTER, AUTOSWITCHING, FOR MOTOROLA APX/XPR SERIES PORTABLE, PVAPX-385/C  $359.00

Contract shall not exceed $465,000 for the first 3-year term (Contract shall not exceed $155,000 per year)

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County of Orange
Sheriff-Coroner Department

MA-060-21010113
Motorcycle Helmet Communication Kits

Page 20 of 22
File No.: C028682

Revised 6/17/20
a. Contractor's name and address  
b. Contractor's remittance address, if different from 1 above  
c. Contractor's Taxpayer ID Number  
d. Name of County Agency/Department  
e. Delivery/service address  
f. Master Agreement (MA) or Purchase Order (PO) number  
g. Agency/Department's Account Number  
h. Date of invoice  
i. Product/service description, quantity, and prices  
j. Sales tax, if applicable  
k. Freight/delivery charges, if applicable  
l. Total

Invoice and support documentation are to be forwarded to:

<table>
<thead>
<tr>
<th>County of Orange Communication Division</th>
<th>County of Orange Southeast Operations</th>
<th>County of Orange Southwest Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange, CA 92868 Attn: Sue Saythavi Ph: 714-704-7962</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>County of Orange Stanton Police Services</th>
<th>County of Orange Yorba Linda Police Services</th>
</tr>
</thead>
</table>

9. Payment (Electronic Funds Transfer (EFT))  
The County of Orange offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. To request a form, please contact the assigned Deputy Purchasing Agent. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.

10. Year End and Final Invoices  
At the end of each term of the Contract, and upon final termination, Contractor shall submit final invoices for services rendered or goods accepted by County under the Contract term (typically one year) within ninety (90) days. For example, if the term of a Contract ends, or the Contract expires without being renewed on June 30th, any and all invoices for services rendered or goods accepted by County during the preceding term of the Contract shall be submitted to County on or before September 28. In the event the ninetieth (90th) day falls on a weekend or County holiday, the deadline for
submission of invoices shall be extended to the next business day. County holidays include New Year’s Day, Martin Luther King Day, President Lincoln’s Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

Contractor’s failure to submit invoices pursuant to the deadlines established herein may be deemed a breach and shall be a basis for the County to refuse payment.
Release Bid Workflow

Name: Gina C Lozares
Phone: 7148342284
Email: glozares@ocsd.org
Status: Submitter  Oct 7, 2020 3:56:34 PM PDT

Bid Information
Bid Number: 000-C02862-16
Bid Title: HELMET COMMUNICATION KITS AND INSTALLATION SERVICES

Status
Status: Approved

Questions? Contact a Periscope Source representative: 800-990-9339 or email: source-support@periscopeholdings.com
Procurement

Sole Source Request Form

Sole Source Bidsync #060-C028682-GL

SECTION II – DEPARTMENT INFORMATION  (Complete in its entirety)

<table>
<thead>
<tr>
<th>Department:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>OCSD/Communications &amp; Technology</td>
<td>3-06-2020</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vendor Name:</th>
<th>Sole Source Bidsync Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>PVP Communication, Inc.</td>
<td>060-C028682-GL</td>
</tr>
</tbody>
</table>

Is the above named vendor a retired employee of the County of Orange?  ☐ Yes  ☒ No

If "Yes", review and Approval is required from CEO Human Resource Services prior to contract execution.

<table>
<thead>
<tr>
<th>Contract Term (Dates):</th>
<th>Is Agreement Grant Funded?</th>
<th>Percent Funded:</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/16/2020-11/15/2023</td>
<td>☐ Yes</td>
<td>☒ No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contract Amount:</th>
<th>Is this renewable? If yes, how many years?</th>
</tr>
</thead>
<tbody>
<tr>
<td>$465,000</td>
<td>Yes, two (2) additional one (1) year terms</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type of Request:</th>
<th>renewal Year:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒ New</td>
<td>3</td>
</tr>
<tr>
<td>☐ Multi-Year</td>
<td></td>
</tr>
<tr>
<td>☐ Renewal</td>
<td></td>
</tr>
<tr>
<td>☐ Amendment</td>
<td></td>
</tr>
<tr>
<td>☐ Increase</td>
<td></td>
</tr>
</tbody>
</table>

Did vendor provide a sole source affidavit?  ☐ Yes  ☒ No
If yes, please attach

Board Date: Targeting 11/03/20
Board meeting date

<table>
<thead>
<tr>
<th>ASR Number:</th>
<th>If not scheduled to go to the Board explain why?</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td></td>
</tr>
</tbody>
</table>

Does Contract Include Non-Standard Language?  If yes, explain in detail.
No

Was Contract Approved by Risk Mgmt.? Yes
Was Contract Approved by County Counsel? Yes

Were any exceptions taken? If yes, explain in detail.
No

☒ DPA certifies that they have read and verified that the information is true and satisfies the sole source requirements listed in the County Contract Policy Manual.

☐ Solicitation Exemption
(For purchases with special circumstances, and/or when it is determined to be in the best interest of the County.)
SECTION III – SOLE SOURCE JUSTIFICATION

1. Provide a description of the type of contract to be established. (For example: is the contract a commodity, service, human service, public works, or other – please explain.) Attach additional sheet if necessary.

   Commodity/Service- Police Motorcycle Communications System, equipment, accessories and installation kit service

2. Provide a detailed description of services/commodities and how they will be used within the department. If this is an existing sole source, please provide some history of its origination, Board approvals, etc. (This information may be obtained from the scope of work prepared by the County and the vendor’s proposal that provides a detailed description of the services/supplies.) Attach additional sheet if necessary.

   For over 10 years, PVP has produces a unique line of specialized helmet headsets, cable, connectors, radio interfaces and application specific hardware unique to the Motorcycle Law Enforcement community. Used by all law enforcement agencies in the County with Motorcycle fleets, PVP has provided the specialized communications equipment required to maintain existing communications systems as well as developing new technology solutions that allows interface to legacy mobile radio platforms as well as the latest generation of Two Way radios being offered today.

   The current Contract MA-060-19011913 was established with a Sole source

   Prior Board approval from the old Contract
   ASR 16-000034 2/23/16
   ASR 16-000635 6/28/16
   ASR 17-000704 9/12/17
   ASR 18-000431 5/22/18
   ASR 18-000769 9/25/18

3. Explain why the recommended vendor is the only one capable of providing the required services and/or commodities. How did you determine this to be a sole source and what specific steps did you take? Please list all sources that have been contacted and explain in detail why they cannot fulfill the County’s requirements. Include vendor affidavit and/or other documentation which supports your sole source. (Responses will include strong programmatic and technological information that supports the claim that there is only one vendor that can provide the services and/or commodities. Your response will include information pertaining to any research that was conducted to establish that the vendor is a sole source, include information pertaining to discussions with other potential suppliers and why they were no longer being considered by the County.) Attach additional sheet if necessary.

   See Attached Sheet.
   Sole Source Section #3-Additional Justification.
4. How does recommended vendor's prices or fees compare to the general market?

Attach quotes for comparable services or supplies. Attach additional sheet if necessary.

Unable to obtain comparable pricing because PVP Communications helmets systems are uniquely designed to
cover the specific communications and safety needs dictated by the use of motorcycles in the field of law
equipment. Helmets will be designed specifically for the special requirements of the Sheriff's Department.

5. If the recommended vendor was not available, how would the County accomplish this particular task?

Attach additional sheet if necessary.

If this vendor could not provide any additional units, we would need to develop and build in-house custom
manufactured system components to meet the needs of our customers. As we are not a manufacturing facility, the
cost of research and development (R&D), tooling and assembly would be prohibitive.

6. Please provide vendor history – name change, litigation, judgments, aka, etc. for the last 7 years.

PVP Communications was founded in 1994 with humble beginnings, but with a strong dedication to provide the best
products available. Unsatisfied with their helmet communications, we were contacted by the Los Angeles Police
Department to design and build a helmet communications system, to replace their current system. We first listened,
and then proceeded to design a system to meet their needs. The rest is history. That design, years later, is patented
and continues to provide reliable service on an everyday basis.

Today, with thousands of satisfied customers throughout the United States and Internationally, we continue to listen
to our customers needs and provide them with personal customer service and a quality product. Never resting, we
continue to find ways of improving our products, by applying new technologies and methods to manufacture the best
in helmet communications and other various communication accessories. From our most basic systems to the latest in
wireless Bluetooth Technology, PVP Communications has risen to the top of the field in Law Enforcement
Communications, and we remain dedicated to improving the lives of those who protect and serve our communities.

PVP Communications has had no name changes, litigation, judgments for the last 7 years.

7. If vendor is a retired, former employee, has the vendor previously been rehired as a contractor within the last three years?   ☐ Yes ☒ No

If yes, provide explanation/support for hiring the retired, former employee as a vendor and provide
contract dates, scope of work, and total amounts paid under each contract.
8. Explain (in detail) why a request for Solicitation Exemption is needed. *(Only applicable for Solicitation Exemption)*

   Attach additional sheet if necessary.
Sole Source Request Form

Sole Source Bidsync # 060-C028582-GL

SECTION IV - AUTHOR/REQUESTOR

Signature: [Signature]
Print Name: Dave Fortney
Date: 3/9/2020

SECTION V - CEO Human Resource Services APPROVAL (Review and approval is required when vendor is a Retired, Former Employee.)

Signature: [Signature]
Print Name: [Print Name]
Date: [Date]

SECTION VI - DEPUTY PURCHASING AGENT CONCURRENCE

Signature: [Signature]
Print Name: Frederick Lyle Ross
Date: 9/18/2020

SECTION VII - DEPARTMENT HEAD APPROVAL

Signature: [Signature]
Print Name: Brian Dayt
Date: 9/11/2020

SECTION VIII - COUNTY PROCUREMENT OFFICE

Prior to execution of a contract, the County Procurement Officer or designee shall approve All Sole Source requests for Commodities that exceed $250,000, Capitol Assets and services exceeding $75,000, and All other Sole Source requests that require Board approval despite the amount. Approvals are obtained electronically through the County’s online bidding system.

SOLICITATION EXEMPTION – CEO USE ONLY:

Board of Supervisor Notification Date:

Comments:

CPO: □ Approved  □ Denied
CFO: □ Approved  □ Denied

CPO Authorized Signature: [Signature]  Date: [Date]
CFO Authorized Signature: [Signature]  Date: [Date]
Sole Source Section #3-Additional Justification (PVP contract renewal for 2020-2021)

For over 20 years, the Orange County Sheriff’s Department along with all of our contract cities have been using the PVP products in their Motorcycle communications systems. Officer’s Integrated Helmet Headset, Interface to Motorola Portable Radios, Interface to the on Motorcycle Hot Red Radio Package (Proprietary to Orange County Law Enforcement, used by All agencies), and Interface to Public Address.

Due to the specialized nature of this application, PVP has pioneered many of the systems that are widely used throughout the Motorcycle law enforcement community today.

Solutions offered by other vendors are typically generic or proprietary in nature. The Generic products are typically consumer-grade and fail to meet the minimum engineering and performance standards necessary for dependable public safety applications. Additionally, many of these off shore products are manufactured using substandard materials, with poor form fit and function, and substandard hardware. Quality control if any, is almost non-existent making these items un-safe and un-reliable in our public safety application.

Vendors offering Proprietary products that we have reviewed are designed to mate with the specific manufactures equipment only. We have found that these products from these manufacturers are not compatible with our existing fleet – wide system in several ways, They tend to be too large to fit in the electronics pod on the motorcycle, their interface cabling requires a dedicated wiring “Kit” They utilize a proprietary “Smart” Speaker/Microphone that is worn on the officer, and they utilize a controller mounted to the handle bar of the Motorcycle. (There is little if any additional space on the handle bars and would require a customized bracket).

PVP has developed a small, integrated IP67 rated (weather-tight) system interface that is designed to be a Motorcycle specific, Plug “N” Play option for each Motorcycle. Recognizing the space limitations in the electronics pod on Motorcycles today, this unit has been designed to fit in the palm of your hand with all cabling options hardwired directly into the unit. This Plug "N" Play design
directly interfaces to our specialized Motorola Astro Spectra and APX Hot Red radio control harness as well as the existing factory wiring harness on the Motorcycle thus reducing installation time and making for faster trouble-shooting and diagnostic repairs.

In the case of either generic or proprietary solutions, we have found these products are not as developed nor mission specific as the products from PVP. As such, these do not meet the fleet compatibility and interoperability requirements within the overall Public Safety Motorcycle, Aircraft, and Tactical Special Services equipment in service today. Having to migrate to another product would require a complete re-design and re-installation of every Motorcycle in the county wide fleet as well as each agency we service. This would encompass more than 250 Motorcycles and Officer Helmets.
March 4, 2020

To Whom It May Concern:

RE: Sole Source Manufacturer

PVP Communications, Inc is the sole manufacturer of PVP helmet communications. These helmet communication systems are uniquely designed to address the specific communications and safety needs dictated by the use of motorcycles in the field of law enforcement. Items sold to the County of Orange have been designed specifically for the special requirements of the department and are solely available from PVP Communications.

PVP Communications’ Motor-One™ and Freedom™ Wireless Systems are designed, patented, and manufactured exclusively by PVP Communications under United States Patents 6,311,052; 7,062,301; 7,203,525 and 9,042,944. The Motor-One and Freedom Wireless systems are the only product of its kind that incorporates Bluetooth® wireless technology.

Our CP line of headsets are the only ones available to integrate cell phone with a two way radio for law enforcement. The CP line is patent pending.

PVP Communications also understands the importance of product reliability and support with our customers and provides not only a one year limited warranty, but telephone technical support and modular designs that provide ease of maintenance for customers in the field.

We look forward to being of service to you in the future!

Sincerely,

[Signature]

Jay Calzada
General Manager
# Contract Summary Form

PVP Communications Inc.

## Summary of Significant Changes

N/A

## Subcontractors

This contracts do not include subcontractors or pass through to other providers.

## Contract Operating Expenses

See attached excerpt from the contract, which details the pricing in the not to exceed amount of $155,000, for a cumulative contract amount of $465,000.
<table>
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County of Orange
Sheriff-Coroner Department

MA-060-21010113
Motorcycle Helmet Communication Kits

Page 20 of 22
File No.: C028682

Revised 6/17/20
October 29, 2020

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 3, 2020, Board Hearing.

Agency: Health Care Agency
Subject: Master Agreement for Project Homekey Operator Services
Districts: 2

Reason for supplemental: The County Executive Office is requesting this Supplemental Item be added to the November 3, 2020, Board agenda to approve the operational use contract required for Project Homekey to move forward. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur: 

Michelle Steel, Chairwoman of the Board of Supervisors

cc: Board of Supervisors
    County Executive Office
    County Counsel
### SUPPLEMENTAL AGENDA ITEM

**AGENDA STAFF REPORT**

**MEETING DATE:** 11/03/2020  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** 2  
**SUBMITTING AGENCY/DEPARTMENT:** Health Care Agency  
**DEPARTMENT HEAD REVIEW:**  
**DEPARTMENT CONTACT PERSON(S):**  
- Jason Austin (714) 834-5000  
- Clayton Chau (714) 834-2830

**SUBJECT:** Master Agreement for Project Homekey Operator Services

<table>
<thead>
<tr>
<th>CEO CONCUR</th>
<th>COUNTY COUNSEL REVIEW</th>
<th>CLERK OF THE BOARD</th>
</tr>
</thead>
</table>
| Digitally signed by Frank Kim  
CR#: 100137500, crx: LA County of Orange, crx: CEO.  
e-mail: frankkim@orange.com,  
ctx: US  
Date: 2020.10.29 13:31:20-4737/77 | Approved to Form  
Action | Discussion  
3 Votes Board Majority |

**CEO Signature** | **County Counsel Signature**

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| Budgeted: Yes | **Current Year Cost:** $2,961,908 | Annual Cost: FY 2021-22:  
$3,669,498  
FY 2022-23: $3,669,498  
FY 2023-24: $3,514,254  
FY 2024-25: $3,514,254  
FY 2025-26: $917,374 |

| **Staffing Impact:** No | **# of Positions:** | **Sole Source:** Yes |

| **Current Fiscal Year Revenue:** N/A | **Funding Source:** See Financial Impact | **County Audit in last 3 years:** No |

**Prior Board Action:** 10/20/2020 #16G, 09/15/2020 #17, 07/28/2020 #25

**RECOMMENDED ACTION(S):**

1. Approve the Master Agreement with Jamboree Housing Corporation for provision of Operator Services for the term of November 3, 2020, through November 2, 2025, in an amount not to exceed $18,246,786.

2. Authorize the County Procurement Officer or authorized Deputy to execute the Agreement with Jamboree Housing Corporation as referenced in the Recommended Action above.

**SUMMARY:**
Approval of the Master Agreement with Jamboree Housing Corporation for Project Homekey Program operating services for interim housing sites to support homeless individuals exiting Project Roomkey until conversion to permanent supportive housing.

BACKGROUND INFORMATION:

In response to COVID-19, Project Roomkey was established in March of 2020 to provide Temporary Shelter for Vulnerable Populations and Temporary Isolation Shelter for sick/symptomatic persons experiencing homelessness in all three Service Planning Areas in Orange County. Each location has been managed by a contracted service provider and collectively those accommodations have proved effective in controlling the spread of COVID-19. On June 30, 2020, Governor Gavin Newsom announced the Homekey Program as the successor to Project Roomkey. These Homekey sites will assist those persons experiencing homelessness or at-risk of homelessness and who are impacted by the COVID-19 pandemic to be developed immediately into interim housing and ultimately into permanent supportive housing units.

On July 28, 2020 and September 15, 2020, your Honorable Board of Supervisors (Board) passed resolutions to apply and submit applications for Project Homekey with Jamboree Housing listed as co-applicant. On October 20, 2020, the Board authorized OCCR to accept Homekey Program grant funds totaling $23,088,000 and execute standard agreements related to the purchase and acquisition of the identified sites. Part of that agreement included the County providing immediate interim housing operations at the Homekey sites within ninety days.

The County, in collaboration with the County’s Continuum of Care Board and CalOptima, will provide funding to support operating costs for these Homekey Program sites from state and federal grants and County General Funds using existing HCA funding. All aspects of property operations as an interim housing program will include: 24 hours a day, seven days per week onsite security and site supervision, support services, referral access line, daily meals and janitorial services. The operator’s staff will connect all eligible participants to benefits, permanent housing options and community resources. This contract for operations contains non-standard County language developed and approved by County Counsel.

**Performance Goals**

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<tr>
<td>Number of participants enrolled</td>
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<td>Number of participants served</td>
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<td>Number of participants exited successfully and unsuccessfully</td>
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<td>Number of participants exited to permanent housing and other housing opportunities</td>
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<td>Average length of stay</td>
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<td>Number of participants enrolled into Cal Optima benefits</td>
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<td>Number of participants linked to behavioral health services</td>
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<tr>
<td>Number of participants enrolled in SSI/SSDI Advocacy programs</td>
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<tr>
<td>Number of participants linked to Social Services Agency benefits</td>
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The County in collaboration with the City of Stanton decided to partner with Jamboree Housing based on their extensive experience and past performance in housing development. This sole vendor was submitted as part of the County’s Project Homekey application.

A Sole Source Request Form is attached to this Agenda Staff Report. See Attachment C for approved Sole Source Form.
OCCR staff have conducted due diligence on the vendor. An RFI was conducted by OCCR in collaboration with the City of Stanton to determine a qualified co-applicant for Project Homekey.

This Agreement includes subcontractors. See Attachment B for information regarding subcontractors and Contract Summary Form.

The County's application for the State's Homekey Program Notice of Funding Availability (Homekey Program NOFA) included CalOptima, Emergency Solutions Grant, and Homeless Housing Assistance and Prevention Grant as the County's and Jamboree's sources of funds regarding their capacities to provide five years of operating funds for the transitional housing sites identified in the NOFA application. Although State has accepted the joint NOFA application, the County and Jamboree has yet to enter into a contract with State to that effect. The Agreement here includes a provision that requires the County to be solely responsible for any amounts owed to State pursuant to any contract that County and Jamboree enter into with the State, including any obligation to repay Project Homekey funds to the State, in the event the County terminates the Agreement for convenience or suspends/terminates the funding for this Agreement.

FINANCIAL IMPACT:

Appropriations for this Agreement are included in Budget Control 042 FY 2020-21 Budget and will be included in the budgeting process for future years.

Funding Source:
State: 87% (Emergency Solutions – Coronavirus Grant; Homeless Housing Assistance & Prevention Grant; CalOptima Grant; State General Funds - Department of Housing and Community Development)
General Fund: 7%
Fed: 6% (CARES Act Grant)

STAFFING IMPACT:
N/A

ATTACHMENT(S):
Attachment A - Master Agreement with Jamboree Housing Corporation
Attachment B – Contract Summary Form to Attachment A
Attachment C – Sole Source Request Form
CONTRACT FOR PROVISION OF
PROJECT HOMEKEY OPERATOR SERVICES
BETWEEN
COUNTY OF ORANGE
AND
JAMBOREE HOUSING CORPORATION
NOVEMBER 3, 2020 THROUGH NOVEMBER 2, 2025

THIS CONTRACT entered into this November 3, 2020 (effective date), is by and between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and Jamboree Housing Corporation, a California for-profit corporation (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This Contract shall be administered by the Director of the COUNTY’s Health Care Agency or an authorized designee (“ADMINISTRATOR”).

WITNESSETH:

WHEREAS, on February 26, 2020, the County declared a Local Emergency, and the County’s Health Officer declared a Local Health Emergency in response to COVID-19 emergency and outbreak, as necessary for the preservation of public health and safety; and
WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency in the State of California concerning the COVID-19 emergency and outbreak; and
WHEREAS, on March 12, 2020, Governor Gavin Newsom issued Executive Order N-25-20, ordering all California residents to heed any orders and guidance of State and local public health officials, including but not limited to imposition of social distancing measures, to control the spread of COVID-19; and
WHEREAS, on March 18, 2020, the President of the United States proclaimed a national emergency concerning the COVID-19 outbreak; and
WHEREAS, on March 22, 2020, the President of United States declared a major disaster exists in the State of California and ordered Federal assistant to supplement State and local recovery efforts in the areas affected by the COVID-19 pandemic; and
WHEREAS, the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) has issued the Public Assistance Program and Policy Guide, Version 4 (Guide) that provides guidance on the availability of federal funding to states and local governments during emergencies pursuant to Section 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act); and
//
WHEREAS, the Guide identifies the services/commodities described herein as an eligible cost during emergencies; and

WHEREAS, Section 601(a) and 601(d) of the Social Security Act, as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), provides that payments from the CARES Act funds may be used to cover certain costs that are necessary expenditures with respect to the COVID-19 emergency; and

WHEREAS, County is in need of the services/commodities described herein in order to support its efforts to respond to the COVID-19 pandemic in a manner consistent with the above declarations and authorities, including the CARES Act, and any continuing executive orders and declarations as part of the on-going emergencies; and

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Project Homekey Operator Services described herein to individuals experiencing homelessness in Orange County; and

WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein, COUNTY and CONTRACTOR do hereby agree as follows:
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<th>PARAGRAPH</th>
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<tbody>
<tr>
<td>Title Page</td>
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<tr>
<td>Table of Contents</td>
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<td>Referenced Contract Provisions</td>
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<td>II. Alteration of Terms</td>
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<td>III. Assignment of Debts</td>
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<td>IV. Compliance</td>
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<td>V. Confidentiality</td>
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<td>VI. Conflict of Interest</td>
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<td>VII. Corrective Action Plan</td>
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<td>VIII. Cost Report</td>
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<tr>
<td>IX. Debarment and Suspension Certification</td>
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<tr>
<td>X. Delegation, Assignment and Subcontracts</td>
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<td>XI. Dispute Resolution</td>
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<td>XII. Employee Eligibility Verification</td>
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<td>XIII. Equipment</td>
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<td>XIV. Facilities, Payments and Services</td>
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<td>XXI. Nondiscrimination</td>
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<td>XXV. Participant’s Rights</td>
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<td>XXVII. Records Management and Maintenance</td>
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<td>XXVIII. Research and Publication</td>
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<td>XXIX. Revenue</td>
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<td>XXXI. Special Provisions</td>
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<td>XXXII. Status of Contractor</td>
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<td>XXXIV. Termination</td>
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<td>XXXV. Third Party Beneficiary</td>
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## EXHIBIT A

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<td>I. Common Terms &amp; Definitions</td>
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<td>II. Budget</td>
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<tr>
<td>III. Payments</td>
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<td>IV. Reports</td>
<td>13</td>
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<td>V. Services</td>
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<td>VI. Staffing</td>
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## EXHIBIT B

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## EXHIBIT C

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### REFERENCED CONTRACT PROVISIONS

**Term:** November 3, 2020 – November 2, 2025

**Maximum Obligation:** $18,246,784

**Basis for Reimbursement:** Actual Cost

**Payment Method:** Monthly in Arrears

**CONTRACTOR DUNS Number:** 86-892-3442

**CONTRACTOR TAX ID Number:** 33-0413518

### Notices to COUNTY and CONTRACTOR:

**COUNTY:** County of Orange  
Health Care Agency  
Contract Services  
405 West 5th Street, Suite 600  
Santa Ana, CA 92701-4637

**CONTRACTOR:** Jamboree Housing Corporation  
17701 Cowan #200  
Irvine, CA 92614

<table>
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<th>CFDA#</th>
<th>FAIN#</th>
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<th>Federal Award Amount</th>
<th>R&amp;D Award (Y/N)</th>
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<td>N/A or 10% de minimis rate</td>
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### I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Contract:

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II. ALTERATION OF TERMS

A. This Contract, together with Exhibits A, B, and C attached hereto and incorporated herein by this reference, fully express the complete understanding of COUNTY and CONTRACTOR with respect to the services and obligations under this Contract.

B. Unless otherwise expressly stated in this Contract, no addition to, or alteration of the terms of this Contract or any Exhibits thereof, whether written or verbal, made by the Parties, their officers, employees or agents shall be valid unless made in the form of a written amendment to this Contract, which has been formally approved and executed by both Parties.

III. ASSIGNMENT OF DEBTS

Unless this Contract is followed without interruption by another Contract between the Parties hereto for the same services and substantially the same scope, at the termination of this Contract, CONTRACTOR shall assign to COUNTY any debts owed to CONTRACTOR by or on behalf of persons receiving services pursuant to this Contract. CONTRACTOR shall immediately notify by mail each of the relevant Parties, specifying the date of assignment, the County of Orange as assignee, and the address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of said persons, shall be immediately given to COUNTY.

IV. COMPLIANCE

A. COMPLIANCE PROGRAM - ADMINISTRATOR has established certain policies and procedures regarding a Compliance Program and Code of Conduct, and offers Annual Provider Trainings (together, “Compliance Program”) for the purpose of ensuring adherence to all rules and regulations related to federal and state homeless service and employment programs.

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1. ADMINISTRATOR shall provide CONTRACTOR a copy of the policies and procedures relating to ADMINISTRATOR’s Compliance Program for CONTRACTOR to implement and comply with in relation to Covered Individuals performing services under this Contract.

2. CONTRACTOR has the option to develop and provide, or make available to, ADMINISTRATOR copies of its own Compliance Program policies and procedures. CONTRACTOR’s Compliance Program policies and procedures shall be verified by ADMINISTRATOR’s Compliance Department to ensure they include all required elements of the ADMINISTRATOR’s Compliance Program as described in this Compliance Paragraph to this Contract prior to implementation. These elements include:
   a. Designation of a Compliance Officer and/or compliance staff.
   b. Written standards, policies and/or procedures.
   c. Compliance related training and/or education program and proof of completion.
   d. Communication methods for reporting concerns to the Compliance Officer.
   e. Methodology for conducting internal monitoring and auditing.
   f. Methodology for detecting and correcting offenses.
   g. Methodology/Procedure for enforcing disciplinary standards.

3. If CONTRACTOR does not provide, or make available to ADMINISTRATOR, copies of its own Compliance Program policies and procedures, CONTRACTOR shall comply with ADMINISTRATOR’s Compliance Program in performing the services hereunder, and shall submit to the ADMINISTRATOR within thirty (30) calendar days of execution of this Contract a signed acknowledgement that CONTRACTOR will internally comply with ADMINISTRATOR’s Compliance Program. CONTRACTOR shall have as many Covered Individuals as it determines necessary, complete ADMINISTRATOR’s annual compliance training to ensure proper compliance.

4. If CONTRACTOR elects to have its own Compliance Program, then CONTRACTOR shall submit, or make available to ADMINISTRATOR copies of that Compliance Program policies and procedures within thirty (30) calendar days of execution of this Contract. ADMINISTRATOR’s Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not exceed forty-five (45) calendar days, and determine if CONTRACTOR’s proposed Compliance Program contains all required elements to the ADMINISTRATOR’s satisfaction as consistent with the HCA’s Compliance Program. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and CONTRACTOR shall revise its Compliance Program to meet ADMINISTRATOR’s required elements within thirty (30) calendar days after ADMINISTRATOR’s Compliance Officer’s determination and resubmit the same to ADMINISTRATOR for review.

5. Upon written confirmation from ADMINISTRATOR’s Compliance Officer that the CONTRACTOR’s Compliance Program contains all required elements, CONTRACTOR shall ensure that all Covered Individuals relative to this Contract are made aware of CONTRACTOR’s Compliance Program and contact information for the ADMINISTRATOR’s Compliance Program.
B. GENERAL COMPLIANCE TRAINING - ADMINISTRATOR shall make General Compliance Training available to Covered Individuals.

1. CONTRACTORS that have acknowledged that they will comply with ADMINISTRATOR’s Compliance Program shall use their best efforts to encourage completion by all Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated representative to complete ADMINISTRATOR’s General Compliance Training when offered.

2. Such training will be made available to Covered Individuals within thirty (30) calendar days of employment or engagement.

3. Such training will be made available to each Covered Individual annually.

4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide copies of training certification upon request.

5. Each Covered Individual attending a group training shall certify, in writing, attendance at compliance training. ADMINISTRATOR shall provide instruction on group training completion while CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

C. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized Provider Training, where appropriate, available to Covered Individuals.

1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered Individuals relative to this Contract. This includes compliance with federal and state HOMELESS SERVICES program regulations and procedures or instructions otherwise communicated by regulatory agencies.

2. Such training will be made available to Covered Individuals within thirty (30) calendar days of employment or engagement.

3. Such training will be made available to each Covered Individual annually.

4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall provide copies of the certifications upon request.

5. Each Covered Individual attending a group training shall certify, in writing, attendance at compliance training. ADMINISTRATOR shall provide instructions on completing the training in a group setting while CONTRACTOR shall retain the certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

D. Failure to comply with the obligations stated in this Compliance Paragraph shall constitute a breach of the Contract on the part of CONTRACTOR and be grounds for COUNTY to terminate the Contract.
V. CONFIDENTIALITY

A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, as they now exist or may hereafter be amended or changed.

1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this Contract are Participants of the Orange County Project Homekey Operator Shelter Services Program, and therefore it may be necessary for authorized staff of ADMINISTRATOR to audit Participants files, or to exchange information regarding specific Participants with COUNTY or other providers of related services contracting with COUNTY.

2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written consents for the release of information from all persons served by CONTRACTOR pursuant to this Contract.

3. In the event of a collaborative service agreement between Homeless Services providers, CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information, from the collaborative agency, for Participants receiving services through the collaborative agreement.

B. Prior to providing any services pursuant to this Contract, all members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and records which may be obtained in the course of providing such services. This Contract shall specify that it is effective irrespective of all subsequent resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns.

VI. CONFLICT OF INTEREST

CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with COUNTY interests. This obligation shall also apply to CONTRACTOR’s employees, agents, subcontractors, consultants, volunteers and interns associated with the provision of services provided under this Contract. CONTRACTOR’s efforts shall include, but not be limited to, establishing rules and procedures preventing its employees, agents, subcontractors, consultants, volunteers and interns from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence COUNTY staff or elected officers in the performance of their duties.

VII. CORRECTIVE ACTION PLAN

A. CONTRACTOR shall be responsible for meeting all programmatic and administrative contracted objectives and requirements as indicated in this Contract. CONTRACTOR shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not
meet goals and expectations, and/or for non-compliance. If CAPs are not completed within an
acceptable timeframe as determined by ADMINISTRATOR notice, ADMINISTRATOR reserves the
right to reduce and/or withhold payments until such time as the CAP is resolved to the satisfaction of the
ADMINISTRATOR. Failure to resolve the CAP to ADMINISTRATOR’s satisfaction will constitute a
material breach and be grounds for termination of this Contract.

VIII. COST REPORT

A. CONTRACTOR shall submit a Cost Report to County no later than sixty (60) calendar days
following termination of this Contract. CONTRACTOR shall prepare the Cost Report in accordance
with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions
Paragraph of this Contract. CONTRACTOR shall allocate direct and indirect costs to and between
programs, cost centers, services, and funding sources in accordance with such requirements and
consistent with prudent business practice, which costs and allocations shall be supported by source
documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon
reasonable notice.

1. If CONTRACTOR fails to submit an accurate and complete Cost Report within the time
period specified above, ADMINISTRATOR shall have sole discretion to impose one or both of the
following:

   a. CONTRACTOR may be assessed a late penalty of five-hundred dollars ($500) for each
      business day after the above specified due date that the accurate and complete Cost Report is not
      submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The
      late penalty shall be assessed separately on each outstanding Cost Report due COUNTY by
      CONTRACTOR.

   b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
      pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the
      accurate and complete Cost Report is delivered to ADMINISTRATOR.

2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the
   Cost Report setting forth good cause for justification of the request. Approval of such requests shall be
   at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied.

3. In the event that CONTRACTOR does not submit an accurate and complete Cost Report
   within one hundred and eighty (180) calendar days following the termination of this Contract, and
   CONTRACTOR has not entered into a subsequent or new Contract for any other services with
   COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Contract shall
   be immediately reimbursed to COUNTY.
B. The Cost Report shall be the final financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR. CONTRACTOR shall document that costs are reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The Cost Report shall be the final financial record for subsequent audits, if any.

C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues and any late penalty, not to exceed COUNTY’s Maximum Obligation as set forth in the Referenced Contract Provisions of this Contract. CONTRACTOR shall not claim expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an unreimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30) calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, less applicable revenues and late penalty, are lower than the aggregate of interim monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Contract, less applicable revenues and late penalty, are higher than the aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided such payment does not exceed the Maximum Obligation of COUNTY.

F. All Cost Reports shall contain the following attestation, which may be typed directly on or attached to the Cost Report:

"I HEREBY CERTIFY that I have executed the accompanying Cost Report and supporting documentation prepared by __________ for the cost report period beginning __________ and ending __________ and that, to the best of my knowledge and belief, costs reimbursed through this Contract are reasonable and allowable and directly or indirectly related to the services provided and that this Cost Report is a true, correct, and complete statement from the books and records of (provider name) in accordance with applicable instructions, except as noted. I also hereby certify that I have the authority to execute the accompanying Cost Report."
IX. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONTRACTOR certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded, or placed on any such lists, by any federal department or agency.

2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.

4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction,” (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.

B. The terms and definitions of this paragraph have the meanings set out in the Definitions and Coverage sections of the rules implementing 51 F.R. 6370.

X. DELEGATION, ASSIGNMENT AND SUBCONTRACTS

A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR’s intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted delegation in derogation of this paragraph shall be void.
B. CONTRACTOR agrees that if there is an assignment of this Contract by CONTRACTOR, as defined below, prior to completion of this Contract, and COUNTY agrees to such assignment, the new owners shall be required under the terms of sale or such other instruments of transfer for the assignment to assume CONTRACTOR’s duties and obligations contained in this Contract and complete them to the satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR’s intent to assign the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the assignment. COUNTY reserves the right to immediately terminate the Contract in the event COUNTY determines, in its sole discretion, that the assignee is not qualified or is otherwise unacceptable to COUNTY for the provision of services under the Contract. Any attempted assignment in derogation of this subparagraph shall be void.

1. Nonprofit Entity Assignment. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal Government.

2. For-Profit Entity Assignment. If CONTRACTOR is a for-profit organization, any change in the business structure, including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR at one time shall be deemed an assignment pursuant to this paragraph.

3. Governmental Entity Assignment. If CONTRACTOR is a governmental organization, any change to another structure, including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph.

4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization, CONTRACTOR shall provide written notification within thirty (30) calendar days to ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any governing body of CONTRACTOR at one time.

C. CONTRACTOR’s obligations undertaken pursuant to this Contract may be carried out by means of subcontracts, provided such subcontractors are approved in advance by ADMINISTRATOR, meet the requirements of this Contract as they relate to the service or activity under subcontract, include any provisions that ADMINISTRATOR may require, and are authorized in writing by ADMINISTRATOR prior to the beginning of service delivery.
1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the subcontractor upon five (5) calendar days’ written notice to CONTRACTOR if the subcontractor subsequently fails to meet the requirements of this Contract or any provisions that ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported by CONTRACTOR.

2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY pursuant to this Contract.

3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR, amounts claimed for subcontracts not approved in accordance with this paragraph.

4. This provision shall not be applicable to service agreements usually and customarily entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional services provided by consultants.

D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR’s status with respect to a mere name change. CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party to any litigation against COUNTY, or a party to litigation that may reasonably affect the CONTRACTOR’s performance under the Contract, as well as any potential conflicts of interest between CONTRACTOR and County that may arise prior to or during the period of Contract performance.

XI. DISPUTE RESOLUTION

A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:

1. CONTRACTOR shall submit to the County Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract.

2. CONTRACTOR’s written demand shall be fully supported by factual information, and shall include with the demand a written statement signed by an authorized representative indicating that the demand is made in good faith, that the supporting data are accurate and complete. If such demand involves a cost adjustment to the Contract, CONTRACTOR’s written statement shall state that the amount requested accurately reflects the Contract adjustment for which CONTRACTOR believes COUNTY is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, CONTRACTOR agrees to proceed diligently with the performance of services secured via this Contract, including the provision of services. CONTRACTOR’s failure to proceed diligently shall constitute a material breach and be grounds for termination of this Contract.

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C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agency or deputy. If COUNTY fails to render a decision within ninety (90) calendar days after receipt of CONTRACTOR’s demand, it shall be deemed a final decision adverse to CONTRACTOR’s contentions.

D. This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

XII. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR attests that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Contract meet the citizenship or alien status requirements set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, subcontractors, and consultants for the period prescribed by the law.

XIII. EQUIPMENT

A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by ADMINISTRATOR to assist in performing the services described in this Contract. “Relatively Permanent” is defined as having a useful life of one (1) year or longer. Equipment which costs $5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between $600 and $5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than $600 but may contain PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Contract shall be depreciated according to GAAP.

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B. CONTRACTOR shall obtain ADMINISTRATOR’s written approval prior to purchase of any Equipment with funds paid pursuant to this Contract. Upon delivery of Equipment, CONTRACTOR shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.

C. Upon ADMINISTRATOR’s prior written approval, CONTRACTOR may expense to COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To “expense,” in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with COUNTY.

D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Contract, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if any.

E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any or all Equipment to COUNTY.

F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure approved by ADMINISTRATOR and the Notices Paragraph of this Contract. In addition, CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of Equipment are moved from one location to another or returned to COUNTY as surplus.

G. Unless this Contract is followed without interruption by another Contract between the Parties for substantially the same type and scope of services, at the termination of this Contract for any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this Contract.

H. CONTRACTOR shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

XIV. FACILITIES, PAYMENTS AND SERVICES

A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance with this Contract. COUNTY shall compensate, and authorize, when applicable, said services. CONTRACTOR shall operate continuously throughout the term of this Contract with at least the minimum number and type of staff which meet applicable federal and state requirements, and which are necessary for the provision of the services hereunder. Service disruptions must be reported to COUNTY immediately and be approved in writing by the ADMINISTRATOR.
B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation. The reduction to the Maximum Obligation shall be in an amount proportionate to the number of days in which CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.

**XV. INDEMNIFICATION AND INSURANCE**

A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY’s Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this Contract. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

B. Prior to the provision of services under this Contract, CONTRACTOR agrees to purchase all required insurance at CONTRACTOR’s expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Contract have been complied with. CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with COUNTY during the entire term of this Contract. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Contract shall be covered under CONTRACTOR’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from CONTRACTOR under this Contract. It is the obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CONTRACTOR through the entirety of this Contract for inspection by COUNTY representative(s) at any reasonable time.

D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand dollars ($50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of CONTRACTOR’s current audited financial report. If CONTRACTOR’s SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:
1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from CONTRACTOR’s, its agents, employee’s or subcontractor’s performance of this Contract, CONTRACTOR shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2. CONTRACTOR’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 the CONTRACTOR’s SIR provision shall be interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.

E. If CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of this Contract, the COUNTY may terminate this Contract.

F. QUALIFIED INSURER

1. 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).

2. 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.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td></td>
<td>$2,000,000 aggregate</td>
</tr>
<tr>
<td>Automobile Liability including coverage</td>
<td>$2,000,000 per occurrence</td>
</tr>
<tr>
<td>for owned, non-owned and hired vehicles</td>
<td>(7 passengers or less)</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers’ Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims made</td>
</tr>
<tr>
<td>Employee Dishonesty</td>
<td>$1,000,000 per occurrence</td>
</tr>
</tbody>
</table>
H. REQUIRED COVERAGE FORMS

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

2. The Business Automobile 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 coverage at least as broad.

I. REQUIRED ENDORSEMENTS

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:
   a. 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, agents and employees as Additional Insureds, or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN CONTRACT*.
   b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the CONTRACTOR’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

2. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:
   a. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.
   b. A primary and non-contributing endorsement evidencing that the CONTRACTOR’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

J. The Workers’ Compensation policy 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*, or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN CONTRACT*.

K. All insurance policies required by this Contract 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.

L. The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.

M. CONTRACTOR shall notify COUNTY in writing within thirty (30) business days of any policy cancellation and within ten (10) business days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to suspend or terminate this Contract.
N. If CONTRACTOR’s Network Security & Privacy Liability is a “Claims Made” policy, CONTRACTOR shall agree to maintain coverage for two (2) years following the completion of the Contract.

O. 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 0001 policy).

P. Insurance certificates should be forwarded to COUNTY at the address specified in the Referenced Contract Provisions of this Contract.

Q. If the CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, the Contract may be terminated by County without penalty.

R. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

S. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

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

U. SUBMISSION OF INSURANCE DOCUMENTS

1. The COI and endorsements shall be provided to COUNTY as follows:
   a. Prior to the start date of this Contract.
   b. No later than the expiration date for each policy.
   c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.

2. The COI and endorsements shall be provided to the COUNTY at the address as specified in the Referenced Contract Provisions of this Contract.

3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance provisions stipulated in this Contract by the above specified due dates, ADMINISTRATOR shall have sole discretion to impose one or both of the following:
   a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any and all Contracts between COUNTY and CONTRACTOR until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to ADMINISTRATOR.
b. CONTRACTOR may be assessed a penalty of one hundred dollars ($100) for each late COI or endorsement for each business day, pursuant to any and all Contracts between COUNTY and CONTRACTOR, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to ADMINISTRATOR.

c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from CONTRACTOR’s monthly invoice.

4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

XVI. INSPECTIONS AND AUDITS

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Comptroller General of the United States, or any other of their authorized representatives, shall to the extent permissible under applicable law have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, and Participant records, of CONTRACTOR that are directly pertinent to this Contract, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Contract. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Contract, and the premises in which they are provided.

B. CONTRACTOR shall actively participate and cooperate with any person specified in Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this Contract, and shall provide the above–mentioned persons adequate office space to conduct such evaluation or monitoring.

C. AUDIT RESPONSE

1. Following an audit report, in the event of non–compliance with applicable laws and regulations governing funds provided through this Contract, COUNTY may terminate this Contract as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement appropriate corrective action. A CAP shall be submitted to ADMINISTRATOR in writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.

2. If the audit reveals that money is payable from one Party to the other, that is, reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said funds shall be due and payable from one Party to the other within sixty (60) calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement is not received within said sixty (60) calendar days, COUNTY may,
in addition to any other remedies provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as may be required during the term of this Contract.

E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR’s operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Contract.

XVII. LICENSES AND LAWS

A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Contract, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be cause for termination of this Contract.

B. CONTRACTOR shall comply with all applicable governmental laws, regulations, and requirements as they exist now or may be hereafter amended or changed. The applicable provisions of laws, regulations, and requirements for the provision of services under this Contract shall include, but not be limited to, the following:

1. ARRA of 2009.
4. CCR, Title 9, Rehabilitative and Developmental Services.
5. CCR, Title 17, Public Health.
6. CCR, Title 22, Social Security.
7. CFR, Title 42, Public Health.
8. CFR, Title 45, Public Welfare.
12. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
14. McKinney-Vento Homeless Assistance Act
15. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

XVIII. LITERATURE, ADVERTISEMENTS AND SOCIAL MEDIA

A. Any written information or literature, including educational or promotional materials, distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related to this Contract must be approved at least thirty (30) business days in advance and in writing by ADMINISTRATOR before distribution. For the purposes of this Contract, distribution of written materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such as the Internet.

B. Any advertisement through radio, television broadcast, or the Internet, for educational or promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this Contract must be approved in advance at least thirty (30) business days and in writing by ADMINISTRATOR.

C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) in support of the services described within this Contract, CONTRACTOR shall develop social media policies and procedures and have them available to ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media used to either directly or indirectly support the services described within this Contract. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. CONTRACTOR shall also include any required funding statement information on social media when required by ADMINISTRATOR.

D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by COUNTY, unless ADMINISTRATOR consents thereto in writing.

XIX. MAXIMUM OBLIGATION

A. The Maximum Obligation of COUNTY for services provided in accordance with this Contract is as specified in the Referenced Contract Provisions of this Contract.

B. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten percent (10%) of funding for this Agreement.

XX. MINIMUM WAGE LAWS

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its Covered Individuals (as defined herein) that directly or
indirectly provide services pursuant to this Contract, in any manner whatsoever. CONTRACTOR shall require and verify that all of its Covered Individuals providing services pursuant to this Contract be paid no less than the greater of the federal or California Minimum Wage.

B. CONTRACTOR shall comply and verify that its Covered Individuals comply with all other federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to providing services pursuant to this Contract.

C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR, where applicable, shall comply with the prevailing wage and related requirements, as provided for in accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

XXI. NONDISCRIMINATION

A. EMPLOYMENT

1. During the term of this Contract, CONTRACTOR and its Covered Individuals (as defined in the “Compliance” paragraph of this Contract) shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term of this Contract, CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

3. CONTRACTOR shall not discriminate between employees with spouses and employees with domestic partners, or discriminate between domestic partners and spouses of those employees, in the provision of benefits.

4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices from ADMINISTRATOR and/or the United States Equal Employment Opportunity Commission setting forth the provisions of the EOC.

5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender
identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed fulfilled by use of the term EOE.

6. Each labor union or representative of workers with which CONTRACTOR and/or subcontractor has a collective bargaining agreement or other contract or understanding must post a notice advising the labor union or workers’ representative of the commitments under this Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the CCR; and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination paragraph, discrimination includes, but is not limited to the following based on one or more of the factors identified above:

1. Denying a Participant or potential Participant any service, benefit, or accommodation.

2. Providing any service or benefit to a Participant which is different or is provided in a different manner or at a different time from that provided to other Participants.

3. Restricting a Participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service and/or benefit.

4. Treating a Participant differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service and/or benefit.

5. Assignment of times or places for the provision of services.

C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all Participants through a written statement that CONTRACTOR’s and/or subcontractor’s Participants may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR.

1. Whenever possible, problems shall be resolved at the point of service. CONTRACTOR shall establish an internal informal problem resolution process for Participants not able to resolve such problems at the point of service. Participants may initiate a grievance or complaint directly with CONTRACTOR either orally or in writing.
a. COUNTY shall establish a formal resolution and grievance and appeals process in the event informal processes do not yield a resolution.

b. Throughout the problem resolution and grievance and appeals process, Participant rights shall be maintained, including access to the COUNTY’s grievance and appeals process at any point in the process.

2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, has the right to request a State Fair Hearing.

D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities, and if applicable, as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together with succeeding legislation.

E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.

F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state law, this Contract may be canceled, terminated or suspended in whole or in part and CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal, state or COUNTY funds.

XXII. NOTICES

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Contract shall be effective:

1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by E-Mail; or

4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.

B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by ADMINISTRATOR and shall be effective when faxed,
transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United
Parcel Service, or any other expedited delivery service.

C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of
becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such
occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or
damage to any COUNTY property in possession of CONTRACTOR.

D. For purposes of this Contract, any notice to be provided by COUNTY may be given by
ADMINISTRATOR.

XXIII. NOTIFICATION OF DEATH

A. Upon becoming aware of the death of any person served pursuant to this Contract,
CONTRACTOR shall immediately notify ADMINISTRATOR.

B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain
the name of the deceased, the date and time of death, the nature and circumstances of the death, and the
name(s) of CONTRACTOR’s officers or employees with knowledge of the incident.

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by
telephone immediately upon becoming aware of the death due to non-terminal illness of any person
served pursuant to this Contract; notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION
   a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send
      via encrypted E-Mail to ADMINISTRATOR a written report within sixteen (16) hours after becoming
      aware of the death due to non-terminal illness of any person served pursuant to this Contract.
   b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written
      report hand delivered, faxed, sent via encrypted E-Mail, within forty-eight (48) hours of becoming
      aware of the death due to terminal illness of any person served pursuant to this Contract.
   c. When notification via encrypted E-Mail is not possible or practical CONTRACTOR
      may hand deliver or fax to a known number said notification.

C. If there are any questions regarding the cause of death of any person served pursuant to this
Contract who was diagnosed with a terminal illness, or if there are any unusual circumstances related to
the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this
Notification of Death Paragraph.

XXIV. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in
whole or in part by the COUNTY, except for those events or meetings that are intended solely to serve
Clients or occur in the normal course of business.
B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance of any applicable public event or meeting. The notification must include the date, time, duration, location and purpose of the public event or meeting. Any promotional materials or event related flyers must be approved by ADMINISTRATOR prior to distribution.

XXV. PARTICIPANT’S RIGHTS

A. CONTRACTOR shall post the current HMIS privacy notice as well as the Orange County Continuum of Care Grievance and Appeals poster in locations readily available to Participants and staff. Grievance and Appeal forms must be available in the threshold languages and envelopes must be readily accessible to Participants to take without having to request the form or envelope.

B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have an internal grievance and appeals processes approved by ADMINISTRATOR, to which the participant shall have access.

1. CONTRACTOR’s grievance and appeals processes shall incorporate COUNTY’s grievance, appeals, participants’ rights, and/or utilization management guidelines and procedures. The participant has the right to utilize either or both grievance and appeals process(es) simultaneously in order to resolve their dissatisfaction.

C. The Parties agree that Participants have recourse to initiate an expression of dissatisfaction to CONTRACTOR, file a grievance, file an appeal, and file a complaint.

XXVI. PAYMENT CARD COMPLIANCE

Should CONTRACTOR conduct credit/debit card transactions in conjunction with their business with COUNTY, on behalf of COUNTY, or as part of the business that they conduct, CONTRACTOR covenants and warrants that it is currently PA DSS and PCI DSS compliant and will remain compliant during the entire duration of this Contract. CONTRACTOR agrees to immediately notify COUNTY in the event CONTRACTOR should ever become non-compliant, and will take all necessary steps to return to compliance and shall be compliant within ten (10) business days of the commencement of any such interruption. Upon demand by COUNTY, CONTRACTOR shall provide to COUNTY written certification of CONTRACTOR’s PA DSS and/or PCI DSS compliance.

XXVII. RECORDS MANAGEMENT AND MAINTENANCE

A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Contract, prepare, maintain and manage records, primarily in HMIS, appropriate to the services provided and in accordance with this Contract and all applicable requirements.

1. CONTRACTOR shall maintain records that are adequate to substantiate the services for which claims are submitted for reimbursement under this Contract and the charges thereto. Such
records shall include, but not be limited to, individual housing plans, case management plans and utilization review records.

2. CONTRACTOR shall keep and maintain records of each service rendered to each participant, the identity of the participant to whom the service was rendered, the date the service was rendered, and such additional information as ADMINISTRATOR may require.

3. CONTRACTOR shall maintain books, records, documents, accounting procedures and practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature claimed to have been incurred in the performance of this Contract and in accordance with County policies of reimbursement and GAAP.

B. CONTRACTOR shall implement and maintain acceptable administrative, technical and physical safeguards to ensure the privacy and security of health related and/or personally identifying information CONTRACTOR collects from participants. If there is an unauthorized use of disclosure of participant’s health related and/or personally identifying information in possession of CONTRACTOR, CONTRACTOR shall (i) immediately notify ADMINISTRATOR of such unauthorized use of disclosure and (ii) mitigate, to the extent practicable, the known harmful effect of any such unauthorized use or disclosure.

C. CONTRACTOR’s participant records shall be maintained in a secure manner. CONTRACTOR shall maintain participant records and must establish and implement written record management procedures.

D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the termination of the contract, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.

E. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges, billings, and revenues available at one (1) location within the limits of the County of Orange. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide written approval to CONTRACTOR to maintain records in a single location, identified by CONTRACTOR.

F. To the extent CONTRACTOR is subject to PRA, CONTRACTOR shall notify ADMINISTRATOR of any PRA requests related to, or arising out of, this Contract, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR all information that is requested by the PRA request.

G. CONTRACTOR may retain participant documentation electronically in accordance with the terms of this Contract and common business practices. If documentation is retained electronically, CONTRACTOR shall, in the event of an audit or site visit:

1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit or site visit.

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2. Provide auditor or other authorized individuals access to documents via a computer terminal.
3. Provide auditor or other authorized individuals a hardcopy printout of documents, if requested.

XXVIII. RESEARCH AND PUBLICATION

CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out of, or developed, as a result of this Contract for the purpose of personal or professional research, or for publication.

XXIX. REVENUE

A. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Contract may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR’s usual and customary charges.

B. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately ensure proper billing and collection procedures. CONTRACTOR’s procedures shall specifically provide for the identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are billed, collected, transferred to a collection agency, or deemed by CONTRACTOR to be uncollectible.

C. OTHER REVENUES – CONTRACTOR shall charge for services, supplies, or facility use by persons other than individuals or groups eligible for services pursuant to this Contract.

XXX. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Contract or application thereof to any person or circumstances to be invalid or if any provision of this Contract contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Contract or the application thereof shall remain valid, and the remaining provisions of this Contract shall remain in full force and effect, and to that extent the provisions of this Contract are severable.

XXXI. SPECIAL PROVISIONS

A. CONTRACTOR shall not use the funds provided by means of this Contract for the following purposes:

1. Making cash payments to intended recipients of services through this Contract.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body.
5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing body for expenses or services.
6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
8. Severance pay for separating employees.
9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.
10. Supplanting current funding for existing services.

B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Contract for the following purposes:
1. Funding travel or training (excluding program-related mileage or parking).
2. Making phone calls outside of the local area unless documented to be directly for the purpose of Participant care.
3. Payment for grant writing, consultants, certified public accounting, or legal services.
4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Contract.
5. Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.
6. Providing inpatient hospital services or purchasing major medical equipment.
7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal funds (matching).
8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s Participants outside of program Scope of Services.

XXXII. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Contract. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Contract shall not be construed as creating the
relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR’s employees, agents, consultants, volunteers, interns, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, volunteers, interns, or subcontractors as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, volunteers, interns, or subcontractors, shall not be entitled to any rights or privileges of COUNTY’s employees and shall not be considered in any manner to be COUNTY’s employees.

XXXIII. TERM

A. The term of this Contract shall commence as specified in the Referenced Contract Provisions of this Contract or the execution date, whichever is later. This Contract shall terminate as specified in the Referenced Contract Provisions of this Contract unless otherwise sooner terminated as provided in this Contract. CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting, and accounting.

B. Any administrative duty or obligation to be performed pursuant to this Contract on a weekend or holiday may be performed on the next regular business day.

XXXIV. TERMINATION

A. COUNTY may terminate this Contract, without cause, upon thirty (30) calendar days’ written notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Contract.

1. The County acknowledges that Contractor and the County have applied for the Homekey Program Notice of Funding Availability (Homekey Program NOFA) issued by the California Department of Housing and Community Development (HCD). Pursuant to this joint application, the County and Contractor, jointly and severally, identified their capacities to provide five years of operating funds for the transitional housing sites identified in their Homekey Program NOFA application. The sources of funding identified are from CalOptima, Emergency Solutions Grant, and Homeless Housing Assistance and Prevention Grant (Original Funding Sources). The HCD has accepted the joint application by Contractor and County, but agreements with HCD have not been executed as of the effective date of this CONTRACT. In the event the County terminates this Contract without cause under this Contract or the County suspends or terminates the funding under this Contract the County shall be solely responsible for any amounts owed to HCD pursuant to the Standard Agreement, including any obligation to repay Project Homekey funds to HCD.

B. COUNTY may terminate this Contract immediately, upon prior written notice, on the occurrence of any of the following events:
1. The loss by CONTRACTOR of legal capacity.
2. Cessation of services without cause.
3. The delegation or assignment of CONTRACTOR’s services, operation or administration without the prior written consent of COUNTY.
4. The neglect by any licensed person employed by CONTRACTOR of any duty required pursuant to this Contract.
5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this Contract.
6. The continued incapacity of any licensed person to perform duties required pursuant to this Contract.
7. Unethical conduct or malpractice by any physician or licensed person providing services pursuant to this Contract; provided, however, COUNTY may waive this option if CONTRACTOR removes such licensed person from serving persons assisted pursuant to this Contract.

C. CONTINGENT FUNDING

1. Any obligation of COUNTY under this Contract is contingent upon the following:
   a. The continued availability of federal, state and County funds for reimbursement of COUNTY’s expenditures, and
   b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s) approved by the Orange County Board of Supervisors.

2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend, terminate or renegotiate this Contract upon thirty (30) calendar days’ written notice provided to CONTRACTOR. If COUNTY elects to renegotiate this Contract due to reduced or terminated funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

D. In the event this Contract is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Contract, ADMINISTRATOR may, at its sole discretion, reduce the Not To Exceed Amount of this Contract to be consistent with the reduced term of the Contract.

E. In the event this Contract is terminated CONTRACTOR shall do the following:
   1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of quality care and prudent business practice.
   2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of Contract performance during the remaining Contract term.
   3. Until the date of termination, continue to provide the same level of service required by this Contract.
   4. If Participant’s records are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all Participant’s information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.
5. Assist ADMINISTRATOR in effecting the transfer of Participants in a manner consistent with Participant’s best interests.

6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.

7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and supplies purchased with funds provided by COUNTY.

8. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personal services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.

9. Provide written notice of termination of services to each Participant being served under this Contract, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendar day period.

XXXV. THIRD PARTY BENEFICIARY

Neither Party hereto intends that this Contract shall create rights hereunder in third parties including, but not limited to, any subcontractors or any Participants provided services pursuant to this Contract.

XXXVI. WAIVER OF DEFAULT OR BREACH

Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this Contract shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any default or any breach by CONTRACTOR shall not be considered a modification of the terms of this Contract.

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IN WITNESS WHEREOF, the Parties have executed this Contract, in the County of Orange, State of California.

BY: George Scary

DATED: 10/28/2020

TITLE: COO

BY: Michael Massie

DATED: 10/28/2020

TITLE: Chief Development Officer

COUNTY OF ORANGE

BY: ________________________________

DATED: ________________________________

HEALTH CARE AGENCY

APPROVED AS TO FORM

OFFICE OF THE COUNTY COUNSEL

ORANGE COUNTY, CALIFORNIA

DATED: 10/28/2020

If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution or by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or her signature alone is required by ADMINISTRATOR.
EXHIBIT A

TO THE CONTRACT FOR PROVISION OF
PROJECT HOMEKEY OPERATOR SERVICES

BETWEEN

COUNTY OF ORANGE

AND

TBD

NOVEMBER 3, 2020 THROUGH NOVEMBER 2, 2025

I. COMMON TERMS AND DEFINITIONS

A. The parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Agreement.

1. **Active and Ongoing Case Load** means documentation, by CONTRACTOR, of completion of the entry and evaluation documents into IRIS and documentation that the Consumers are receiving services at a level and frequency and duration that is consistent with each Consumer’s level of impairment and treatment goals and consistent with individualized, solution-focused, evidenced-based practices.

2. **ADL** means Activities of Daily Living and refers to diet, personal hygiene, clothing care, grooming, money and household management, personal safety, symptom monitoring, etc.

3. **Admission** means documentation, by CONTRACTOR, of completion of the entry and evaluation documents into IRIS.

4. **Benefits Specialist** means a specialized position that would primarily be responsible for coordinating Consumer applications and appeals for State and Federal benefits.

5. **Best Practices** means a term that is often used interchangeably with “evidence-based practice” and is best defined as an “umbrella” term for three levels of practice, measured in relation to Recovery-consistent mental health practices where the Recovery process is supported with scientific intervention that best meets the needs of the Consumer at this time.
   a. **EBP** means Evidence-Based Practices and refers to the interventions utilized for which there is consistent scientific evidence showing they improved Consumer outcomes and meets the following criteria: it has been replicated in more than one geographic or practice setting with consistent results; it is recognized in scientific journals by one or more published articles; it has been documented and put into manual forms; it produces specific outcomes when adhering to the fidelity of the model.
   b. **Promising Practices** means that experts believe the practice is likely to be raised to the next level when scientific studies can be conducted and is supported by some body of evidence, (evaluation studies or expert consensus in reviewing outcome data); it has been endorsed by recognized bodies of advocacy organizations and finally, produces specific outcomes.
c. **Emerging Practices** means that the practice seems like a logical approach to addressing a specific behavior which is becoming distinct, recognizable among Consumers and clinicians in practice, or innovators in academia or policy makers; and at least one recognized expert, group of researchers or other credible individuals have endorsed the practice as worthy of attention based on outcomes; and finally, it produces specific outcomes.

6. **Care Coordinator** is a MHS, CSW, or MFT that provides mental health, crisis intervention and case management services to those Consumers who seek services in the COUNTY operated outpatient programs.

7. **Case Management Linkage Brokerage** means a process of identification, assessment of need, planning, coordination and linking, monitoring and continuous evaluation of Consumers and of available resources and advocacy through a process of casework activities in order to achieve the best possible resolution to individual needs in the most effective way possible. This includes supportive assistance to the Consumer in the assessment, determination of need and securing of adequate and appropriate living arrangements.

8. **CAT** means Crisis Assessment Team and provides twenty-four (24) hour mobile response services to any adult who has a behavioral health emergency. This program assists law enforcement, social service agencies, and families in providing crisis intervention services for individuals who are in behavioral health crises. CAT is a multi-disciplinary program that conducts risk assessments, initiates involuntary hospitalizations as necessary, and provides case management, linkage and follow up services for individuals evaluated.

9. **Certified Reviewer** means an individual that obtains certification by completing all requirements set forth in the Quality Improvement and Program Compliance Reviewer Training Verification Sheet.

10. **Client or Individual** means an individual, referred by COUNTY or enrolled in CONTRACTOR’s program for services under the Agreement, who is living with a serious and persistent mental illness.

11. **Clinical Director** means an individual who meets the minimum requirements set forth in Title 9, CCR, and has at least two (2) years of full-time professional experience working in a mental health setting.

12. **CES** means Coordinated Entry System and refers to the mechanism for allocating available housing units into a systematic resource targeting process designed to implement localized priorities for program participants. The CES covers the geographic area of the County and is regionally focused by Service Planning Areas, is easily accessed by individuals and families seeking housing and services, and includes a comprehensive and standardized process used by all service providers in the Orange County System of Care.

13. **CoC** means Continuum of Care, a regional or local planning body that coordinates housing and services funding for homeless families and individuals. The CoC strategizes the community plan to
organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximize self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness.

14. **Crisis Stabilization Unit (CSU)** means a behavioral health crisis stabilization program that operates twenty-four (24) hours a day that serves Orange County residents, aged eighteen (18) and older, who are experiencing a behavioral health crisis that cannot wait until a regularly scheduled appointment. Crisis Stabilization services include psychiatric evaluations, nursing assessments, consultations with significant others and outpatient providers, individual and family education, crisis intervention services, counseling/therapy services provided by a Licensed Clinical Social Worker or Marriage Family Therapist, basic medical services, medication services, and referrals and linkages to the appropriate level of continuing care and community services, including Peer Mentoring services. As a designated outpatient facility, the CSU may evaluate and treat individuals for no longer than twenty-three (23) hours and fifty-nine (59) minutes. The primary goal of the CSU is to help stabilize the crises and begin treating individuals in order to refer them to the most appropriate, least restrictive non-hospital setting when indicated or to facilitate admission to psychiatric inpatient units when the need for this level of care is present.

15. **Data Collection System** means software designed for collection, tracking and reporting outcomes data for Consumers enrolled in the FSP Programs.

   a. **3 M’s** means the Quarterly Assessment Form that is completed for each Consumer every three months in the approved data collection system.

   b. **Data Mining and Analysis Specialist** means a person who is responsible for ensuring the program maintains a focus on outcomes, by reviewing outcomes, and analyzing data as well as working on strategies for gathering new data from the Consumers’ perspective, which will improve understanding of Consumers’ needs and desires towards furthering their Recovery. This individual will provide feedback to the program and work collaboratively with the employment specialist, education specialist, benefits specialist, and other staff in the program in strategizing improved outcomes in these areas. This position will be responsible for attending all data and outcome related meetings and ensuring that the program is being proactive in all data collection requirements and changes at the local and state level.

   c. **Data Certification** means the process of reviewing State and COUNTY mandated outcome data for accuracy and signing the Certification of Accuracy of Data form indicating that the data is accurate.

   d. **KET** means Key Event Tracking and refers to the tracking of a Consumer’s movement or changes in the approved data collection system. A KET must be completed and entered accurately each time the CONTRACTOR is reporting a change from previous Consumer status in certain categories. These categories include residential status, employment status, education and benefits establishment.
1.e. PAF means Partnership Assessment Form and refers to the baseline assessment for each Consumer that must be completed and entered into the data collection system within thirty (30) days of the Partnership date.

16. Diagnosis means the definition of the nature of the Consumer’s disorder. When formulating the Diagnosis of Consumer, CONTRACTOR shall use the diagnostic codes and axes as specified in the most current edition of the DSM published by the American Psychiatric Association. DSM diagnoses will be recorded on all IRIS documents, as appropriate.

17. Engagement means the process by which a trusting relationship between worker and Consumer(s) is established with the goal to link the individual(s) to the appropriate services. Engagement of Consumer(s) is the objective of a successful Outreach.

18. Face-to-Face means an encounter between Consumer and provider where they are both physically present.

19. FSP

a. FSP means Full Service Partnership and refers to a type of program described by the State in the requirements for the COUNTY plan for use of MHSA funds and which includes Consumers being a full partner in the development and implementation of their treatment plan. A FSP is an evidence-based and strength-based model, with the focus on the individual rather than the disease. Multi-disciplinary teams will be established including the Consumer, Psychiatrist, and PSC. Whenever possible, these multi-disciplinary teams will include a mental health nurse, marriage and family therapist, clinical social worker, peer specialist, and family members. The ideal Consumer to staff ratio will be in the range of fifteen to twenty (15 – 20) to one (1), ensuring relationship building and intense service delivery. Services will include, but not be limited to, the following:

1) Crisis management;
2) Housing Services;
3) Twenty-four (24) hours per day, seven (7) days per week intensive case management;
4) Community-based Wraparound Recovery Services;
5) Vocational and Educational services;
6) Job Coaching/Developing;
7) Consumer employment;
8) Money management/Representative Payee support;
9) Flexible Fund account for immediate needs;
10) Transportation;
11) Illness education and self-management;
12) Medication Support;
13) Co-occurring Services;
14) Linkage to financial benefits/entitlements;
15) Family and Peer Support; and
16) Supportive socialization and meaningful community roles.

b. Consumer services are focused on Recovery and harm reduction to encourage the highest level of Consumer empowerment and independence achievable. PSC’s will meet with the Consumer in their current community setting and will develop a supportive relationship with the individual served. Substance abuse treatment will be integrated into services and provided by the Consumer’s team to individuals with a co-occurring disorder.

c. The FSP shall offer “whatever it takes” to engage seriously mentally ill adults, including those who are dually diagnosed, in a partnership to achieve the individual’s wellness and Recovery goals. Services shall be non-coercive and focused on engaging people in the field. The goal of FSP Programs is to assist the Consumer’s progress through pre-determined quality of life outcome domains (housing, decreased jail, decreased hospitalization, increased education involvement, increased employment opportunities and retention, linkage to medical providers, etc.) and become more independent and self-sufficient as Consumers move through the continuum of Recovery and evidence by progressing to lower level of care or out of the “intensive case management need” category.

HMIS means Homeless Management Information System and refers to the local information technology system used to collect client-level data on the provision of housing and services to homeless individuals and families, as well as persons at risk of homelessness.

20. Housing Specialist means a specialized position dedicated to developing the full array of housing options for their program and monitoring their suitability for the population served in accordance with the minimal housing standards policy set by the COUNTY for their program. This individual is also responsible for assisting Consumers with applications to low income housing, housing subsidies, senior housing, etc.

21. Individual Services and Support Funds – Flexible Funds means funds intended for use to provide individuals and/or their families with immediate assistance, as deemed necessary, for the treatment of their behavioral health disorder and their overall quality of life. Flexible Funds are generally categorized as housing, Consumer transportation, food, clothing, medical and miscellaneous expenditures that are individualized and appropriate to support Consumer’s mental health treatment activities.

22. Intake means the initial meeting between a Consumer and CONTRACTOR’s staff and includes an evaluation to determine if the Consumer meets program criteria and is willing to seek services.

23. Intern means an individual enrolled in an accredited graduate program accumulating clinically supervised work experience hours as part of fieldwork, internship, or practicum requirements. Acceptable graduate programs include all programs that assist the student in meeting the educational requirements in becoming a MFT, a licensed CSW, or a licensed Clinical Psychologist.
24. **Job Coach/Developer** means a specialized position dedicated to cultivating and nurturing employment opportunities for the Consumers and matching the job to the Consumer’s strengths, abilities, desires, and goals. This position will also integrate knowledge about career development and job preparation to ensure successful job retention and satisfaction of both employer and employee.

25. **Medical Necessity** means the requirements as defined in the COUNTY MHP Medical Necessity for Medi-Cal reimbursed Specialty Mental Health Services that includes Diagnosis, Impairment Criteria and Intervention Related Criteria.

26. **Member Advisory Board** means a member-driven board, which shall direct the activities, provide recommendations for ongoing program development and create the rules of conduct for the program.

27. **Mental Health Specialist** means an individual who has a Bachelor’s Degree and four years of experience in a mental health setting and who performs individual and group case management studies.

28. **MFT** means Marriage and Family Therapist and refers to an individual who meets the minimum professional and licensure requirements set forth in CCR, Title 9, Section 625.

29. **Mental Health Services** means interventions designed to provide the maximum reduction of mental disability and restoration or maintenance of functioning consistent with the requirements for learning, development and enhanced self-sufficiency. Services shall include:

   a. **Assessment** means a service activity, which may include a clinical analysis of the history and current status of a beneficiary’s mental, emotional, or behavioral disorder, relevant cultural issues and history, Diagnosis and the use of testing procedures.

   b. **Collateral** means a significant support person in a beneficiary’s life and is used to define services provided to them with the intent of improving or maintaining the mental health status of the Consumer. The beneficiary may or may not be present for this service activity.

   c. **Co-Occurring Integrated Treatment Model**. In evidence-based Integrated Treatment programs, consumers receive combined treatment for behavioral health and substance use disorders from the same practitioner or treatment team.

   d. **Crisis Intervention** means a service, lasting less than twenty-four (24) hours, to or on behalf of a Consumer for a condition that requires more timely response than a regularly scheduled visit. Service activities may include, but are not limited to, assessment, collateral and therapy.

   e. **Medication Support Services** means those services provided by a licensed physician, registered nurse, or other qualified medical staff, which includes prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals and which are necessary to alleviate the symptoms of behavioral health disorders. These services also include evaluation and documentation of the clinical justification and effectiveness for use of the medication, dosage, side effects, compliance and response to medication, as well as obtaining informed consent, providing medication education and plan development related to the delivery of the service and/or assessment of the beneficiary.
f. **Rehabilitation Service** means an activity which includes assistance in improving, maintaining, or restoring a Consumer’s or group of Consumers’ functional skills, daily living skills, social and leisure skill, grooming and personal hygiene skills, meal preparation skills, support resources and/or medication education.

g. **Targeted Case Management** means services that assist a beneficiary to access needed medical, educational, social, prevocational, vocational, rehabilitative, or other community services. The service activities may include, but are not limited to, communication, coordination and referral; monitoring service delivery to ensure beneficiary access to service and the service delivery system; monitoring of the beneficiary’s progress; and plan development.

h. **Therapy** means a service activity which is a therapeutic intervention that focuses primarily on symptom reduction as a means to improve functional impairments. Therapy may be delivered to an individual or group of beneficiaries which may include family therapy in which the beneficiary is present.

30. **Mental Health Worker** means an individual that assists in planning, developing and evaluating mental health services for Consumers; provides liaison between Consumers and service providers; and has obtained a Bachelor’s degree in a behavioral science field such as psychology, counseling, or social work, or has two years of experience providing client related services to Consumers experiencing mental health, drug abuse or alcohol disorders. Education in a behavioral science field such as psychology, counseling, or social work may be substituted for up to one year of the experience requirement.

31. **MHSA** means Mental Health Services Act and refers to the law that provides funding for expanded community Mental Health Services. It is also known as “Proposition 63.”

32. **MORS** means Milestones of Recovery Scale and refers to a Recovery scale that COUNTY will be using for the Adult mental health programs in COUNTY. The scale will provide the means of assigning individuals to their appropriate level of care and replace the diagnostic and acuity of illness-based tools being used today. MORS is ideally suited to serve as a Recovery-based tool for identifying the level of service needed by participating members. The scale will be used to create a map of the system by determining which milestone(s) or level of Recovery (based on the MORS) are the target groups for different programs across the continuum of programs and services offered by COUNTY.

33. **NPI** means National Provider Identifier and refers to the standard unique health identifier that was adopted by the Secretary of HHS under HIPAA for health care providers. All HIPAA covered healthcare providers, individuals and organizations must obtain an NPI for use to identify themselves in HIPAA standard transactions. The NPI is assigned for life.

34. **NOA-A** means Notice of Action and refers to a Medi-Cal requirement that informs the beneficiary that he/she is not entitled to any specialty mental health service. The COUNTY has expanded the requirement for an NOA-A to all individuals requesting an assessment for services and found not to meet the Medical Necessity criteria for specialty Mental Health Services.
35. **NPP** means Notice of Privacy Practices and refers to a document that notifies individuals of uses and disclosures of PHI that may be made by or on behalf of the health plan or health care provider as set forth in HIPAA.

36. **Outreach** means the Outreach to potential Consumers to link them to appropriate Mental Health Services and may include activities that involve educating the community about the services offered and requirements for participation in the programs. Such activities should result in the CONTRACTOR developing their own Consumer referral sources for the programs they offer.

37. **Peer Recovery Specialist/Counselor** means an individual who has been through the same or similar Recovery process as those he/she is now assisting to attain their Recovery goals while being paid for this function by the program. A peer Recovery specialist practice is informed by his/her own experience.

38. **PERT** means Psychiatric Emergency Response Team and is a specialized unit designed to create a behavioral health and law enforcement response team. While the primary purpose of the partnership is to assist individuals in behavioral health crisis in accessing behavioral health services, the PERT team also educates police on behavioral health issues and provides them with the tools necessary to more effectively assist individuals in behavioral health crises. PERT provides a behavioral health trained clinician to ride along with a police officer in order to provide a prompt response and assessment to individuals in behavioral health crises and provide them with the appropriate care and linkages to other resources as required in a dignified manner.

39. **PSC** means Personal Services Coordinator and refers to an individual who will be part of a multi-disciplinary team that will provide community based Mental Health Services to adults that are struggling with persistent and severe mental illness as well as homelessness, rehabilitation and Recovery principles. The PSC is responsible for clinical care and case management of assigned Consumer and families in a community, home, or program setting. This includes assisting Consumers with mental health, housing, vocational and educational needs. The position is also responsible for administrative and clinical documentation as well as participating in trainings and team meetings. The PSC shall be active in supporting and implementing the program’s philosophy and its individualized, strength-based, culturally/linguistically competent and Consumer-centered approach.

40. **Pharmacy Benefits Manager** means the organization that manages the medication benefits that are given to Consumers that qualify for medication benefits.

41. **Pre-Licensed Psychologist** means an individual who has obtained a Ph.D. or Psy.D. in Clinical Psychology and is registered with the Board of Psychology as a registered Psychology Intern or Psychological Assistant, acquiring hours for licensing and waivered in accordance with Welfare and Institutions Code section 575.2. The waiver may not exceed five (5) years.

42. **Pre-Licensed Therapist** means an individual who has obtained a Master’s Degree in Social Work or Marriage and Family Therapy and is registered with the Board of Behavioral Sciences (BBS as
an Associate CSW or MFT Intern acquiring hours for licensing. An individual’s registration is subject to regulations adopted by the BBS.

43. **Program Director** means an individual who has complete responsibility for the day-to-day function of the program. The Program Director is the highest level of decision-making at a local, program level.

44. **Promotores de Salud Model** means a model where trained individuals, Promotores, work towards improving the health of their communities by linking their neighbors to health care and social services, educating their peers about behavioral health disorders, disease and injury prevention.

45. **Promotores** means individuals who are members of the community who function as natural helpers to address some of their communities’ unmet mental health, health and human service needs. They are individuals who represent the ethnic, socio-economic and educational traits of the population he/she serves. Promotores are respected and recognized by their peers and have the pulse of the community’s needs.

46. **PHI** means individually identifiable health information usually transmitted by electronic media, maintained in any medium as defined in the regulations, or for an entity such as a health plan, transmitted or maintained in any other medium. It is created or received by a covered entity and relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present, or future payment for health care provided to an individual.

47. **Psychiatrist** means an individual who meets the minimum professional and licensure requirements set forth in Title 9, CCR, Section 623.

48. **Psychologist** means an individual who meets the minimum professional and licensure requirements set forth in Title 9, CCR, Section 624.

49. **Recovery** means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential, and identifies four major dimensions to support Recovery in life:

   a. Health: Overcoming or managing one’s disease(s) as well as living in a physically and emotionally healthy way;

   b. Home: A stable and safe place to live;

   c. Purpose: Meaningful daily activities, such as a job, school, volunteerism, family caretaking, or creative endeavors, and the independence, income, and resources to participate in society; and

   d. Community: Relationships and social networks that provide support, friendship, love, and hope.

50. **Referral** means providing the effective linkage of a Consumer to another service, when indicated; with follow-up to be provided within five (5) working days to assure that the Consumer has made contact with the referred service.
51. Supportive Housing PSC means a person who provides services in a supportive housing structure. This person will coordinate activities that will include, but not be limited to: independent living skills, social activities, supporting communal living, assisting residents with conflict resolution, advocacy, and linking Consumers with the assigned PSC for clinical issues. Supportive Housing PSC will consult with the multidisciplinary team of Consumers assigned by the program. The PSCs will be active in supporting and implementing a full service partnership philosophy and its individualized, strengths-based, culturally appropriate, and Consumer-centered approach.

52. Supervisory Review means ongoing clinical case reviews in accordance with procedures developed by ADMINISTRATOR, to determine the appropriateness of Diagnosis and treatment and to monitor compliance to the minimum ADMINISTRATOR and Medi-Cal charting standards. Supervisory review is conducted by the program/clinic director or designee.

53. VASH means Veterans Affairs Supportive Housing, a program which combines Housing Choice Voucher (HCV) rental assistance for homeless Veterans with case management and clinical services provided by the Department of Veterans Affairs (VA).

54. Vocational/Educational Specialist means a person who provides services that range from pre-vocational groups, trainings and supports to obtain employment out in the community based on the Consumers’ level of need and desired support. The Vocational/Educational Specialist will provide “one on one” vocational counseling and support to Consumers to ensure that their needs and goals are being met. The overall focus of Vocational/Educational Specialist is to empower Consumers and provide them with the knowledge and resources to achieve the highest level of vocational functioning possible.

55. WRAP means Wellness Recovery Action Plan and refers to a Consumer self-help technique for monitoring and responding to symptoms to achieve the highest possible levels of wellness, stability, and quality of life.

B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Common Terms and Definitions Paragraph of this Exhibit A to the Agreement.

II. BUDGET

A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph of this Exhibit A to the Agreement and the following budget, which is set forth for informational purposes only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

<table>
<thead>
<tr>
<th>Salaries</th>
<th>Benefits</th>
<th>Services &amp; Supplies</th>
<th>Subcontractors</th>
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TOTAL

PROGRAM COSTS

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### III. PAYMENTS

A. COUNTY shall pay CONTRACTOR monthly, in arrears, at the provisional amount of $\text{________}$ estimated at one month’s projected contract costs. In addition, COUNTY shall pay $\text{______}$ in start-up funds upon execution of the Contract. Any unspent any portion of the start-up CARES Grant funds received under this Agreement to cover Eligible Expenses by December 30, 2020, shall be
returned to the County by February 1, 2021 the amount remaining unspent as of December 30, 2020. Contractor agrees that all payments are interim payments only, and subject to auditing by County and/or other regulatory body with auspices over CARES Act funding and maybe subject to recoupment in the event said expenditures cannot be substantiated by source documentation collected and maintained by Contractor, to include but not be limited to receipts, purchase orders, ledgers, books, check stubs, invoices, records, etc. confirming expenses incurred and paid out (expended). Lack of supporting source documentation of any expenditure claimed to County and reimbursed to Contractor under this Agreement shall be immediately subject to recoupment by County.

All payments are interim payments only, and subject to Final Settlement in accordance with the Cost Report Paragraph of the Agreement for which CONTRACTOR shall be reimbursed for the actual cost of providing the services hereunder; provided, however, the total of such payments do not exceed the Maximum Obligation as specified in the Referenced Contract Provisions of the Agreement, and provided further, CONTRACTOR’s costs are reimbursable pursuant to COUNTY, state, and federal regulations. ADMINISTRATOR may, at its discretion, pay supplemental invoices for any month for which the provisional amount specified above has not been fully paid.

1. In support of the monthly invoices, CONTRACTOR shall submit an Expenditure and Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Agreement. ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

2. If, at any time, CONTRACTOR’s Expenditure and Revenue Reports indicate that the provisional amount payments exceed the actual cost of providing services, ADMINISTRATOR may reduce COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the year-to-date provisional amount payments to CONTRACTOR’s and the year-to-date actual cost incurred by CONTRACTOR.

3. If, at any time, CONTRACTOR’s Expenditure and Revenue Reports indicate that the provisional amount payments are less than the actual cost of providing services, ADMINISTRATOR may authorize an increase in the provisional amount payment to CONTRACTOR by an amount not to exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and the year-to-date actual cost incurred by CONTRACTOR.

B. CONTRACTOR’s invoicing shall be on a form approved or supplied by ADMINISTRATOR and provide such information as is required by ADMINISTRATOR. Invoices are due the twentieth (20th) day of each month. Invoices received after the due date may not be paid within the same month. Payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice.

C. All invoices to COUNTY shall be supported, at CONTRACTOR’s facility, by source documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.
D. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the Agreement.

E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of the Agreement, except as may otherwise be provided under the Agreement, or specifically agreed upon in a subsequent Agreement.

F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Payments Paragraph of this Exhibit A to the Agreement.

IV. REPORTS

A. CONTRACTOR shall maintain records and make statistical reports as required by ADMINISTRATOR and the DHCS on forms provided by either agency.

B. FISCAL

1. CONTRACTOR shall submit monthly Expenditure and Revenue Reports to ADMINISTRATOR. These reports will be on a form acceptable to, or provided by, ADMINISTRATOR and will report actual costs and revenues for CONTRACTOR's program described in the Services Paragraph of this Exhibit A to the Agreement. Such reports will also include total bed days, DSH and number of Clients by program. The reports will be received by ADMINISTRATOR no later than the twentieth (20th) day following the end of the month being reported. CONTRACTOR must request in writing any extensions to the due date of the monthly required reports. If an extension is approved by ADMINISTRATOR, the total extension will not exceed more than five (5) calendar days.

2. CONTRACTOR shall submit monthly Year-End Projection Reports to ADMINISTRATOR. These reports will be on a form acceptable to, or provided by, ADMINISTRATOR and will report anticipated year-end actual costs and revenues for CONTRACTOR’s program described in the Services Paragraph of this Exhibit A to the Agreement. Such reports will include actual monthly costs and revenue to date and anticipated monthly costs and revenue to the end of the fiscal year. Year-End Projection Reports will be submitted in conjunction with the Monthly Expenditure and Revenue Reports.

C. STAFFING – CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR. These reports will be on a form acceptable to, or provided by, ADMINISTRATOR and will, at a minimum, report the actual FTEs of the positions stipulated in the Staffing Paragraph of this Exhibit A to the Agreement and will include the employees' names, licensure status, monthly salary, hire and/or termination date and any other pertinent information as may be required by ADMINISTRATOR. The reports will be received by ADMINISTRATOR no later than twenty (20) calendar days following the end of the month being reported. If an extension is approved by ADMINISTRATOR, the total extension will not exceed more than five (5) calendar days.

D. PROGRAMMATIC – CONTRACTOR may be required to submit weekly and/or monthly census reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by,
ADMINISTRATOR. ADMINISTRATOR may request additional program reports of CONTRACTOR in order to determine the quality and nature of services provided hereunder. ADMINISTRATOR will be specific as to the nature of information requested, and may allow up to thirty (30) calendar days for CONTRACTOR to respond to request.

E. ADDITIONAL REPORTS – CONTRACTOR shall submit additional reports as reasonably required by ADMINISTRATOR concerning CONTRACTOR’s activities as they affect the duties and purposes contained in the Agreement. ADMINISTRATOR will provide CONTRACTOR with at least thirty (30) calendar days’ notice if such additional reports are required, and shall explain any procedures for reporting the required information.

F. CONTRACTOR shall report all special incidents to ADMINISTRATOR and shall submit a written Special Incident Report in accordance with the Notices Paragraph of the Agreement. Special incidents shall include, but are not limited to, Consumer's suicide or attempted suicide, elopement or absence without leave, serious injury, death, criminal behavior including arrests with or without conviction, positive test results for substance abuse from urine screenings, or any other incident which may expose COUNTY or CONTRACTOR to liability.

G. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing to modify the Reports Paragraph of this Exhibit A to the Agreement.

V. SERVICES

A. Purpose

The purpose of the Management and Operation Plan (MOP) is to satisfy the requirements of the County of Orange Contract requirements with CONTRACTOR regarding the operation of the Project Homekey sites to provide appropriate and high-quality supportive services for participants residing in the Project Homekey during this contract period. This agreement is intended to ensure that obligations and expectations regarding the operations and care of the program participants of The Development which shall be referred to as “Project Homekey” are clearly defined in order that SUBCONTRACTOR will deliver these services during the contact period as defined in this document. The MOP identifies Project Homekey services for individuals experiencing homelessness and best practices to maintain a safe and healthy environment for guests and the community. The overall of this document is to ensure that SUBCONTRACTOR assist homeless participants to achieve housing stability and self-sufficiency to the maximum extent feasible.

SUBCONTRACTOR shall be a 501 (c) 3 tax-exempt non-profit corporation that was established in 1985. The IRS determination letter establishing 501 (c) 3 status is held on site and will be available upon request.

1. Target Population

a. The target population is individuals and couples who are experiencing homelessness or who are at risk of homelessness and who are impacted by the COVID-19 pandemic. See attachment for
1. Detailed definition and referral process. The clients residing within the property shall be determined by the Operating Agreement between CONTRACTOR and the County of Orange.

B. Program Policies

1. Facility and Project Homekey

a. The purpose of the Project Homekey is to serve people experiencing homelessness or who are also at risk of serious illness from COVID-19. The target population is defined by the contract between CONTRACTOR and the County of Orange Health Care Agency. This is not a walk-in shelter and no services are provided to those who are not clients residing within the facility.

b. Per the United States Department Housing and Urban Development (HUD) Standards of Care, all Continuums of Care (CoCs) must adopt “written policies and procedures” to guide the general operations and day-to-day activities of their coordinated entry (CE) systems (2017). Hence, entry criteria for adults who are homeless include but are not limited to:

1) Homeless (HUD definition)
2) Ambulatory and not requiring hospital or nursing home care
3) Agree to be nonviolent
4) Agree not to use or sell alcohol, drugs, or illegal substances on the premises
5) Agree to treat other participants, staff and the property with respect
6) Agree to obey fire and other safety regulations
7) Agree to follow posted housing rules
8) Standards of Care for Orange County Emergency Shelter Providers

c. Project Homekey staff supplied by SUBCONTRACTOR will be stationed on site, at a minimum Monday to Friday, 8 a.m.-8 p.m. during regular business hours. Security will be onsite at all hours, or at a minimum of 8pm to 8 am, as well as weekends.

d. A typical staff structure will include on-site staff on duty on a staggered shift schedule from 8 a.m. to 8 p.m. with staff working variable hours on weekends in support of defined activities, inclusive of the serving of meals and community support. SUBCONTRACTOR staff will be available at all hours for emergencies and off-hour issues. Additionally, two (2) SUBCONTRACTOR staff shall serve in temporary residence on-site and be available additionally in support of off-hour requirements.

e. All staff schedules and service/program schedules will be submitted for review to CONTRACTOR for approval on a schedule to be determined. There are spaces available for weekly meetings onsite between participants and their assigned Case Manager.

2. Referral and Intake Process

a. Referrals into the program will be made through the Coordinated Entry System (CES) with prioritization for individuals impacted by COVID-19 with underlying health conditions and/or 65 and over, with community ties in Stanton and/or North Service Planning Areas. Individuals from Central and South Service Planning Area of Orange County may be considered for referral into the program if they meet the above vulnerability criteria for prioritization.
b. No walk-ups are allowed to identified site(s). Referrals and transportation will be coordinated by CES manager and the assigned SUBCONTRACTOR Case Manager located at the site.

c. Once the referral is made, SUBCONTRACTOR will conduct a criminal background check. Background checks will be required based on County contract requirements.

d. When the criminal background check is cleared, the Case Manager will schedule a meeting with the participant and start the intake process.

e. The Case Manager will schedule a meeting with the participant(s) to review and sign program agreements and house rules specific to, but limited to, initial entrance and inspection, entering and leaving the facility, laundry services and item (storage limitations), and an agreement that specifies that the facility is temporary shelter—not housing.

f. If the participant(s) agree to and sign the program agreements, a SUBCONTRACTOR Case Manager will then take the participant to view a unit, agree upon a unit and a move-in date for that unit if the participant accepts the offer of admission into the Project Homekey.

g. On the initial entrance of the Project Homekey, SUBCONTRACTOR will inspect the participants’ belongings to ensure there are no bed bugs, dangerous items, or disallowed contraband. All participants will be then asked to bring their items to the laundry room to be washed and/or cleared of bedbugs through a portable heating unit. Funds for laundry (such as tokens or a card) and laundry detergents will be provided to program participants.

1) Case Manager will inform participants of alternative off-site laundromats near the facility, so participants have options to use those resources. Laundry tokens and detergents will be provided to participants.

j. Case Managers will meet with participants on or after their entrance to the program over the course of one or more initial meetings to perform complete/update a VI-SPDAT, review the meal plan and discuss food allegories/dietary needs, review the rules regarding random room checks for health/safety concerns, obtain toiletries (if applicable) and develop a housing plan.

k. The Case Manager and participant will then meet weekly or as needed to check participant progress on goal achievement and ability to access resources to transition to a more stable housing program.

l. Access to future openings in the Program shall be determined in accordance with the Operating Agreement between CONTRACTOR and the County of Orange. Any waitlist will be specified in a separate document and will be managed by the County of Orange or their designee.

**Intake Form (Attachments)**

C. Service Provided

1. Facility & Meal Service

   a. Each household or participant will be assigned to a room and have access to a restroom.

   b. SUBCONTRACTOR will provide housing, showers, basic cleaning supplies and three meals per day (one hot meal for lunch), as well as access to specialized services such as laundry services
and case management support. Basic cleaning supplies will be provided as needed to participants. All
participants will be issued masks, gloves as needed and required to adhere to social distancing practices.
Failure to follow CDC Guidelines specific to may be viewed as a threat to the peaceful enjoyment of the
community and may result in participants facing loss of program privileges, behavioral contracts, and/or
room forfeiture and program exit.

c. Due to CDC guidelines specific to COVID-19 all meals will be distributed to the room
by SUBCONTRACTOR staff who are California Food Handler Certified. Participants will receive one
hot meal at lunch and two meals that may be stored in refrigerators provided by SUBCONTRACTOR.
The hot meals will be served every day at noon each day.
d. During the meal distribution, participants will receive a temperature check, sign-in their
names to denote receipt of hot meal and cold meal for dinner. If the participant is not present at
mealtimes, they will have the options to get a meal from the on-site staff depending on meal availability
due to limited refrigerator storage.

2. Laundry Service
a. The Residential Manager will arrange to provide laundry service to each household
weekly.
b. The Residential Manager and participant will coordinate to create a schedule for each
household to wash their clothing with the on-site laundry room. If a reasonable accommodation is
needed, transportation to an off-site laundromat may also be arranged the participant’s Case Manager.
c. Residential Manager will practice universal precautions while assisting with the
laundry services such as wearing appropriate protective garments (i.e. masks and gloves).
d. Each household will be given laundry detergent by the Residential Manager during the
participants’ scheduled appointment to use the laundry room. The laundry fees will be at no cost to the
participant, laundry tokens will be provided.
e. Participants will be assigned a two-hour block of time per week to access the Laundry
Room.

3. Case Management Services
a. A Case Manager is assigned to each participant in the Project Homekey. The Case
Manager will schedule regular meetings with each participant to support them as they work towards
housing stability and self-sufficiency.
b. An SUBCONTRACTOR Case Manager is responsible to participate in the CES
Weekly Match Meetings and the participant status on 211/PL. Upon intake appointment, the Case
Manager will conduct the VI-SPDAT for the participant who has not yet completed the survey and
submit the VI-SPDAT to CES within 3 days. For those who have, the Case Manager will review and
make updates if appropriate.
c. Clients will be linked to additional supportive services as needed based on their VI-
SPDAT assessment and with their consent for referrals.
1) If upon screening a participant self-reports feeling specific to suicidal or homicidal ideation, he/she will be referred to Crisis Assessment Team (C.A.T.) for further psychiatric evaluation.

2) At intake, the participant will be asked if he/she would like to receive mental health services. If the participant agrees, he/she will be asked to provide consent for SUBCONTRACTOR to release information from his/her former provider (if applicable) and set a time and date for the participant to meet with an SUBCONTRACTOR Clinician.

3) At the initial meeting, the SUBCONTRACTOR Clinician will conduct the Modified Mini Screen (mental health screener) and the PCL-5 (trauma screener). If the participant screens positive for substance use disorder and mental health disorder, a clinical biopsychosocial assessment will be conducted. Cut scores of 6 or higher on the Modified Mini Screen, 4 or higher on the TCU Drug Screen V and 16 or higher on the PCL-5 will be used as the determining factors for clinical assessment and treatment. SUBCONTRACTOR staff will work with the County’s Behavioral Health Department to determine suitable program linkages for mental health and substance use services.

   d. The Case Manager will work with participants to receive a source of income or apply for resources such as SSI/SSDI. SUBCONTRACTOR staff will coordinate with Chrysalis Employment Program as well.

   e. The Case Manager will ensure participants are screened for replacement social security cards, birth certificates, state identification, Medicaid benefits, and SSI/SSDI benefits.

   f. The Case Manager will screen each participant to inquire of his/her Veterans Status. If the participant denotes that he/she is a Veteran and/or has a DD214, the Case Manager will contact the Veterans Administration Department and begin the process of linking him/her to a Veterans Services Officer for housing and support services.

   g. All participants will be screened for eligibility for CalOptima/Health Benefits. SUBCONTRACTOR will work with CalOptima to connect with current CalOptima members and pursue linkage for new member status.

   h. The Case Manager will seek to identify resources and programs that participants would benefit from such as job training, resume building, and job fairs. Case Manager will also review the Resource Binder with participant and make appropriate linkage.

   i. SUBCONTRACTOR will provide daily life skills groups and educational workshops on topics including community resources, self-sufficiency, housing support, engagement with the community and other topics agreed upon with COUNTY. Weekly or monthly reports will be required on metrics for these supportive services.


   a. SUBCONTRACTOR’s approved Project Homekey policies are given to each participant during their intake appointment. Participants who have agreed to enter the Project Homekey will have reviewed and agreed to follow the rules. Please see Attachment B for Guidelines of Residences and Security Policy and Occupancy Agreement.
5. Housekeeping
   a. SUBCONTRACTOR understands the importance of maintaining hygienic, sanitary environments for the well-being of participants, visitors, volunteers, and staff. Each participant and/or household are responsible to keep their unit clean and free of hazards.
   b. SUBCONTRACTOR Staff will conduct daily unit inspections to ensure participants are keeping their units clean. Staff will complete the unit inspection sheet for each unit and store the form in the service file.
   c. Each unit is provided with cleaning supplies in order to maintain cleanliness. Participants are responsible to request additional supplies if needed.

6. Grievances Policies
   a. SUBCONTRACTOR has set forth policies and procedures for grievances. SUBCONTRACTOR will take action to ensure grievances and concerns are addressed appropriately as guided within the Standards of Care for Emergency Shelters. Please see Attachment D – Grievance Policies.

7. Reporting
   a. As required by the County and stipulated by agreement with CONTRACTOR, SUBCONTRACTOR will submit reports on a monthly basis in a timely manner. SUBCONTRACTOR is responsible to complete each report before the due date and submit to the CONTRACTOR for review prior to submitting to the County Project Manager. The monthly report will include but not be limited to: referrals, benefits and entitlements obtained, referrals and successful linkages to services, housing placement, and program exits.

Please see Attachment F for all reporting forms.

   b. Case Managers collect required documentation before and during the intake process to create a service file for each participant. Participant data will be entered into the HMIS database and reviewed monthly to ensure data accuracy. Case Managers will meet with participants to document data related to demographics, veteran status, income, benefits and services that assist SUBCONTRACTOR in reports for grants and donations. Case Managers will ensure participants are screened during intake for replacement social security cards, birth certificates, state identification, Medicaid benefits, and SSI/SSDI benefits. Case Manager will develop a plan with participant to acquire missing documentation.

   c. Participants choosing to receive assessment and case management are documented for needs for resources and referrals, disabilities, recovery needs and housing placement. The Case Manager will keep case notes in both hard copy and data base files to track progress, resources and referrals given, and support rendered. Outcomes are recorded at exit.

   d. Required and collected documentation will be entered into HMIS within a 72-hour period of receiving/providing a service.

   e. Confidentiality of documentation is maintained between Case Manager and authorized SUBCONTRACTOR staff. Data base files require authorization and passwords to access.
f. SUBCONTRACTOR will adhere to HMIS guidelines for documentation as outlines within the HMIS Policies and Procedures.

8. HMIS

a. Authorized staff, Case Managers, Agency Program Manager, and preapproved personnel are authorized to access the HMIS software program. Each staff must be approved to enter, change, or read data in the system. Each staff has a separate password for entry. Staff is authorized to only use computers that have been authorized by SUBCONTRACTOR for use at that location. No person without a username or password set up by SUBCONTRACTOR will have access to the Project Homekey participant management computers.

b. SUBCONTRACTOR uses HMIS as its primary participant database. HMIS confidentiality policies are explained, signed, and followed. Disclosure of participants’ information to other social service agencies, whether on a referral to or from SUBCONTRACTOR Project Homekey, may be permitted only with the participant’s written consent. Disclosure of records relating to participants may be released without participant’s consent in certain circumstances as required by law.

9. Confidentiality Policies

SUBCONTRACTOR will keep strict confidentiality practices as written in the SUBCONTRACTOR Confidentiality Policy that includes:

a. Disclosure to Other Agencies

1) Disclosure of participants’ information to other social service agencies, whether on a referral to or from SUBCONTRACTOR may be provided where necessary and generally may be permitted only with the participant’s written consent. Information is to be withheld where enjoined by law and whereby contract SUBCONTRACTOR has agreed to maintain the confidentiality of the participant records (as under the Privacy Act).

2) Disclosure of information relating to program participants should not be made to employers, credit agencies, unions, or other similar organization, except at the request, and with the consent of the participant.

b. Information to the Participant

1) In some situations, it may be required by law to disclose to the participant information contained in their own case record. Information disclosed should be limited to what is included in the formal case information, not including counselor notes and observations. Information provided by other agencies should not be shared.

c. Law Enforcement Personnel

1) All requests for information regarding participant originating from law enforcement agencies should be referred to the SUBCONTRACTOR Senior Director of Residential Services. SUBCONTRACTOR sets boundaries for the sharing of information with law enforcement personnel according to its policies on participant confidentiality and applicable law.

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2) SUBCONTRACTOR participants will be asked at their assessment if they would like to sign a Release of Information form that allows SUBCONTRACTOR staff to share their presence in the Project Homekey with their probation officer.

3) When an arrest warrant or a search warrant has been issued by a court and is presented to an SUBCONTRACTOR staff relating to a participant in the residence, SUBCONTRACTOR will cooperate with the law enforcement agency. If a search or an arrest is required, it will be made in a manner, which will involve the least disruption of the program at the facility.

10. Community Coordination and Communication
   a. SUBCONTRACTOR will work in partnership with the County of Orange to be a “Good Neighbor”, informing the public about the positive aspects of the program, being responsive to community concerns, and working closely with city/local government to minimize the impact of the program on the surrounding neighborhood.

11. Safety Precautions
   a. Participants are given a safety protocol sheet, which describes actions to take when a disaster strikes. The local police and fire departments via calling 911 will be contacted if any life-threatening emergencies occur.
   b. The incident report policies and procedures will assure the tracking and reporting of incidents involving:
      1) Abuse, suspected abuse, and reportable abuse including Adult Protective Services or Child
      2) Protective Services;
      3) Acts of violence or sexual misconduct;
      4) Death of participant and/or shelter staff;
      5) Emergency situations that prompt evacuation; and
      6) Substantial damage to the facility, or the discovery of hazardous material on shelter’s premises.
   c. Incidents will be reported to the County within 24 hours of the incident occurring and shall use the County Template pursuant to the County of Orange Standards of Care. In cases of psychiatric evaluations, all SUBCONTRACTOR staff have been trained to assess suicidal/homicidal ideation; specifically, to:
      1) **Ask:** “Are you thinking about hurting yourself or someone else?”
      2) **Plan:** If the participant states that he/she confirms thoughts of suicidal/homicidal ideation and/or attempt; ask them if they have a plan. If a plan is noted, contact your supervisor via phone for further assessment and inquiry. **(Note: Never leave a suicidal participant alone.)**
      3) **Keep them safe:** Reduce access to highly lethal items or potentially unsafe places.
      4) **Be there:** Listen carefully and learn what the participant is thinking and feeling.
5) **Help them connect**: Utilize the strengths of the treatment team to deescalate a suicidal participant. For example, helping them to make a connection with a trusted individual like a family member, friend, spiritual advisor, or mental health professional.

6) **Stay Connected**: Stay in touch after a crisis or after the participant is discharged from care. Please see Attachment C – Resident Safety Protocol and Crisis Intervention Policy

12. Incident Reporting

   a. After appropriately addressing unusual incidents and ensuring the physical and mental well-being of all involved, SUBCONTRACTOR staff and participant will provide a written report on unusual incidents within 24 hours of the incident. “Unusual Incidents” include, but are not limited to:

   1) Physical altercations
   2) Harm or threat (participant to participant, participant to staff, physical, verbal, etc.)
   3) Contact with emergency personnel
   4) Hospitalizations, arrests, etc.
   5) Use of illegal substances on site
   6) Discharges from program
   7) Safety issues/incidents
   8) Injuries: staff or participant
   9) Vehicle incident/damage/problems
   10) Incident that is out of the ordinary and could pose a safety issue

   b. A report will be submitted to the CONTRACTOR Program Manager and to the County Project Manager. Please see Attachment E – Incident Report Form.

13. Transportation

   a. SUBCONTRACTOR Staff will provide transportation to participants who are seeking medical services, benefits, attending workshops, job interviews or other appointments. Participants are responsible to notify SUBCONTRACTOR Staff a minimum of 24 hours in advance if they need assistance with transportation. SUBCONTRACTOR will maintain a log of all transportation requests and applicable van mileage. The program manager will perform a monthly audit of the transportation log and monitor van usage.

   b. Transportation will be provided in two 6-passenger SUBCONTRACTOR vans driven by SUBCONTRACTOR Staff with a valid California Department of Motor Vehicles (DMV) license.

   c. Wherever possible and based on availability of tokens, bus tokens will be given out. Participants must sign a form indicating they have requested and received a bus token from SUBCONTRACTOR. SUBCONTRACTOR will maintain a monthly log the number of bus tokens purchased and the participants who were issued a bus token. The program manager will perform a monthly audit of the bus pass log and monitor bus pass distribution. Please see Attachment H – Transportation
14. Policy for Compliance with Local Laws  
a. SUBCONTRACTOR will comply with all local laws of the County of Orange. Additionally, SUBCONTRACTOR will follow all OC Health Department and Fire Code requirements, and will have staff trained for food handling, CPR, fire drills and other disaster evacuation procedures.

15. Policies for Compliance with Labor Laws  
a. SUBCONTRACTOR will comply with all required labor laws. OSHA training and review will be done during staff meetings on a quarterly basis.

b. SUBCONTRACTOR wages are at or above minimum wage. Employee breaks, meals, and overtime are monitored legally and compensated as needed. SUBCONTRACTOR is contracted with a vendor to examine any work injuries. The proper incident reports, Worker's Compensation forms and requirements will be completed.

16. Non-Discrimination Policies  
a. SUBCONTRACTOR will not discriminate against anyone based on age, race, religion, sexual orientation or gender identity and expression, marital status, geographic, national or ethnic origin, HIV status, and disability of veteran status.

VI. STAFFING  
A. CONTRACTOR shall provide effective administrative management of the budget, staffing, recording, and reporting portion of the agreement with the COUNTY. If administrative responsibilities are delegated to subcontractors, the CONTRACTOR must ensure that any subcontractor(s) possess the qualifications and capacity to perform all delegated responsibilities. Responsibilities include but are not limited to the following:

1. Designate the responsible position(s) in your organization for managing the funds allocated to this program;
2. Maximize the use of the allocated funds;
3. Ensure timely and accurate reporting;
4. Maintain appropriate staffing levels;
5. Ensure staff possess the qualification and capacity to perform responsibilities tied to the staff’s position. All staff should complete training as detailed within the County of Orange Standards of Care For Emergency Shelters.
6. Ensure staff are not on any formal or informal supervision;
7. Effectively communicate and monitor the program for its success;
8. Maintain communication between the CONTRACT key staff and Program Administrators;

and,

9. Act quickly to identify and solve problems.

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B. Staff shall be available on site, seven (7) days per week for each site(s).

1. Participants will be assisted with housing search, linkage to health care, applying for benefits/resources and provided support to increase income.

2. The Property Management Dept. will have a team of four staff members. These staff members would be able to address any work order or issues with their living situation.

3. The program will have a minimum of 3 case managers on site that will be assigned to work with individual participants with a target average case management ratio that is at or less than 18:1, and who will be available to meet with participants on a weekly basis to provide needed resources and services. Together, the participant and case manager assigned will also develop housing plans appropriate to meet the participant’s needs.

C. Staff shall ensure that all program sites are well maintained, hazard free, and food is supplied.

D. Experience with the target population is preferred. Staff should be trained to recognize signs of decompensation and be prepared to provide the appropriate level of intervention as needed.

E. One (1) or more staff will work with the participants to apply for available housing units. The staff should work closely with any Housing Navigators working with the target population, and collaborate with existing systems to ensure maximum utilization of services and reduce duplicative efforts. This includes, but is not limited to, assistance with all issues related to securing housing such as developing housing leads, identifying landlords willing to work with the population, creating suitable housing options from available stock, working with landlords to develop positive relationships, assisting participants to be document ready for housing interviews, and assisting with transportation for housing search purposes. Staff will meet with property managers, coach residents to be successful when meeting with potential property managers, and prepare them for moving into a unit. Staff may also work to develop shared housing options for participants. Staff will work in collaboration with the participants’ assigned case manager to ensure both parties are aware of one another’s efforts and progress. Caseloads should be limited to thirty five (35) Clients per case manager at any given time.

F. If participants are not connected to supportive services, one (1) or more support staff will assist the participants with linkage to supportive services.). This includes assisting Case Managers, whom will obtain records needed for benefits acquisition. Staff will also assist with all housing search activities as described above.

G. CONTRACTOR shall, at a minimum, provide the following staffing pattern expressed in Full-Time Equivalents (FTEs) continuously throughout the term of the Agreement. One (1) FTE shall be equal to an average of forty (40) hours work per week.

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<th>PROGRAM</th>
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<td>DIRECT ADMINISTRATION</td>
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<td>Development Staff</td>
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I. CONTRACTOR shall maintain personnel files for each staff member, including the Executive Director and other administrative positions, which will include, but not be limited to, an application for employment, qualifications for the position, documentation of bicultural/bilingual capabilities (if applicable), pay rate and evaluations justifying pay increases.

J. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing Paragraph of this Exhibit A to the Agreement.
EXHIBIT B

TO THE CONTRACT FOR PROVISION OF
PROJECT HOMEKEY OPERATOR SERVICES
BETWEEN
COUNTY OF ORANGE
AND
TBD
NOVEMBER 3, 2020 THROUGH NOVEMBER 2, 2025

I. CERTIFICATION REGARDING ANTI-LOBBING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, __________________ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that
the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

___________________________________
Signature of Contractor’s Authorized Official
George Searcy          COO

Name and Title of Contractor’s Authorized Official
10/28/2020

Date

_____________________________
EXHIBIT C

TO THE CONTRACT FOR PROVISION OF
PROJECT HOMEKEY OPERATOR SERVICES
BETWEEN
COUNTY OF ORANGE
AND
JAMBOREE HOUSING CORPORATION
NOVEMBER 3, 2020 THROUGH NOVEMBER 2, 2025

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County of Orange

Standards of Care

for Emergency Shelter Providers
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1.1. Standards of Care for Emergency Shelter Providers

The County of Orange (County) has adopted the following Standards of Care for Emergency Shelter Providers (Shelter Providers) for Homeless Services.

The Standards of Care establish minimum standard requirements designed to promote an environment that is conducive under the following governing principles:

- Shelter Providers are trained, competent and equipped to support the complex needs presented by those experiencing homelessness within Orange County (OC).
- Participants are empowered to freely enter into a voluntary service partnership whereby their right to be treated with dignity and respect is mutually shared with support services staff.
- Facilities are maintained as accessible, clean, safe, secure and vector-free.
- Shelter Providers and participants have established processes to identify and resolve any concerns or conflicts that may arise during the administration and operation of the program.
- Shelter Providers actively work to engage participants in a person-centered approach and support the development of individualized participant housing plans.

The County will provide oversight of Shelter Providers that directly contract with the County with the goal of promoting quality assurance practices for their operations and remediation protocols in order to allow participants a meaningful opportunity to exercise their rights to due process for redress of their concerns. To that effect, these Shelter Providers must develop policies and procedures to ensure the Standards of Care is implemented consistently, and must submit the policies and procedures to County for review and approval. County’s review and approval will be in deference to and in conjunction with the requirements of all applicable funding sources and all state and federal guidelines including Housing and Urban Development (HUD) and the Centers for Disease Control and Prevention (CDC).

All city-only and private emergency shelter providers serving homeless individuals that receive funding distributed through the County, directly or indirectly, will be provided with the Standards of Care and must adopt and implement the minimum standards set forth in this document.
1.2. Emergency Shelter Providers’ Operations

1.2.1. Admissions and Eligibility

Shelter Providers must develop policies and procedures for participant referral and admission. Admission policies and procedures must be clear, written and verbally explained to participants and referring entities at time of referral to ensure appropriate linkage prior to arrival at shelter.

Admission policies and procedures must at a minimum, provide information on admission parameters including referral process, eligibility, shelter program services, participant guidelines, the reasonable accommodation process, and reasons for admission denial.

Shelter Providers must ensure information is given to participants both verbally and in writing and in a manner which is preferred by participant, considering disability and limited English proficiency. For individuals with communication disabilities, including people who are deaf and/or blind and people who have speech disabilities, Shelter Providers must provide auxiliary aids and services (such as sign language interpreters, information in braille or large print, video relay communications) when needed to communicate effectively with people who have communication disabilities. For participants with limited English proficiency, shelter providers must provide interpretation services. Interpretation may be provided by a family or friend if chosen by the participant. Shelter Providers must provide outside interpretation if the participant states that they are not comfortable having their family or friend interpret.

Shelter Providers at admission must assess, with input from the participant, the appropriateness of the shelter environment for referred participants to ensure that basic individualized needs of the participant can be met by the facility, shelter staff and programming.

Shelter Providers at admission must assess, with input from the participant, for diversion and prevention opportunities by evaluating participant’s strengths and social support networks such as temporary and/or permanent housing options with family and friends. If it is determined that an individual may qualify for a medical or mental health placement with a higher level of care, the Shelter Provider shall request that evaluation from Orange County Health Care Agency (HCA) within 1 business day of the determination. HCA will facilitate that assessment at the shelter site within 5 business days, and will provide same day evaluation in exigent circumstances.

Shelter Providers must document within Homeless Management Information System (HMIS) any new bed placements or exits within 24 hours.

Denial of Admission

Denial to shelter is at the discretion of Shelter Providers, however, any denial must clearly explain to participant and referring entity denial of admission to the shelter. If a denial is issued, shelter must issue a written notice with a Notice of Denial (NOD), reason for denial, and procedures for third-party appeal.

Reasons for denial may include any of the following:

- Referred participant does not meet basic admission eligibility criteria – status related to homelessness, domestic violence, veteran, etc. Shelters that have designated beds based on funding sources may have additional eligibility criteria.
• Observed behavior that puts health and safety of staff and participants at risk. Such behavior may include, but is not limited to, violence, brandishing weapons, use of drugs or alcohol on premises, property damage.
• Any additional site specific contractual criteria.

1.2.2. Intake and Orientation

Shelter Providers during intake must provide newly admitted participants with information both verbally and in writing, detailing participant guidelines, shelter programming and resources, and facility-based information. Shelters must also assess, with participant, for any reasonable accommodations needed during the intake process. Shelter Providers should be sensitive to participant’s background and that it may create transference during the intake process. Intake staff must be trained to spot signs that a participant may be experiencing discomfort and if needed, respond by asking another staff to conduct the intake. Shelter Providers’ interaction with participants must at all times take into account that many participants have experienced past trauma. It is important that Shelter Providers’ intakes are designed and conducted in a trauma-informed-care-way.

Shelter Providers must provide an intake and orientation for referred participants within 3 business days of arrival absent exigent circumstances requiring additional time.

Shelter Providers during intake must obtain a referred participant’s signature of acknowledgement that the shelter has provided to referred participant intake and orientation. Participant’s signature is not a requirement for provision of shelter service, and intake paperwork must have a section documenting participant’s refusal or inability to sign.

1.2.3. Participant’s Rights and Responsibilities

Participant’s rights and responsibilities must be provided to participants upon intake and orientation evidenced by participant’s signature of acknowledgement or document of participant’s refusal or inability to sign. Participant’s rights and responsibilities must also be posted in common areas of the shelter.

At a minimum, participant’s rights must include:

• Participants have the right to be treated with dignity and respect;
• Participants have the right to be treated with cultural responsiveness;
• Participants have the right to privacy within the constrictions of the shelter environment;
• Participants have the right to self-determination in identifying and setting goals;
• Participants should be clearly informed, in understandable language, about the purpose of the services being delivered, including participants who are not literate and/or who have limited English proficiency;
• Participants have a right to reasonable accommodation and modifications based on a disability or limited English proficiency;
• Services should be provided to participants only in the context of a professional relationship based on valid, informed consent;
• Participants have the right to confidentiality and information about when confidential information will be disclosed, to whom and for what purpose, as well as the right to deny disclosure, unless disclosure is required by law; and
• Participants have the right to reasonable access to records concerning their involvement in the program.

Participant’s responsibilities will include:

• Participants are expected to support an environment that promotes safety, toward staff and other participants;
• Participants are expected to follow participant guidelines reviewed at intake;
• Participants are expected to participate and be active in their care, to the degree possible, in developing and achieving mutually agreed upon service plan goals;
• Participants must provide, to the extent possible, accurate information needed by professional staff providing services to ensure thorough assessment, service planning, appropriate linkages and referrals; and
• Participants are expected to maintain confidentiality and privacy of others, just as theirs must be maintained.

1.2.4. Equal Access and Gender Identity

Shelter Providers must have policies and procedures that provide equal access to transgender, intersex, gender fluid, and non-binary participants in accordance with their gender identity.

Shelter Providers must not request or require any form of proof of gender to validate eligibility, and are not to require that a person’s gender match the sex listed on legal documentation.

The policies and procedures must incorporate all of the following practices:

• Participants must be assigned a bed at the shelter that serves the gender with which they identify or feel safest, which may include accommodating participant requests to relocate within the shelter. Accommodations to support safety for gender identity is the responsibility of the shelter staff. Accommodations must be developed mutually and determined by the participant.
• Participants must have access to bathrooms where they feel safest, regardless of biological or physical characteristics, or legally documented sex.
• Participant families are to receive services regardless of the gender identities within the family.
• Participants must be able to dictate the gender identity utilized in HMIS and data collection.
• Participants may dictate their preferred name for use in HMIS as HMIS does not require use of legal name.

1.2.5. Non-Discrimination

Shelter Providers must have a non-discrimination policy in compliance with federal and state laws. Non-discrimination policy must ensure that Shelter Providers’ programs and services do not discriminate based on the grounds of race, creed, color, sex, gender, gender identity, gender expression, sexual orientation, religion, ancestry, age, disability (including physical and mental disabilities), medical condition, genetic information, marital status, familial status, political affiliation, national origin, source of income, citizenship, primary language, immigration status, arbitrary characteristics as protected by the Unruh Civil Rights Act, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes.
Shelter Providers must have public postings of the shelter’s non-discrimination policy at the facility where they operate the shelter program.

1.2.6. Reasonable Accommodations

Shelter Providers must have policies and procedures on reasonable accommodations, including reasonable modifications to premises, in compliance with federal and state law. Shelter Providers must make reasonable accommodations and modifications in their programs, facilities, activities and services when necessary, to ensure equal access to participants with disabilities, unless a fundamental alteration in the nature of their program, activities or services would result from the accommodation. Shelter Providers must track all reasonable accommodations requests and outcomes including the reasons for approval or denial. All shelters must offer appeals based on a denial and will track appeal outcomes and make them available if requested.

Shelter Providers must have public postings of their shelter’s reasonable accommodation and modification policy. The postings must include contact information including the contact information for the Shelter’s Americans with Disabilities Act (ADA) Coordinator.

Shelter Providers must receive and attend an annual training covering general accessibility provided by the County to ensure requirements under federal and state law (including but not limited to: the ADA Title II and Title III, Section 504, FHA, FEHA, Gov. Code Section 11135, Unruh Act, and California Disabled Persons Act) are addressed. Shelter Providers must also provide an annual training for staff relating to programmatic and facility based compliance with federal and state law requirements.

Shelter Providers must complete a Self-Evaluation Plan every 2 years to ensure that their shelters and all programs, services and activities therein are accessible for participants.

1.2.7. Service Animals and Support Animals

Shelter Providers must have policies and procedures regarding access for participants with service animals and support animals, as well as pets.

Shelter Providers must admit participants and his/her/their service animal or support animal regardless of what documentation is present at the time of admission. Service Animals do not need to have any certification or documentation. Providers should support participant in acquiring any registration, licensing and vaccinations as needed.

Shelter Providers must not ask what disability a participant with a service animal may have to establish the need for the service animal. Shelter staff are only allowed to ask if the service animal supports a disability, and what function the service animal executes.

Support animals are protected under the California Fair Employment and Housing Act. Support animals provide therapeutic support to the participant to support day-to-day functioning, and participants must be allowed to have support animals as a reasonable accommodation. If necessary, shelters should support participants with obtaining information from a reliable third party who is in a position to know about the individual’s disability or disability-related need for the support animal, or in obtaining necessary vaccinations.
The supervision of the service animals and support animals is the responsibility of the participant. The animal must be under the participant’s control at all times and not pose a safety risk to other participants within the program. Shelter Providers may exit a participant without the assistance of his/her/their animal in the event the participant is unable to control his/her/their service animal or support animal, or the service animal or support animal becomes a safety risk or sanitary concern for the shelter, shelter’s operations, participant, or other participants. However, Shelter Providers must determine whether a reasonable accommodation would resolve the event from happening in the future or resolve any ongoing event and offer alternatives to exit including the option to board the animal temporarily.

1.2.8. Communication Accessibility

Language Accessibility: Shelter Providers must have a Language Access Plan and accompanying guidance to ensure that participants with limited English proficiency can receive services in their desired language. Shelter Providers must provide training for all shelter staff on how to support limited English proficiency services.

Disability Communication Accessibility: Shelter Providers must have a Disability Communication Access Plan for participants with disabilities including people who are deaf and/or blind and people who have speech disabilities, to ensure access and effective communication when needed, by providing auxiliary aids and services (such as sign language interpreters, information in braille or large print, video relay communications) or other accommodations. Shelter Providers must provide training for all shelter staff on how to support and access various interpretation services, as well as auxiliary aids and services.

Language Access Plan must be provided to participants at intake and provide information on the following:

- How to request services for language access.
- The contact information for the Shelter ADA Coordinator.
- How to request language access for effective communication.
- How to request auxiliary aids and other disability communication access accommodations.
- Procedures for requesting a reasonable accommodation based on disability.

1.2.9. Participant Feedback

Shelter Providers must establish a participant feedback policy and develop a feedback process that provides for ongoing opportunities for participants to voice opinions and provide feedback confidentially to the person in charge of the shelter operations on program operations and programming, including participant guidelines. Methods for receiving participant feedback can include exit interviews, surveys, focus groups and program meetings.

Shelter Providers must solicit participant feedback annually and utilize the feedback to assess program operation changes to better support and meet the needs of the participants. A report must be created which summarizes feedback and any changes being implemented based on feedback.

1.2.10. Incident Reporting

Shelter Providers must develop policies and procedures for the tracking and reporting of incidents involving:
• Abuse, suspected abuse, and reportable abuse including Adult Protective Services or Child Protective Services;
• Acts of violence or sexual misconduct;
• Death of participant and/or shelter staff;
• Emergency situations that prompt evacuation; and
• Substantial damage to the facility, or the discovery of hazardous material on shelter’s premises.

Shelter Providers must report incidents to County within 24 hours of the incident occurring. The notification to the County should occur even if there is partial information at the required time of submission.

Shelter Providers must utilize the County Template (Attachment 1) when reporting incident reports and submit them to:

   Email: OCSHELTERFEEDBACK@OCHCA.COM
   Address: 405 W. 5th Street, Suite 658, Santa Ana, CA 92701

1.2.11. Grievances

Shelter Providers must have policies and procedures for participants to submit their grievances. Shelter Providers must incorporate the County Template (Attachment 2) when creating grievance forms and related documents. The grievance policies and procedures are aimed for Shelter Providers to resolve participants’ concerns as efficiently as possible.

Note: Orange County Health Care Agency, Behavioral Health Services programs and services are not subject to the grievance policies and procedures set forth in this Section 1.2.10. Behavioral Health Services programs and services have different formalized grievance and due process procedures which are prescribed by those funding sources and are considered independent of the minimum standards set forth in this Section 1.2.10.

To promote knowledge and understanding of the grievance policies and procedures, Shelter Providers must ensure the following:

• Review of grievance policy and procedures with participants during intake and orientation evidenced by participant signature of acknowledgement, or documentation of a participant’s inability or refusal to sign.
• Copies of the grievance policies and procedures must be prominently posted in common areas, and must be readily available for participants upon request. Postings must include the following:
  o Where to obtain the grievance policies and procedures.
  o Information and procedures for participants on how to notify shelter staff of a grievance, including access to the associated forms and how to submit.
  o Timeframe and initial communication expectations participants can expect from shelter staff once grievance has been submitted. Absent a danger to health and safety, no action including exit shall be taken against the participant while the grievance or appeal is pending.
• Shelter Providers must provide information upon intake, and by request, how participants can contact the County Homeless Services Division.
• Annual training component for applicable shelter staff and subcontractors.
Designate a management staff to oversee the administration of grievances, including an alternative staff to ensure participant access to grievances at any point in time.

The grievance policies and procedures shall include, but are not limited to, the following:

- Shelter Providers must ensure participant confidentiality.
- Shelter Providers must ensure an organized system of grievance documentation.
- Shelter Providers must provide opportunity for participants to present their grievance case before a neutral decision-maker (a supervisor or manager who was not directly involved in the incident or situation of the grievance).
- Accommodation of third-party advocates in the grievance process, if requested by the participant. Participant must give their permission for an advocate to be present evidenced by a signed release of information.
- Shelter Providers must work to create face-to-face meetings to support the resolution of a participant’s grievance.
- Shelter Providers must ensure participants receive a written determination for the submitted grievance after the grievance process has concluded.
- Shelter Providers must have a procedure for an appeal review process for participants looking to dispute their written determination. The final determination should contain a clear statement of the outcomes that led to the decision of the appeal.
- Shelter Providers must provide any documentation related to the grievance to the participant upon request.
- Shelter Providers’ policies and procedures must include information directing clients to the County Grievance Appeal Process.

The grievance policies and procedures must incorporate the following process and timeframes associated to respond promptly to participant’s grievance:

- Shelter Providers’ confirmation of grievance receipt not to exceed 3 business days, during which the Shelter Providers will acknowledge and review the grievance being received. A timeline to resolve the grievance should not exceed 10 business days, during which the participant will receive a written determination about the grievance that includes the factors that led to the final determination.
- The appeal process must afford participants an opportunity to present written and/or oral objections before a management/director staff member other than the staff person who made the prior grievance determination. Shelter Providers must provide a written determination for participant appeals within 10 business days.
- Absent an immediate health and safety risk to other participants or staff, the participant must be permitted to remain in the shelter during the appeal.

County Grievance Appeal Process

The County Grievance Appeal Process is designed to review participant grievances that have completed the Shelter Providers’ grievance process, including having gone through the Shelter Providers’ appeal process (Attachment 3). The County Grievance Appeal Process (Attachment 4) reviews the administrative and operational compliance of Shelter Providers’ grievance policy and procedure in addition to compliance to the Standards of Care.
Dispute Resolution Services

Dispute Resolution Services may be requested by the participant once the Shelter Providers’ grievance process and the County Grievance Appeal Process have been completed and the outcome is not a satisfactory resolution for the Participant.

Shelter Providers’ policies and procedures must include information on how to obtain dispute resolution services from the court. This may include notifying the chambers of Judge David O. Carter via email at DOCchambers@cacd.uscourts.gov or contacting the Elder Law and Disability Rights Center at (714) 617-5353 or info@eldrcenter.org. Any hearings by the court must be conducted during regular business hours whenever feasible.

1.2.12. Program Exits

Shelter Providers must provide the policy for program exits upon intake evidenced by a participant’s signature of acknowledgement, or documentation of participant’s refusal or inability to sign.

Policies and procedures developed regarding participant guideline violations must include an escalation continuum incorporating warnings and staff/participant problem solving methods prior to instituting shelter exits.

Shelter Providers must have policies and procedures for assessing, problem solving, and instituting participant exits from shelter.

Shelter Providers must ensure all escalation processes, including those resulting in shelter exits, are documented. Shelter Providers must allow for participants to appeal their termination via the established process in Section 1.2.10 Grievances. Participant exits may include the following reasons, however, Shelter Providers are encouraged to work towards behavioral contract agreements prior to exit:

- In possession or use of drugs on-site.
- Brandishing of weapons.
- Physical fighting/assault/battery.
- Theft that has been validated by shelter staff.

Shelter Providers must provide the reasons for a participant exit in writing. If the exit is immediate based on behavioral issues that create an immediate threat to the surrounding environment, notice in writing must be provided upon request within 24 hours.

Shelter Providers should work towards notifying participants of an exit ahead of time. Absent an immediate threat to health and safety, providers must facilitate the connection to another program. The length of time of exit should correlate with the actual recent behavior which is the reason for the exit, as opposed to the number of times the participant has exhibited the same or similar behavior.

Shelter Providers must work with participants to create an exit plan when possible. Exit plans must identify progress towards goals and resources that will assist the participant going forward with any housing needs. Exit plans should be reviewed with participants when possible.

Shelter Providers must have a policy for reinstatement for participants that have been exited from the shelter. If a participant is being exited to any location other than permanent housing, communication must be provided around the amount of time and/or process for returning. Practices around the length of time
before a participant can return should be commensurate to the severity of the behavior, and must not be progressive in length of time for repeat exits due to the same behavior. Shelter Providers are encouraged to have reinstatement policies that focus on conversations regarding behavior and mutual agreements to reduce the length of time before a participant can return.

If a participant self-exits for any reason other than to avoid an exit or write-up due to behavior, they are eligible to return based on bed availability with no wait period. If there are negative circumstances associated with their self-exit, the Shelter Provider should follow their established process and wait times for re-entry. Self-exit is inclusive of when a participant leaves the program without informing the Shelter Provider of their intent to exit from the program.

1.2.13. Hours of Operation and Curfew

Shelter Providers must notify participants of shelter hours of operation and any curfews. Shelter Providers must support reasonable accommodations for participants with disabilities, and provide accommodations to support employed participants and/or extenuating circumstances.

1.2.14. Coordinated Entry System Integration

Shelter Providers must participate in the Orange County homeless services system of care, including the Orange County Coordinated Entry System (CES). The emergency shelter system serves as a key Access Point to the Coordinated Entry System to facilitate program participants’ connection to available housing resources and programs.

Shelter Providers must coordinate with public benefits, employment services and Housing Navigators that will assist program participants in exploring all available employment, income and housing options, collecting required documentation and completing necessary assessments as required by the Coordinated Entry System.

1.2.15. Food Services

Shelter Providers must provide three meals per day to each program participant: breakfast, lunch and a hot dinner, or meals on another schedule as defined by the funder contract. Shelter Providers may cater meals in and/or make arrangements to ensure food service compliance. Shelter Providers must ensure meals can accommodate clients who have special dietary needs due to a documented medical condition, or due to religious beliefs.

Meal schedules must be covered during intake and orientation with participants. Meal schedules must be updated weekly and posted in common areas for participants’ access.

Meals must be served in an area specifically designated for meal consumption where adequate space for seated dining is available for each participant, including those with mobility devices.

Meals must be nutritionally adequate in accordance with United States Department of Agriculture.

Meal preparation and distribution will be in compliance with OC Health Care Agency Safe Food Handling Requirements.
1.2.16. Medication Storage
Shelter Providers must develop and implement a policy regarding participant medication storage. The policy shall address medication storage, documentation, refrigeration, and shall include a secure and locked location for medication storage such as a medication cabinet, locker or drawer.

The Shelter Provider may not administer or dispense medication (provide dosage or ensure medication schedule adherence) for participants and may not require participants to turn over their medication.

1.2.17. Storage and Personal Belongings
Shelter Providers must have a participant storage policy to be provided to participants upon intake. At a minimum, shelter operators must allow for at least 90 days after a participant’s exit to gather her/his/their personal belongings or facilitate relocating those belonging to participant sooner.

Shelter Providers must maintain a log of personal belongings that are discarded. The log will at minimum include the name of the participant, the date when belongings were discarded and the staff member who updated the log.

Shelter Providers will allow for individuals to regularly access their storage and personal belongings, and not restrict volume of belongings that would exclude essential items and disability related items.

1.2.18. Safety and Emergency Preparedness
Shelter Providers must develop written policies and procedures for emergency situations with relation to staff and participant safety and security.

Policies and Procedures must include the following:

- Emergency preparedness drills;
- Emergency evacuations;
- Assisting participants with evacuations, including persons with disabilities and/or limited mobility;
- Stockpiling of appropriate quantities of water and food rations;
- Accounting for all individuals accessing the facility (including participants, shelter operator staff, supportive service partners and volunteers) for all entry and exits that include sign-in/out information;
- At least 1 staff member per shift that has been trained in emergency response and has an up-to-date certification for CPR (cardiopulmonary resuscitation) and emergency first aid procedures;
- Staff and participant first aid kits on-site for non-emergency first aid;
- Crisis Intervention for emergency situations requiring staff to access emergency services such as 911 calls, police reports, or for performing other non-violent interventions; and
- Critical incident documentation and reporting.

Shelter Providers procuring security must provide training to the security staff on agency safety protocols, and policies and procedures for escalations requiring security intervention.

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1.2.19. Communicable Diseases

Shelter Providers must develop written policies and procedures that address universal precautions, tuberculosis control, disease prevention, epidemic response, and biohazard practices, which are in compliance with Health Care Agency guidelines.

Shelter Providers must comply with universal precautions, proper sharps disposal, provide personal protective equipment (PPE) and provide training to staff. Shelter providers must ensure that shelter services, bed location, and common space comply with minimum standards for health and safety as provided by the CDC, California Department of Public Health, and the OC Health Care Agency.

2. Supportive Services

2.1. Case Management Access

Shelter Providers are required to have case management available to participants on site.

Participation within case management is voluntary to program participants, however all participants must be offered case management and must be engaged on an ongoing basis to encourage participation. Shelter Providers should recognize that it may take multiple contacts before a participant is ready to engage.

Shelter Providers must ensure case management services are participant-centered to individual needs. Programs must provide space for the provision of case management that works to create as much privacy and confidentiality as possible.

2.2. Assessments

Shelter Providers must provide a standard assessment which includes an evaluation of the participant’s service needs, including information about past and current service needs. Assessments must provide opportunity to identify any barriers or issues that may impact the participant’s ability to successfully engage in services, including barriers arising from trauma and/or disabilities. Assessments must also be designed to identify additional supports and resources that participants should be referred/aligned with.

Shelter Providers must work with the Health Care Agency to inform participants of the availability of additional clinical assessments/screenings. Providers may also request additional screenings by the behavioral health team, or by the Comprehensive Health Assessment Team-Homeless (CHAT-H) Public Health Nurse team to screen for increased care supports and resources. Programs must allow the County to post notice in each facility informing participants of these available additional assessments.

2.3. Housing Plans

Shelter Providers must work with participants to create a housing plan within 30-days of admission to the shelter. Plans should focus on finding permanent housing for each participant and the staff and programs that will be supporting them in their goals. If a participant is unable or refuses to complete a housing plan, that must be documented.

Housing plans must identify the participant’s needs, goals, actions to be taken, and progress towards goals. The housing plan must be focused on working with participants to have a positive shelter stay that is as
short as possible. The housing plan must be updated as the participant’s needs and/or goals shift, and as progress is completed towards their goals.

Program staff must continue to engage participants who do not progress towards their housing goals. Engagement to participants not progressing must occur no less than once every two weeks, and must be documented.

2.4. Housing Focused Services

Shelter Providers are expected to engage participants in a wide range of service needs, including, but not limited to: employment/benefits, health, substance use, mental health, legal issues and transportation. Program staff should regularly engage participants on how these various other service areas are in support of their overall housing goal and allow these providers to meet with participants on the shelter site. Housing must be the primary focus of shelter staff.

2.5. Services, Referrals and Linkages

Case Management services should be available as needed for participants. Although services are voluntary within shelter programs, it is the responsibility of program staff to actively engage participants for case management services no less than once per month.

The purpose of the shelter system is to provide stable setting and supports that assist participants toward a permanent housing outcome. The responsibility of engagement is held with the Shelter Provider, and progress towards service/housing plan goals must be evaluated individually based on a participant’s unique circumstances. Shelter Providers must operate in a participant-centered approach and work to engage participants that may be hesitant or resistant to actively participate in the services being offered.

If participants are not engaging in supportive services and are not able to express or demonstrate any progress towards service/housing goals, then shelter staff should engage with the participant in conversation around their needs and what changes could be reasonably made to assist the person with their needs. Engagement discussion should include all options that could benefit the participant including on-site services, alternative shelters or supportive services.

Programs must be able to meet a wide range of needs for participants and must maintain a network of resources that they are able to refer and link participants to. Shelter operators must either provide the following services or have linkages to:

- Identification and vital document support
- Enrollment in to mainstream benefits (TANF, SSI/SSDI, health insurance, VA health care, etc.)
- Health services (physical health, mental health and substance use)
- Employment and vocational services
- Legal assistance
- Childcare
- Life skills and coaching

When a referral is made to an outside resource or service, program staff must provide a warm handoff/connection and a follow-up inquiry to ensure the linkage has been made. If linkage is unsuccessful, staff must support in finding other possible resource options.
2.6. Transportation

Shelter Provider must make reasonable efforts to address transportation needs for participants. Transportation needs can be met through direct transport, public transportation fare or through supporting participants with learning how to use and access public transportation.

Programs should be assisting participants who are eligible to access reduced public transportation fare.

Transportation provided by shelter operators must be ADA compliant and have the ability to support participants with mobility devices without staff physically providing the transfer.

3. Staff Training

Shelter Providers must establish a policy and procedure for onboarding new staff, including documentation of all trainings, and ensure regular updates to the annualized training completed by staff.

Shelter Providers must complete mandatory staff trainings regarding safety, compliance and quality services provisions to best address the complex needs of the homeless populations served.

All shelter and/or specialized staff must receive training upon hire or upon request by the County, city and/or funder to ensure competency within the following core areas:

A. Program Operational Standards
B. Effective Communication
C. Evidence-Based Practices
D. Facility, Health and Safety Practices
E. Anti-discrimination, Equity Practices
F. ADA Compliance

Shelter Providers must ensure all new employees and/or specialized staff complete the following mandatory trainings:

- Mandated Child/Elder Abuse Reporting
- Privacy and Confidentiality
- Due Process/Grievance Process
- ADA Compliance/Reasonable Accommodation
- Emergency Evacuation/Incident Management
- First Aid/Universal Precautions/CPR
- Domestic Violence & Safety Planning
- Cultural Humility
- Harassment
- Equal Access and Gender Identity
- Mental Health First Aid
• Trauma-Informed Care
• Harm Reduction
• Motivational Interviewing
• Problem Solving and Diversion Intervention
• Crisis Intervention and De-escalation Training
• Housing First Principles

Certificates and other documentation that verify training attendance must be maintained for each employee and documented in the contracted agency files.

Shelter Providers must be able to provide proof that appropriate staff have been trained in the legal requirements of being a mandated reporter, reporting any suspicion of abuse or neglect to relevant authorities as required by law.

4. Facility Standards

4.1. Facility Standards for Emergency Shelter

Structure and materials:

• The shelter building is structurally sound to protect the participants from the elements and not pose any threat to the health and safety of the participants.
• Shelter Providers have site control demonstrated by either a fully executed lease, or proof of ownership.
• Shelter Provider can produce the most recent public health permit and fire department permit.

Interior air quality:

• Each room or space within the shelter has a natural or mechanical means of ventilation. The interior air is free of pollutants at a level that might threaten or harm the health of participants.

Water supply:

• The shelter's water supply is free of contamination and freely available for participants.

Thermal environment:

• The shelter has any necessary heating/cooling facilities in proper operating condition.

Illumination and electricity:

• The shelter has adequate natural or artificial illumination to permit normal indoor activities and support health and safety.
• There are sufficient electrical sources to permit the safe use of electrical appliances in the shelter.
Sanitary facilities:

- Each participant in the shelter has access to sanitary facilities, including sinks, showers, and toilets and accompanying items that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- Programs must establish a housekeeping and maintenance plan that ensures a safe, sanitary, clean and comfortable environment.
- All sites must have an inspection for rodents and insects by a certified pest control company, at least twice annually, and as needed. If an infestation is found, the Shelter Provider must fumigate and make appropriate reasonable accommodations for the participants.
- The shelter provides trash receptacles throughout the facility and ensures trash is taken out of the facility at regular intervals.

Food preparation:

- Food preparation areas, if any, contain suitable space and equipment to store, prepare and serve food in a safe and sanitary manner.

Fire safety:

- There is at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors are located near sleeping areas.
- All public areas of the shelter have at least one working smoke detector.
- The fire alarm system is designed for hearing-impaired participants.
- There is a second means of exiting the building in the event of fire or other emergency.
- All fire extinguishers must be fully charged and labeled.
- Facilities must have an annual fire inspection conducted by the fire department.
- Fire drills must be conducted annually.
- Shelter Providers must keep a log of all inspections, approvals and fire drills.

Emergency:

- Emergency numbers and evacuation routes must be posted in all common areas in the facility in case of an emergency.
- Emergency exits are clear and operating.

4.2. ADA Facility Standards

Shelter Providers must have operating facility standards and policies to ensure that facilities, inside and out, have been assessed for inaccessible facility-based areas and reasonable accommodations and physical modifications have been identified and developed to ensure participants with a disability have equal access and full inclusion of services.

Shelter Providers must work to ensure the following accessibility standards are met. The County recognizes that not all existing shelters can reasonably accommodate all disability-related needs, however, shelter operators will be required to identify those areas where there is not adequate access and develop reasonable accommodation and modification plans and policies. Individuals denied access to a shelter
because of inaccessibility must be offered an indoor alternative within their service planning area. Alternatives may include motel/hotel, other shelters, or higher level of care facilities.

Some participants may require reasonable accommodations or reasonable modifications to the premises in addition to required accessible features.

- Facilities must be accessible to participants with disabilities.
- Facilities must not have areas, in or out of the property, with broken, raised, or uneven sidewalks or walkways, or stairs or steps with no identified accessible pathway to the entrance and/or curb cuts.
- Entry into the facility must be accessible to participants with limited mobility, including participants who use wheelchairs, scooters, or manually-powered mobility aids such as walkers, crutches or canes.
- The exterior of the facility must be accessible for participants with disabilities when approaching, entering or inside the location.
- Shelter Provider must provide at least one restroom with at least one stall with a 5-foot turning radius.
- All restrooms established under this section must have handles for an individual using a mobility device to move themselves without assistance.
- If parking is available at the facility, programs must provide at least one ADA accessible van parking space for every 25 non-accessible parking spaces. The accessible space must provide enough room for a van with a hydraulic lift to operate without any issue.
- All fire alarm systems and fire extinguishers must be no more than 48 inches from the ground for easy access in case of an emergency.
- All programmatic areas must be accessible for an individual with a mobility device.
- Shelter Provider must provide at least one shower accessible for those with a mobility device, regardless of gender.
- Shelter Provider sites must provide at least one accessible roll-in shower or at least two transfer ADA shower seats.
- Shelter Provider must provide accessible beds for persons with mobility disabilities designed for easy access to beds from common spaces and easy transfer from a mobility device.
- If there are common/communal areas located at the facility, they must be accessible for all participants, including those with mobility devices.
- If there is a dining area located in the facility, it must be accessible for all participants, including those with mobility devices.
- Doors within the facility must be equipped with a handle which can be opened with a closed fist rather than a knob.
- Accessibility postings must be posted in plain sight in a common area of the facility.
- Please use this link for further details on how to assess the site for ADA compliance: https://www.adachecklist.org/doc/fullchecklist/ada-checklist.pdf.

4.3. Hygiene Products

Shelter Providers must provide participants access to sinks, showers, toilets and accompanying items. Shelter operator must ensure that hygiene and toiletry items are given to participants, or given upon request, and at a minimum:
• Towels
• Soap
• Deodorant
• Toilet tissue
• Feminine hygiene products
• Disposable razors
• Toothpaste and toothbrush

Shelter Providers must ensure that all sheets, towels and blankets are laundered weekly or more frequently as needed.

If applicable, washers and dryers shall be provided free of charge to participants and include access to free detergent. If laundry equipment is not provided on-site, shelter operator must support participants with accessing laundromat services.

ADA requirements for showers and restrooms can be found in Section: IV b. ADA Facility Standards.

4.4. Hazardous Materials

Shelter Providers must have policies and procedures with regard to proper hazardous material clean-up and removal. Shelter Providers must ensure that staff have the proper biohazard equipment for cleaning and disposal.

Shelter Providers must provide accommodations to participants in the event hazardous material poses a health and safety risk to participants and staff.

Shelter Providers must maintain a documentation log for hazardous material circumstances.

Shelter Providers will make available Safety Data Sheets (SDS) which provide information on chemicals, describing the hazards the chemicals present.

5. Administration

5.1. Policies and Procedures

Executive and administrative staff are responsible for ensuring that a comprehensive set of policies and procedures are updated at minimum on an annual basis; however, policies and procedures must be updated any time there is a significant change within program operations. Program and procedural updates must be shared with the County Administrative Entity for review to ensure that required policy and procedure areas have been adequately covered.

Shelter Providers are required to have a process for how staff are trained and access information within the policies and procedures.

5.2. Staffing

Shelter Providers must maintain a clear and comprehensive job description for all positions working within or supporting the emergency shelter.
Shelter Providers must maintain an organizational chart which identifies positions attached to the emergency shelter and a supporting documentation to show where each position is being funded from.

Program staff must have a way of being identifiable to program participants. This can be done through uniform attire or identification badges. Programs that operate confidential locations serving participants fleeing domestic violence will be exempted from this requirement.

Programs must have a conflict of interest policy and make staffing adjustments as necessary to minimize the potential of circumstances that create a conflict of interest, including personal and familial relationships. Conflict of interest policies must have expectations for reporting and ways in which staff can alert program management of potential conflicts, and how program management will monitor and assess the conflict.

5.3. HMIS Participation and Documentation

Shelter Providers must actively document within the HMIS and do so within accordance with the HMIS Policies and Procedures. Programs are required to document enrollments and exits in HMIS within a 24-hour period for the purpose of live bed management.

Shelter Providers must maintain participant records that include documentation of all participant intake paperwork, assessments, housing plans, referrals, interventions, placements or follow-up activities.

5.4. Document Storage and Retention

Files containing participant information shall be stored in a locked and safe location that maintains participant confidentiality. Only authorized personnel can access the location where files are being kept.

Shelter Providers are required to have policies and procedures that detail the length of time and manner in which participant documents are retained.

Shelter Provider must have policies and procedures that detail how release of information requests are processed for participant information.

5.5. Quality Assurance

Shelter Providers must have a quality assurance plan that assures adherence to the overall program policies and procedures. The quality assurance plan must outline a process for the integration of participant feedback on program operations and to any revisions to policies and procedures.

5.6. Program Monitoring

Shelter Providers can expect the County to monitor their program annually to ensure adherence to the Standards of Care outlined in this document. Any findings identified by the County during program monitoring must be quickly resolved.

5.7. Reporting

Programs are required to be timely on any required reporting, including but not limited to: program outcomes, program invoicing, incident reports and key staffing changes. If a program is not able to meet
the deadline for a required report, the program administration must provide notice and an estimated time frame of when they will be able to submit reporting.

5.8. Waivers

Programs must follow all requirements within the Standards of Care, as well as those identified within their direct contract. If for any reason a program is unable to meet a standard of care, they may request a waiver. Waiver requests will consider the impact for participants receiving services and what reasonable program adjustments can be made to minimize that impact on program participants.

The County will work with programs to find ways in which to meet the Standards of Care or when not possible to find solutions that have minimal impact for participants. The County will provide written documentation on all waiver approvals and denials along with reasoning.
6. Attachments
## Critical Incident Report

**County of Orange**

**Health Care Agency Office of Care Coordination**

<table>
<thead>
<tr>
<th>Today's Date:</th>
<th>Date &amp; Time of Incident:</th>
<th>Date of Notification of the Incident (if different from incident date):</th>
<th>Date Incident Report Submitted:</th>
<th>Was This Incident Reported Within 24 Hours of the Date of Incident (Required):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>□ Yes  □ No</td>
</tr>
</tbody>
</table>

If no, please explain circumstances:

__________________________________________________________________________________

__________________________________________________________________________________

**Provider:**

<table>
<thead>
<tr>
<th>Staff Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Staff Telephone Number:</th>
<th>Staff Email Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Program Manager:</th>
<th>Program Manager Phone Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Address Where Incident Occurred:**

<table>
<thead>
<tr>
<th>Person to Contact Regarding the Incident:</th>
</tr>
</thead>
</table>
| Name: _______________________________
| Title: ______________________________|

Name of people involved in incident. (For program participant(s) use HMIS unique identifier and initials.)

__________________________________________________________________________________

__________________________________________________________________________________

**Type of Incident (incidents occurring on premises) – Check all that apply:** (Requires additional and immediate telephone notification to County)

- Medical Emergency Requiring Immediate Medical Attention (EMT, ED and/or 911 Contacted)
- Sexual Misconduct / Harassment / Inappropriate Touching (Including Allegations):
  - □ Client-to-Client
  - □ Staff / Provider-to-Client
- Reportable Abuse (Including Allegations):
  - □ APS Contacted
  - □ CPS Contacted
- Violence:
  - □ Destruction of Property
  - □ Physical Altercation Involving Another Client
  - □ Physical Altercation Involving Staff
  - □ Acts or Threats of Violence
- Evacuation:
  - □ Planned Evacuation
  - * Facility-Related / Evacuation (i.e. water or electricity outages, etc.)
  - □ * Weather-Related Evacuation (flood, wildfire, etc.)
- Death:
  - □ * Death on premises
  - □ Death reported past discharge

**Description of Incident (facts, timelines, outcome) – List any necessary notifications made:**

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

**Did debriefing occur with shelter staff involved in the incident?** □ Yes  □ No

**Brief description:**

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

**PLEASE TURN OVER AND COMPLETE PAGE 2 OF THE CRITICAL INCIDENT REPORT**
Are there any operational changes or managerial actions that may be considered to lessen the impact or likelihood of similar incidents occurring in the future?  □ Yes  □ No
If yes, provide a description of the action

<table>
<thead>
<tr>
<th>Name / Title of Reporting Staff (Printed):</th>
<th>Staff Signature:</th>
<th>Date:</th>
</tr>
</thead>
</table>

Administrative Use Only

| Internal Log #:________________________ |

Has this Participant been involved in other incidents?  □ Yes  □ No
If yes, please write additional Internal Log #’s involving this Participant below:

<table>
<thead>
<tr>
<th>Incident Reviewed By:</th>
<th>Date:</th>
</tr>
</thead>
</table>

Additional Notifications Needed:

□ Department Head  □ CEO’s Office  □ Other: _____________________________

Outcome determined. □ Incident logged, no action required  □ Incident logged, remedial action required
Detail outcome conversation with Shelter Operator below:

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
</tbody>
</table>
Shelter Grievance Form

SHELTER NAME seeks to support participant grievances in a fair, transparent and efficient manner. Please complete the information below to the best of your ability and submit it to the shelter’s designated grievance staff. You may submit the completed form by email or in-person at the addresses listed below,

- Email:
- Address:

You will be contacted by Shelter name/position within three (3) business days to work towards a resolution of your grievance.

If you need support with completing this paperwork due to a disability or language barrier, please contact the shelter Americans with Disabilities Act (ADA) coordinator: _______________________________

_______________________________________________________________________________________

Full Name (Please Print): ___________________________________________ Date: ________________

Phone: ____________________________________ Email: _______________________________________

Other means of contact:

_________________________________________________________________________

I have a need for language translation or interpretation services? □ Yes □ No

Date of the grievance incident: _______________

Type of Grievance. Please check all that apply:

- Facility
- Program Services
- Shelter Staff
- Other Participants
- Reasonable Accommodations (Disability Related Need)
- Program Exit/Termination
- Other: ___________________________________________

This is the first time I am submitting a grievance for this concern: □ Yes □ No
I am submitting this as an appeal to the result of a previous grievance: □ Yes □ No

(Please note, an appeal may not be considered if filed more than 30 days past the determination date of the grievance result you are appealing. Circumstances may allow for appeal to the County of Orange past the 30 days.)
Shelter Grievance Form  
PROVIDER NAME  
County of Orange/Office of Care Coordination 

Grievance Description  
*Briefly describe your grievance. Please include a description of what occurred, who was involved and additional information relevant to the grievance. (Please include additional sheets if needed.)*

Desired Outcome  
*State what you would like to see happen with regard to this grievance.*

Participant’s Signature: __________________________________________ Date: ____________________

Administrative Use Only  
Internal Log # ___________________

Date Received by Staff: __________________________________________

Staff Name and Position: _________________________________________

Grievance Type: □ Grievance □ Appeal
Attachment 3
County of Orange
Health Care Agency, Office of Care Coordination
Shelter Grievance Process

The Shelter Grievance Process document is intended to provide Shelter Participants information on their grievance rights and an overview of the process. The County of Orange (County) appreciates feedback and takes grievances seriously. The County will work to resolve Participant grievances in a transparent and efficient manner.

If you as a Shelter Participant are unsure of how to access the shelter grievance process within the shelter you are staying, you can reference the information provided during the intake process, ask a shelter staff member, or review grievance information posted in the common areas of the shelter. If at any time during the process you experience difficulty with the shelter grievance process, please reference the Contact Information in Step 3 (below) to contact the County directly via telephone, email and/or mail.

**STEP 1:** Shelter Grievance Process

Participants that have a grievance with a shelter must first start by filing their grievance directly with the shelter operator and complete the shelter’s grievance process.

The Shelter Operator has three (3) business days to contact the participant after submitting their grievance and (ten) 10 business days to supply a written response to the grievance.

**STEP 2:** Shelter Appeal Process

Participants that have completed the shelter’s grievance process and received a written response, but still have concerns with the shelter’s response, have a right to request an appeal of that decision, and request a secondary review of the grievance from the Shelter Operator’s leadership.

Leadership responsible for the appeal process have three (3) business days to contact the participant after submitting their grievance appeal, and (ten) 10 business days to provide the participant a written decision for the appeal.

**STEP 3:** County of Orange Grievance Appeal Process

Participants have a right to contact the County for an additional appeal process, once participants have completed the shelter provider’s grievance AND appeal process.

The County’s grievance appeal process is designed to review the shelter’s grievance and appeal process as well as review the Shelter Operator’s written responses, and ensure that the Shelter Operator is adhering to their grievance policies, as well as their operations are in compliance with the County Standards of Care.

In order to begin this process please contact the County:

**By Telephone:**
Grievance Specialist

**By Email:**
OCShelterfeedback@ochca.com

**By mail:**
Orange County
Health Care Agency
Office of Care Coordination
405 W. 5th Street, Suite 658
Santa Ana, CA, 92701
Attachment 4
County of Orange
Health Care Agency
Office of Care Coordination Grievance Appeal Form

The County of Orange (County) is committed to supporting resolutions for participants that have grievances with County-funded shelter operators. The Grievance Appeal Form is designed for Participants that are looking to appeal a shelter operator’s grievance and/or appeals determination and requesting the County’s review to assess:

1. Shelter operator’s receipt and process of your grievance was done in compliance with stated program policies and procedures.
2. The written decision by the shelter operator is not in conflict with the established County Standards of Care requirements or any other contractual requirement.

The County will contact participants within three (3) business days of receiving the completed Grievance Appeal Form.

Complete the following information to the best of your ability. Please print.

Full Name (First and Last Name): ____________________________________________ Date: ________________

Phone: __________________________ Email: ________________________________

Other means of contact: __________________________________________________________________________

Name of the Shelter Operator or Shelter Program:
_______________________________________________________________________________________________

Have you completed the shelter operator’s grievance process (please mark box)? ☐ Yes ☐ No
Comments (if needed): ________________________________________________________________

Have you completed the shelter operator’s appeal process (please mark box)? ☐ Yes ☐ No
Comments (if needed): ________________________________________________________________

Appeal Description
Please briefly explain what concerns you have with the shelter operator’s grievance and appeal decision. If you need additional space, please utilize the back of the paper or attach additional pages.

_______________________________________________________________________________________________

_______________________________________________________________________________________________

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_____________________________________________________________________________________________
Desired Outcome
State what you would like to see happen with regard to this appeal.

Additional Space

Participant’s Signature: ___________________________________________ Date: __________________________

Please submit a completed form by email or mail at the addresses below:
Email: OCshelterfeedback@ochca.com

Mailing Address: Orange County Health Care Agency
Office of Care Coordination
405 W. 5th Street, Suite 658 Santa Ana, CA, 92701

Administrative Use Only
Internal Log # __________________________

Name of staff reviewing appeal: ___________________________ Staff position: ___________________________
Date staff received form: ___________________________

Actions:
☐ Referred participant back to shelter provider. Reason: __________________________________________
☐ Grievance appeal review. Due date: ___________________________

Page 95 of 97
ATTACHMENT B
SERVICE PLANNING AREAS

munication, May 2017
Contract Summary Form
Jamboree Housing Corporation - Master Agreement

SUMMARY OF SIGNIFICANT CHANGES
No list of significant changes

SUBCONTRACTORS
This contract includes the following subcontractors or pass through to other providers.

<table>
<thead>
<tr>
<th>Subcontractor Name</th>
<th>Service(s)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Family Housing</td>
<td>Project Homekey Services</td>
<td>Unknown at this time</td>
</tr>
</tbody>
</table>

CONTRACT OPERATING EXPENSES

ADMINISTRATION COSTS

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>$1,606,397</td>
</tr>
<tr>
<td>Benefits</td>
<td>$293,608</td>
</tr>
<tr>
<td><strong>SUB TOTAL</strong></td>
<td><strong>$1,900,004</strong></td>
</tr>
</tbody>
</table>

PROGRAM COSTS

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>$5,692,599</td>
</tr>
<tr>
<td>Benefits</td>
<td>$1,230,954</td>
</tr>
<tr>
<td>Services and Supplies</td>
<td>$7,930,211</td>
</tr>
<tr>
<td>Subcontractor Costs</td>
<td>$365,857</td>
</tr>
<tr>
<td>Start-Up Funds</td>
<td>$1,127,159</td>
</tr>
<tr>
<td><strong>SUB TOTAL</strong></td>
<td><strong>$16,346,780</strong></td>
</tr>
</tbody>
</table>

**TOTAL COSTS**

$18,246,784
Sole Source Request Form
Instruction Sheet

COUNTY POLICY ON SOLE SOURCE CONTRACTS:

It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. Per the Contract Policy Manual, a sole source procurement shall not be used unless there is clear and convincing evidence that only one source exists to fulfill the County’s requirements, CPM section 4.5. All sole source purchases requiring Board of Supervisors approval shall be justified as meeting the sole source standard in the Agenda Staff Report. The Agenda Staff Report shall clearly state that it is a sole source procurement. The Sole Source Justification, as described below, shall be attached within the Agenda Staff Report (CPM, Section 4.5)

SECTION I – INSTRUCTIONS FOR COMPLETING THE ATTACHED FORM
(To be completed by the department’s end-user, Program Manager, or Subject Matter Expert)

1. Formal justification is required for sole source procurements when competitive bid guidelines require pricing from competing firms.

2. A written justification will be prepared by the department and approved by the department head or designee.

3. Prior to execution of a contract, the County Procurement Officer or designee shall approve ALL sole source requests for commodities that exceed $250,000 annually, services exceeding $75,000 annually and all Board contracts despite the amount. Board approval is required for all sole source contracts for commodities that exceed $250,000 annually and services exceeding $75,000 annually or a two (2) year consecutive term, regardless of the contract amount. Any amendments to Board approved sole source contracts require a new sole source form.

4. If vendor is a retired, former Orange County employee, CEO Human Resource Services shall approve the sole source request, regardless of the sole source amount.

5. Valid sole source requests will contain strong technological and/or programmatic justifications. Requests will explain how it is a sole source purchase, provide a clear and convincing justification and detail the purchasing history (who, what, when, how and where).

6. Sole source procurements may be approved based upon emergency situations in which there is not adequate time for competitive bidding.

7. Sole source requests for Human Service contracts will be guided by the regulations of the funding source.

8. Each question in Section II of this form must be answered in detail and the form signed by the department head with concurrence of the Deputy Purchasing Agent.

9. All sole source request forms must be entered into the County’s online bidding system along with its supporting documentation.

10. The Deputy Purchasing Agent (DPA) shall retain a copy of the justification/approval as part of the contract file.

11. Request for Solicitation Exemption (For purchases with special circumstances, and/or when it is determined to be in the best interest of the County) – check the Solicitation Exemption box and complete additional question no 8.
**SECTION II – DEPARTMENT INFORMATION** (Complete in its entirety)

<table>
<thead>
<tr>
<th>Department:</th>
<th>Date:</th>
<th>Vendor Name:</th>
<th>Sole Source BidSync Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Care Agency</td>
<td>10/1/2020</td>
<td>Jamboree Housing Corporation</td>
<td>042-C029345-BD-SS</td>
</tr>
</tbody>
</table>

**Is the above named vendor a retired employee of the County of Orange?**

- ☐ Yes
- ☒ No

*If “Yes”, review and Approval is required from CEO Human Resource Services prior to contract execution.*

<table>
<thead>
<tr>
<th>Contract Term (Dates):</th>
<th>Is Agreement Grant Funded?</th>
<th>Percent Funded: 84%</th>
<th>Funding Source</th>
<th>Proprietary?</th>
<th>Percent Funded: 84%</th>
<th>State, Federal and CalOptima</th>
<th>Is this renewable? If yes, how many years?</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 3, 2020- November 2, 2025</td>
<td>☒ Yes</td>
<td>☑ No</td>
<td>☐ Yes</td>
<td>☐ No</td>
<td>☒ Yes</td>
<td>☒ No</td>
<td>☐ Yes</td>
</tr>
</tbody>
</table>

| Contract Amount? | $18,246,784 | Is this renewable? If yes, how many years? | ☐ No |

| Type of Request: | ☒ New | ☐ Multi-Year | ☐ Renewal | ☐ Amendment | ☐ Increase |

| Renewal Year: | N/A |

<table>
<thead>
<tr>
<th>Board Date:</th>
<th>11/3/2020</th>
<th>ASR Number:</th>
<th>20-000918</th>
<th>If not scheduled to go to the Board explain why?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>N/A</td>
<td></td>
<td>N/A</td>
</tr>
</tbody>
</table>

| Does Contract include Non-Standard Language? If yes, explain in detail. | No |

| Was Contract Approved by Risk Mgmt.? | ☐ No |
| No, contract has standard county terms and no revisions to insurance provisions. | Was Contract Approved by County Counsel? | ☐ Yes |
| ☒ Yes | |

| Were any exceptions taken? If yes, explain in detail. | No exceptions were taken. |

- ☒ DPA certifies that they have read and verified that the information is true and satisfies the sole source requirements listed in the County Contract Policy Manual.

- ☐ Solicitation Exemption
  *(For purchases with special circumstances, and/or when it is determined to be in the best interest of the County.)*
SECTION III – SOLE SOURCE JUSTIFICATION

1. **Provide a description of the type of contract to be established.** *(For example: is the contract a commodity, service, human service, public works, or other – please explain.)* Attach additional sheet if necessary.

   This is a human service contract for the operations of Project Homekey Program - the next phase in the state's response to serve people experiencing or at risk of homelessness and are also at risk of serious illness from COVID-19. These funds will be used for operations at the two Project Homekey temporary interim housing sites.

2. **Provide a detailed description of services/commodities and how they will be used within the department. If this is an existing sole source, please provide some history of its origination, Board approvals, etc.** *(This information may be obtained from the scope of work prepared by the County and the vendor's proposal that provides a detailed description of the services/supplies.)* Attach additional sheet if necessary.

   Project Homekey will provide temporary interim housing for individuals and adult households experiencing homelessness impacted by COVID-19 pandemic. The operator will provide property management, oversight of the daily operations of site, supportive services to program participants, as well as offer health and wellness programs to all residents who reside at the site. Other services to be provided on site include meal services for participants, transportation to essential appointments, security and laundry service.

   The County of Orange and Jamboree Housing Corporation submitted three applications as co-applicants and in partnership with the City of Stanton for the State of California’s Homekey program, all located in the City of Stanton, for a total request of $28.1 million in funding. The County of Orange, Health Care Agency, Office of Care Coordination, Continuum of Care, and CalOptima will collaboratively commit $18,246,784 from various funding sources to support the operating subsidies for the Project Homekey’s identified site(s) as awarded.

   Jamboree Housing shall provide all aspects of property operations including, but not limited to, oversight of 24/7 site level security, site maintenance, janitorial, and repair services. In addition to maintenance and management staff, the staffing plan shall focus primarily on staff support to connect to benefits and community resources.

   Program participants will receive a comprehensive range of services to provide stable housing that leads them to economic security and enhanced quality of life. The site operator will address the multiple life challenges specific to each resident/family, and create a plan of action developed by support staff and individual(s) participating in the program.

3. **Explain why the recommended vendor is the only one capable of providing the required services and/or commodities.** How did you determine this to be a sole source and what specific steps did you take? Please list all sources that have been contacted and explain in detail why they cannot fulfill the County’s requirements. Include vendor affidavit and/or other documentation which supports your sole source. *(Responses will include strong programmatic and technological information that supports the claim that there is only one vendor that can provide the services and/or commodities. Your response will include information pertaining to any research that was conducted to establish that the vendor is a sole source, include information pertaining to discussions with other potential suppliers and why they were no longer being considered by the County.)*
Orange County Community Resources (OCCR) through a Request For Information (RFI) selected Jamboree Housing to be a co-applicant for Project Homekey. During the RFI, several developers were pursuing the identified Project Homekey sites. During the RFI, the developers provided their intent, plan and timeline to acquire the sites identified for Project Homekey. Ultimately, in collaboration between the City of Stanton and OCCR, it was decided that Jamboree Housing Corporation would be the developing agency to be the applicant for Project Homekey. The City of Stanton’s input was considered during this selection due to the partnership needed from the City to support the Project Homekey efforts as well as their financial contribution towards the project. During the RFI process, Jamboree Housing Corporation was able to demonstrate their control over the properties as well as their experience in operating and converting sites as required in the Project Homekey Notice Of Financial Availability (NOFA). Upon selection of Jamboree Housing Corporation as the developer for this project, they became a co-applicant. The County as the co-applicant for Project Homekey has agreed to provide operations funding for the identified sites in the application submitted to the state. Through development of the Homekey application and the selection of Jamboree Housing Corporation with site control of the two motel sites, the County in collaboration with the City of Stanton decided to partner with Jamboree Housing based on their extensive experience and past performance in housing development. This sole vendor was submitted as part of the County’s Project Homekey application. The award announcements have been made through the State but the State Agreement for the sites is still pending.
4. **How does recommended vendor’s prices or fees compare to the general market?**

Attach quotes for comparable services or supplies. Attach additional sheet if necessary.

These services are not commensurate with any other vendors since Jamboree Housing Corporation is a co-applicant for Project Homekey, and the County is unable to partner with any other vendor for this project.

5. **If the recommended vendor was not available, how would the County accomplish this particular task?**

Attach additional sheet if necessary.

Jamboree Housing Corporation, was the vendor selected to serve as the co-applicant for Project Homekey. In the case that the vendor was not available to perform the tasks required within the project, the County would have to work collaborative with the City of Stanton and identify another developer through the RFI process. It is not in the County’s best interest to identify another developer as the County risks losing state funding because the funding application’s requirements indicate the need to purchase Project Homekey sites by November 11, 2020. The goal would be to identify another potential developer that possessed similar experience in developing and operating projects designed to serve individuals experiencing homelessness.

6. **Please provide vendor history – name change, litigation, judgments, aka, etc. for the last 7 years.**

There have been no name changes, litigations or judgements against Jamboree Housing Corporation in the last seven years.

7. **If vendor is a retired, former employee, has the vendor previously been rehired as a contractor within the last three years?**

   □ Yes  ☒ No

   If yes, provide explanation/support for hiring the retired, former employee as a vendor and provide contract dates, scope of work, and total amounts paid under each contract.

8. **Explain (in detail) why a request for Solicitation Exemption is needed.** *(Only applicable for Solicitation Exemption)*

Attach additional sheet if necessary.
Sole Source Request Form
Sole Source Bidsync #042-C029345-BD-SS

SECTION IV – AUTHOR/REQUESTOR

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Print Name:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jason Austin</td>
<td>Jason Austin</td>
<td>10/22/2020</td>
</tr>
</tbody>
</table>

SECTION V – CEO Human Resource Services APPROVAL (Review and approval is required when vendor is a Retired, Former Employee.)

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Print Name:</th>
<th>Date:</th>
</tr>
</thead>
</table>

SECTION VI – DEPUTY PURCHASING AGENT CONCURRENCE

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Print Name:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brittany Davis</td>
<td>Brittany Davis</td>
<td>10/22/2020</td>
</tr>
</tbody>
</table>

SECTION VII – DEPARTMENT HEAD APPROVAL

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Print Name:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anna Peters</td>
<td>Anna Peters</td>
<td>10/22/2020</td>
</tr>
</tbody>
</table>

SECTION VIII – COUNTY PROCUREMENT OFFICE

Prior to execution of a contract, the County Procurement Officer or designee shall approve All Sole Source requests for Commodities that exceed $250,000, Capitol Assets and services exceeding $75,000, and All other Sole Source requests that require Board approval despite the amount. Approvals are obtained electronically through the County’s online bidding system.

SOLICITATION EXEMPTION – CEO USE ONLY:

<table>
<thead>
<tr>
<th>Board of Supervisor Notification Date:</th>
<th>Comments:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CPO: □ Approved □ Denied</th>
<th>CFO: □ Approved □ Denied</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CPO Authorized Signature:</th>
<th>Date:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CFO Authorized Signature:</th>
<th>Date:</th>
</tr>
</thead>
</table>
Questions? Contact a Periscope Source representative: 800-990-9339 or email: source-support@periscopeholdings.com
Continuation or Deletion Request

Date: November 2, 2020
To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Re: ASR Control #: N/A, Meeting Date 11/3/20 Agenda Item No. # S33G
Subject: Adult Residential Drug Medi-Cal Substance Use Disorder Treatment Services

☒ Request to continue Agenda Item No. # S33G to the 11/3/20 Board Meeting.

Comments: Please disregard previous request to continue this item, and return it to the 11/3/20 Board Hearing Agenda

☐ Request deletion of Agenda Item No. # ______

Comments:
Continuation or Deletion Request

Date: 10/30/20
To: Clerk of the Board of Supervisors
From: Clayton Chau, Agency Director, Health Care Agency
Re: ASR Control #: N/A, Meeting Date 11/3/20  Agenda Item No. # S33G
Subject: Adult Residential Drug Medi-Cal Substance Use Treatment Services

☐ Request to continue Agenda Item No. # S33G to the 11/17/20 Board Meeting.

Comments:

☐ Request deletion of Agenda Item No. # _____

Comments:
October 29, 2020

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 3, 2020, Board Hearing.

Agency: Health Care Agency
Subject: Adult Residential Drug Medi-Cal Substance Use Treatment Services
Districts: 3

Reason for supplemental: The County Executive Office is requesting this Supplemental Item be placed on the November 3, 2020, Board agenda to expedite implementation of Adult Residential Drug Medi-Cal Substance Use Treatment Services in Orange County and allow for Be Well partner agencies to collaborate with the selected service provider. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:
Michelle Steel, Chairwoman of the Board of Supervisors

cc: Board of Supervisors
    County Executive Office
    County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/03/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 3
SUBMITTING AGENCY/DEPARTMENT: Health Care Agency
DEPARTMENT HEAD REVIEW:
DEPARTMENT CONTACT PERSON(S): Annette Mugrditchian (714) 834-5026
Jeff Nagel (714) 834-7024

SUBJECT: Adult Residential Drug Medi-Cal Substance Use Disorder Treatment Services

CEO CONCUR

COUNTY COUNSEL REVIEW

CLERK OF THE BOARD
Discussion

Approved to Form
Action

3 Votes Board Majority

CEO Signature

County Counsel Signature

Budgeted: Yes
Current Year Cost: $1,642,035
Annual Cost: FY 2021-22
$5,404,063

Staffing Impact: No
# of Positions: Sole Source: No
Current Fiscal Year Revenue: N/A
Funding Source: See Financial Impact Section
County Audit in last 3 years: No

Prior Board Action: N/A

RECOMMENDED ACTION(S)

1. Approve the selection of and Contract with Telecare Corporation for provision of Clinically Managed Withdrawal Management Services, Residential Treatment Services and Co-occurring Residential Treatment Services, for the term of November 3, 2020, through June 30, 2022, for an amount not to exceed $7,046,098, renewable for three additional one-year terms.

2. Pursuant to Contract Policy Manual Section 3.4-114, authorize the County Procurement Officer or authorized Deputy, to exercise a contingency contract cost increase not to exceed a total of 10 percent of the contract amount for the first year of the contract, for the entire term of the contract, including renewals, and within the scope of work set forth in the contract. The use of this contingency contract cost increase is subject to approval requirements established by the County Procurement Officer.

3. Authorize the County Procurement Officer or authorized Deputy to execute the contract as referenced in the Recommended Actions above.

Page 1
SUMMARY:
Approval of the Contract with Telecare Corporation for provision of Clinically Managed Withdrawal Management Services, Residential Treatment Services and Co-occurring Residential Treatment Services will allow services to be provided to adults in a safe and supervised manner.

BACKGROUND INFORMATION:
The Health Care Agency (HCA) released a Request for Proposal (RFP) for Clinically Managed Withdrawal Management Services, Residential Treatment Services and Co-occurring Residential Treatment Services on June 16, 2020, via BidSync. There were three responders to the RFP: Telecare Corporation (Telecare), Phoenix House Orange County, Inc. and Mental Health Systems. An evaluation panel consisting of two HCA representatives and three non-HCA representatives evaluated the proposals and recommended award of the contract to Telecare Corporation for provision of Clinically Managed Withdrawal Management Services, Residential Treatment Services and Co-occurring residential Treatment Services. The provider was awarded for all three services as they scored highest during the RFP evaluation process. Having one provider will be beneficial for the purposes of having one license for this vendor located at this site. HCA staff have conducted due diligence on the vendor. Reference checks were satisfactory and were completed with Santa Clara County Behavioral Health Services, Alameda County Office of Collaborative Court Services and Kern County Behavioral Health and Recovery Services. HCA issued the intent to award to Telecare and has finalized the negotiation process.

Scope of Services
Withdrawal Management
The goal is to serve adults over the age of 18 that are in need of clinically-managed withdrawal management services. Services will be provided 24 hours a day, seven days a week in a 12 bed facility. The length of stay will be determined by during the intake process. All clients must meet medical necessity to receive services. The goal of this program is to help clients successfully detox and manage through the symptoms related to withdrawal from substances. Services will include: intake, observation and discharge planning, which includes; linkages and referrals, counseling, case management and drug testing and will be provided regardless of insurance status. Following successful withdrawal management, clients will be linked to ongoing treatment such as residential or outpatient treatment.

Residential Treatment Services
The goal is to provide residential treatment to adults 18 years and older who have a substance use diagnosis and meet American Society of Addiction Medicine criteria. Residential Treatment Services provide client-centered treatment, which is based on mutually agreed upon goals/objectives between the clinician and client. Service components include intake, treatment planning, individual and group counseling, educational sessions, collateral services, relapse prevention and case management. Common issues that are addressed at the beginning of treatment include planning and preparing for ongoing treatment post discharge, planning and preparing for housing in a safe living environment and education and employment so clients have the tools to succeed and a plan of action at the time of discharge. Clients will be served regardless of insurance status.

Co-Occurring Residential Treatment Services
The goal is to provide co-occurring residential treatment services to adults 18 years and older who have a substance use disorder and also have a severe and persistent mental illness. Service components will include screenings, assessment and treatment planning, individual and group counseling, which incorporates evidenced-based treatment for both mental health and substance use disorders, case
management, drug testing and discharge planning. Discharge planning includes referrals and linkages to social service programs, support groups and continued treatment for both mental health and substance use. Mental Health treatment will be provided through the HCA Program of Assertive Community Treatment program. Treatment will be offered to individuals regardless of insurance status.

**Performance Outcomes**

Withdrawal Management Services:
- Demonstrate provision of effective withdrawal management services as measured by client retention and completion rates of at least 75 percent.
- Increase access to other levels of substance use disorder services, as measured by 75 percent linkage to outpatient or residential treatment services as appropriate upon discharge.
- Increase quality of life as measured by 75 percent of clients reporting that their “life is more manageable than it was when they entered treatment” at 30 days after completion.

Residential Treatment and Co-occurring Residential Treatment:
- Increase quality of life as measured by 75 percent of clients reporting that their “life is more manageable than it was when they entered treatment” at 30 days after completion.

HCA will work with the provider to develop a good neighbor policy as required by their contract. The location of this facility is in the City of Orange.

This item is coming to your Honorable Board of Supervisors (Board) with less than 30 days prior to execution of the Contract in order to expedite the implementation of this new program that will fill an unmet need in Orange County. The Contract was brought to the Board at the earliest Board date available.

This Contract includes subcontractors. See Attachment B for information regarding subcontractors and Contract Summary Form.

HCA requests that the Board approve the Contract with Telecare for provision of Clinically Managed Withdrawal Management Services, Residential Treatment Services and Co-occurring Residential Treatment Services as referenced in the Recommended Actions.

**FINANCIAL IMPACT:**

Appropriations for this Contract are included in Budget Control 042 FY 2020-21 Budget and will be included in the budgeting process for future years.

**Funding Source**
- Fees/Other: 33% (Federal Financial Participation Drug Medi-Cal)
- State: 33% (Drug Medi-Cal State General Fund)
- Fed: 34% (Substance Abuse and Treatment Block Grant)

**STAFFING IMPACT:**

N/A
ATTACHMENT(S):
Attachment A - Contract MA-042-21010449 Adult Residential Drug Medi-Cal Substance Use Disorder Treatment Services
Attachment B - Contract Summary Form
CONTRACT FOR PROVISION OF
ADULT RESIDENTIAL DRUG MEDI-CAL
SUBSTANCE USE DISORDER TREATMENT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
TELECARE CORPORATION
NOVEMBER 3, 2020 THROUGH JUNE 30, 2022

THIS CONTRACT entered into this 3rd day of November 2020, (effective date), is by and between
the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and
TELECARE CORPORATION, a California for profit Corporation (CONTRACTOR). COUNTY and
CONTRACTOR may sometimes be referred to herein individually as “Party” or collectively as
“Parties.” This Contract shall be administered by the County of Orange Health Care Agency
(ADMINISTRATOR).

W IT N E S S E T H:

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Adult
Residential Drug Medi-Cal Substance Use Disorder Treatment Services described herein to the residents
of Orange County; and
WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and
conditions hereinafter set forth:
NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained
herein, COUNTY and CONTRACTOR do hereby agree as follows:
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I. Personal Information Privacy and Security Contract .............................................................. 1
REFERENCED CONTRACT PROVISIONS

Term: November 3, 2020 through June 30, 2022
   Period One means the period from November 3, 2020 through June 30, 2021
   Period Two means the period from July 1, 2021 through June 30, 2022

Maximum Obligation:
   Period One Maximum Obligation: $1,642,035
   Period Two Maximum Obligation: $5,404,063
   TOTAL MAXIMUM OBLIGATION: $7,046,098

Start-up Costs:
   Basis for Reimbursement: Actual Cost
   Payment Method: Provisional Payment

Adult Residential Drug Medi-Cal Substance Use Disorder Treatment Services:
   Basis for Reimbursement: Negotiated Rate
   Payment Method: Monthly in Arrears

CONTRACTOR DUNS Number: 07-654-7363
CONTRACTOR TAX ID Number: 94-1735271

Federal Grant Funding:

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<th>Federal Award Date</th>
<th>Federal Award Indirect Rate</th>
<th>Federal Award Amount</th>
<th>R&amp;D Award (Y/N)</th>
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<td>Substance Abuse Prevention and Treatment Block Grant</td>
<td>HHS</td>
<td>FY 20/21</td>
<td>25.45%</td>
<td>$19,276,499</td>
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Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
   Health Care Agency
   Contract Services
   405 West 5th Street, Suite 600
   Santa Ana, CA 92701-4637

CONTRACTOR: Telecare Corporation
   1080 Marina Village Parkway, Suite 100
   Alameda, CA 94501
   Leslie Davis
   Senior Vice President, Chief Financial Officer
   ldavis@telecarecorp.com

//
I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Contract:

A. AES    Advanced Encryption Standard
B. AOD    Alcohol and Other Drug
C. ARRA    American Recovery and Reinvestment Act
D. ASAM    American Society of Addiction Medicine
E. ASRS    Alcohol and Drug Programs Reporting System
F. BCP    Business Continuity Plan
G. CalOMS    California Outcomes Measurement System
H. CAP    Corrective Action Plan
I. CCC    California Civil Code
J. CCR    California Code of Regulations
K. CD/DVD    Compact Disc/Digital Video or Versatile Disc
L. CEO    County Executive Office
M. CESI    Client Evaluation of Self at Intake
N. CEST    Client Evaluation of Self and Treatment
O. CHHS    California Health and Human Services Agency
P. CFR    Code of Federal Regulations
Q. CHPP    COUNTY HIPAA Policies and Procedures
R. CHS    Correctional Health Services
S. CIPA    California Information Practices Act
T. CMPPA    Computer Matching and Privacy Protection Act
U. COI    Certificate of Insurance
V. CSU    Crisis Stabilization Unit
W. DATAR    Drug Abuse Treatment Access Report
X. DHCS    Department of Health Care Services
Y. D/MC    Drug/Medi-Cal
Z. DMC ODS    Drug Medi-Cal Organized Delivery System
AA. DoD    US Department of Defense
AB. DPFS    Drug Program Fiscal Systems
AC. DRP    Disaster Recovery Plan
AD. DRS    Designated Record Set
AE. DSM–5    Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition
AF. DSS    Department of Social Services
AG. EBPs    Evidenced Based Treatment Practices
AH. EHR    Electronic Health Records
| A1. | AI | ePHI | Electronic Protected Health Information |
| A2. | AJ | EPSDT | Early Periodic Screening, Diagnostic and Treatment |
| A3. | AK | FIPS | Federal Information Processing Standards |
| A4. | AL | FTE | Full Time Equivalent |
| A5. | AM | GAAP | Generally Accepted Accounting Principles |
| A6. | AN | HCA | Health Care Agency |
| A7. | AO | HHS | Health and Human Services |
| A9. | AQ | HITECH Act | The Health Information Technology for Economic and Clinical Health Act, Public Law 111–005 |
| A10. | AR | HSC | California Health and Safety Code |
| A11. | AS | ID | Identification |
| A12. | AT | IEA | Information Exchange Agreement |
| A13. | AU | IRIS | Integrated Records and Information System |
| A14. | AV | ISO | Insurance Services Office |
| A15. | AW | LPHA | Licensed Practitioner of the Healing Arts |
| A16. | AX | MAT | Medication Assisted Treatment |
| A17. | AY | NIST | National Institute of Standards and Technology |
| A18. | AZ | NPI | National Provider Identifier |
| A19. | BA | NPPES | National Plan and Provider Enumeration System |
| A20. | BB | OCPD | Orange County Probation Department |
| A21. | BC | OCR | Office for Civil Rights |
| A22. | BD | OIG | Office of Inspector General |
| A23. | BE | OMB | Office of Management and Budget |
| A24. | BF | OPM | Federal Office of Personnel Management |
| A25. | BG | P&P | Policy and Procedure |
| A26. | BH | PA DSS | Payment Application Data Security Standard |
| A27. | BL | PC | State of California Penal Code |
| A28. | BJ | PCI DSS | Payment Card Industry Data Security Standard |
| A29. | BK | PHI | Protected Health Information |
| A30. | BL | PII | Personally Identifiable Information |
| A31. | BM | PI | Personal Information |
| A32. | BN | RPC | Residential Placement Coordinator |
| A33. | BO | RTS | Residential Treatment Services |
| A34. | BP | SIR | Self–Insured Retention |
| A35. | BQ | SMA | Statewide Maximum Allowance |
II. ALTERATION OF TERMS

A. This Contract, together with Exhibits A, B, C, D, and E, attached hereto and incorporated herein, fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Contract.

B. Unless otherwise expressly stated in this Contract, no addition to, or alteration of the terms of this Contract or any Exhibits, whether written or verbal, made by the parties, their officers, employees or agents shall be valid unless made in the form of a written amendment to this Contract, which has been formally approved and executed by both parties.

III. ASSIGNMENT OF DEBTS

Unless this Contract is followed without interruption by another Contract between the parties hereto for the same services and substantially the same scope, at the termination of this Contract, CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of persons receiving services pursuant to this Contract. CONTRACTOR shall immediately notify by mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of said persons, shall be immediately given to COUNTY.

IV. COMPLIANCE

A. COMPLIANCE PROGRAM – ADMINISTRATOR has established a Compliance Program for the purpose of ensuring adherence to all rules and regulations related to federal and state health care programs.

1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and procedures relating to ADMINISTRATOR’s Compliance Program, Code of Conduct and access to General Compliance and Annual Provider Trainings.

2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own Compliance Program, Code of Conduct and any Compliance related policies and procedures. CONTRACTOR’s Compliance Program, Code of Conduct and any related policies and procedures shall be verified by ADMINISTRATOR’s Compliance Department to ensure they include all required elements by ADMINISTRATOR’s Compliance Officer as described in in this Paragraph IV (COMPLIANCE). These elements include:
a. Designation of a Compliance Officer and/or compliance staff.
b. Written standards, policies and/or procedures.
c. Compliance related training and/or education program and proof of completion.
d. Communication methods for reporting concerns to the Compliance Officer.
e. Methodology for conducting internal monitoring and auditing.
f. Methodology for detecting and correcting offenses.
g. Methodology/Procedure for enforcing disciplinary standards.

3. If CONTRACTOR does not provide proof of its own compliance program to ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR’s Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of execution of this Contract a signed acknowledgement that CONTRACTOR will internally comply with ADMINISTRATOR’s Compliance Program and Code of Conduct. CONTRACTOR shall have as many Covered Individuals it determines necessary complete ADMINISTRATOR’s annual compliance training to ensure proper compliance.

4. If CONTRACTOR elects to have its own Compliance Program, Code of Conduct and any Compliance related policies and procedures review by ADMINISTRATOR, then CONTRACTOR shall submit a copy of its compliance Program, code of Conduct and all relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of execution of this Contract.
ADMINISTRATOR’s Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not exceed forty five (45) calendar days, and determine if CONTRACTOR’s proposed compliance program and code of conduct contain all required elements to the ADMINISTRATOR’s satisfaction as consistent with the HCA’s Compliance Program and Code of Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and CONTRACTOR shall revise its compliance program and code of conduct to meet ADMINISTRATOR’s required elements within thirty (30) calendar days after ADMINISTRATOR’s Compliance Officer’s determination and resubmit the same for review by the ADMINISTRATOR.

5. Upon written confirmation from ADMINISTRATOR’s Compliance Officer that the CONTRACTOR’s compliance program, code of conduct and any Compliance related policies and procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals relative to this Contract are made aware of CONTRACTOR’s compliance program, code of conduct, related policies and procedures and contact information for the ADMINISTRATOR’s Compliance Program.

B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or retained to provide services related to this Contract monthly to ensure that they are not designated as Ineligible Persons, as pursuant to this Contract. Screening shall be conducted against the General Services Administration's Excluded Parties List System or System for Award Management, the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and the
California Medi-Cal Suspended and Ineligible Provider List, the Social Security Administration’s Death Master File at date of employment, and/or any other list or system as identified by ADMINISTRATOR.

1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items or services or who perform billing or coding functions on behalf of ADMINISTRATOR. CONTRACTOR shall ensure that all Covered Individuals relative to this Contract are made aware of ADMINISTRATOR’s Compliance Program, Code of Conduct and related policies and procedures (or CONTRACTOR’s own compliance program, code of conduct and related policies and procedures if CONTRACTOR has elected to use its own).

2. An Ineligible Person shall be any individual or entity who:
   a. is currently excluded, suspended, debarred or otherwise ineligible to participate in federal and state health care programs; or
   b. has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal and state health care programs after a period of exclusion, suspension, debarment, or ineligibility.

3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this Contract.

4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its subcontractors use their best efforts to verify that they are eligible to participate in all federal and State of California health programs and have not been excluded or debarred from participation in any federal or state health care programs, and to further represent to CONTRACTOR that they do not have any Ineligible Person in their employ or under contract.

5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion, or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing services directly relative to this Contract becomes debarred, excluded, or otherwise becomes an Ineligible Person.

6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Contract.

7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction
screened. Such individual or entity shall be immediately removed from participating in any activity associated with this Contract. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by ADMINISTRATOR.

C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance Training available to Covered Individuals.

1. CONTRACTORS that have acknowledged to comply with ADMINISTRATOR’s Compliance Program shall use its best efforts to encourage completion by all Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated representative to complete the General Compliance Training when offered.

2. Such training will be made available to Covered Individuals within thirty (30) calendar days of employment or engagement.

3. Such training will be made available to each Covered Individual annually.

4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide copies of training certification upon request.

5. Each Covered Individual attending a group training shall certify, in writing, attendance at compliance training. ADMINISTRATOR shall provide instruction on group training completion while CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

D. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized Provider Training, where appropriate, available to Covered Individuals.

1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered Individuals relative to this Contract.

2. Such training will be made available to Covered Individuals within thirty (30) calendar days of employment or engagement.

3. Such training will be made available to each Covered Individual annually.

4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall provide copies of the certifications upon request.

5. Each Covered Individual attending a group training shall certify, in writing, attendance at compliance training. ADMINISTRATOR shall provide instructions on completing the training in a group setting while CONTRACTOR shall retain the certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

E. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner and are consistent with federal, state and county laws and regulations. This includes compliance with
1. CONTRACTOR shall comply with all federal and state health care program regulations and procedures or instructions otherwise communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or their agents.

2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims for payment or reimbursement of any kind.

3. CONTRACTOR shall bill only for those eligible services actually rendered which are also fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which accurately describes the services provided and must ensure compliance with all billing and documentation requirements.

4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in coding of claims and billing, if and when, any such problems or errors are identified.

5. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by the ADMINISTRATOR.

6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and participate in the quality improvement activities developed in the implementation of the Quality Management Program.

7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR’s Cultural Competence Plan submitted and approved by the State. ADMINISTRATOR shall update the Cultural Competence Plan and submit the updates to the State for review and approval annually. (CCR, Title 9, §1810.410.subds. (c)-(d).)

F. Failure to comply with the obligations stated in this Paragraph IV (COMPLIANCE) shall constitute a breach of the Contract on the part of CONTRACTOR and ground for COUNTY to terminate the Contract. Unless the circumstances require a sooner period of cure, CONTRACTOR shall have thirty (30) calendar days from the date of the written notice of default to cure any defaults grounded on this Paragraph IV (COMPLIANCE) prior to ADMINISTRATOR’s right to terminate this Contract on the basis of such default.

V. CONFIDENTIALITY

A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, including 42 USC §290dd–2 (Confidentiality of Records), as they now exist or may hereafter be amended or changed.

B. Prior to providing any services pursuant to this Contract, all members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and records which may be obtained in the course of providing such services. This Contract shall specify that it is effective irrespective of all subsequent resignations or terminations of
CONTRACTOR members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns.

C. CONTRACTOR shall have in effect a system to protect patient records from inappropriate disclosure in connection with activity funded under this Contract. This system shall include provisions for employee education on the confidentiality requirements, and the fact that disciplinary action may occur upon inappropriate disclosure. CONTRACTOR agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all confidential information that it creates, receives, maintains or transmits. CONTRACTOR shall provide ADMINISTRATOR with information concerning such safeguards.

D. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR, or its subcontractors or agents in violation of the applicable state and federal regulations regarding confidentiality.

E. CONTRACTOR shall monitor compliance with the above provisions on confidentiality and security, and shall include them in all subcontracts.

F. CONTRACTOR shall notify ADMINISTRATOR within twenty-four (24) hours during a work week, of any suspected or actual breach of its computer system.

VI. CONFLICT OF INTEREST

CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation shall apply to CONTRACTOR’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. CONTRACTOR’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence COUNTY staff or elected officers in the performance of their duties.

VII. COST REPORT

A. CONTRACTOR shall submit separate individual and/or consolidated Cost Reports for Period One and Period Two, or for a portion thereof, to COUNTY no later than forty-five (45) calendar days following the period for which they are prepared or termination of this Contract. CONTRACTOR shall prepare the individual and/or consolidated Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Contract. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice, which costs and allocations shall be supported by source documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event
CONTRACTOR has multiple Contracts for mental health services that are administered by HCA, consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as stipulated by ADMINISTRATOR. CONTRACTOR shall submit the consolidated Cost Report to COUNTY no later than five (5) business days following approval by ADMINISTRATOR of all individual Cost Reports to be incorporated into a consolidated Cost Report.

1. If CONTRACTOR fails to submit an accurate and complete individual and/or consolidated Cost Report within the time period specified above, ADMINISTRATOR shall have sole discretion to impose one or both of the following:
   a. CONTRACTOR may be assessed a late penalty of five hundred dollars ($500) for each business day after the above specified due date that the accurate and complete individual and/or consolidated Cost Report is not submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The late penalty shall be assessed separately on each outstanding individual and/or consolidated Cost Report due COUNTY by CONTRACTOR.
   b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any or all Contracts between COUNTY and CONTRACTOR until such time that the accurate and complete individual and/or consolidated Cost Report is delivered to ADMINISTRATOR.

2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the individual and/or consolidated Cost Report setting forth good cause for justification of the request. Approval of such requests shall be at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied. In no case shall extensions be granted for more than seven (7) calendar days.

3. In the event that CONTRACTOR does not submit an accurate and complete individual and/or consolidated Cost Report within one hundred and eighty (180) calendar days following the termination of this Contract, and CONTRACTOR has not entered into a subsequent or new Contract for any other services with COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Contract shall be immediately reimbursed to COUNTY.

B. The individual and/or consolidated Cost Report prepared for each period shall be the final financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR for that period. CONTRACTOR shall document that costs are reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The individual and/or consolidated Cost Report shall be the final financial record for subsequent audits, if any.

C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues and any late penalty, not to exceed COUNTY’s Maximum Obligation as set forth in the Referenced Contract Provisions of this Contract. CONTRACTOR shall not claim expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an unreimbursable expenditure or service, shall be
repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30)
calendar days of submission of the individual and/or consolidated Cost Report or COUNTY may elect
to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNT Y.

D. If the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of
services provided pursuant to this Contract, less applicable revenues and late penalty, are lower than the
aggregate of interim monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference
to COUNTY. Such reimbursement shall be made, in cash, or other authorized form of payment, with
the submission of the individual and/or consolidated Cost Report. If such reimbursement is not made by
CONTRACTOR within thirty (30) calendar days after submission of the individual and/or consolidated
Cost Report, COUNTY may, in addition to any other remedies, reduce any amount owed
CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

E. If the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of
services provided pursuant to this Contract, less applicable revenues and late penalty, are higher than the
aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the
difference, provided such payment does not exceed the Maximum Obligation of COUNTY.

F. All Cost Reports shall contain the following attestation, which may be typed directly on or
attached to the Cost Report:

"I HEREBY CERTIFY that I have executed the accompanying Cost Report and
supporting documentation prepared by ________ for the cost report period
beginning ________ and ending ________ and that, to the best of my
knowledge and belief, costs reimbursed through this Contract are reasonable and
allowable and directly or indirectly related to the services provided and that this Cost
Report is a true, correct, and complete statement from the books and records of
(provider name) in accordance with applicable instructions, except as noted. I also
hereby certify that I have the authority to execute the accompanying Cost Report.

Signed

Name

Title

Date

VIII. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONTRACTOR certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or
voluntarily excluded by any federal department or agency.
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.

4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction,” (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.

B. The terms and definitions of this paragraph have the meanings set out in the Definitions and Coverage sections of the rules implementing 51 F.R. 6370.

IX. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS

A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR’s intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted assignment or delegation in derogation of this paragraph shall be void.

B. CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR’s business prior to completion of this Contract, and COUNTY agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume CONTRACTOR’s duties and obligations contained in this Contract and complete them to the satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY.

1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an
assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

2. If CONTRACTOR is a for-profit organization, any change in the business structure, including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR
at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
delegation in derogation of this subparagraph shall be void.

3. If CONTRACTOR is a governmental organization, any change to another structure,
including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board
of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an
assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of
this subparagraph shall be void.

4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
CONTRACTOR shall provide written notification of CONTRACTOR’s intent to assign the obligations
hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to
the effective date of the assignment.

5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
CONTRACTOR shall provide written notification within thirty (30) calendar days to
ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
governing body of CONTRACTOR at one time.

6. COUNTY reserves the right to immediately terminate the Contract in the event COUNTY
determines, in its sole discretion, that the assignee is not qualified or is otherwise unacceptable to
COUNTY for the provision of services under the Contract.

C. CONTRACTOR’s obligations undertaken pursuant to this Contract may be carried out by
means of subcontracts, provided such subcontractors are approved in advance by ADMINISTRATOR,
meet the requirements of this Contract as they relate to the service or activity under subcontract, include
any provisions that ADMINISTRATOR may require, and are authorized in writing by
ADMINISTRATOR prior to the beginning of service delivery.

1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the
subcontractor upon five (5) calendar days’ written notice to CONTRACTOR if the subcontractor
subsequently fails to meet the requirements of this Contract or any provisions that ADMINISTRATOR
has required. ADMINISTRATOR may disallow subcontractor expenses reported by CONTRACTOR.

2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
pursuant to this Contract.
3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR, amounts claimed for subcontracts not approved in accordance with this paragraph.

4. This provision shall not be applicable to service agreements usually and customarily entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional services provided by consultants.

D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR’s status with respect to name changes that do not require an assignment of the Contract. CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party to any litigation against COUNTY, or a party to litigation that may reasonably affect the CONTRACTOR’s performance under the Contract, as well as any potential conflicts of interest between CONTRACTOR and County that may arise prior to or during the period of Contract performance. While CONTRACTOR will be required to provide this information without prompting from COUNTY any time there is a change in CONTRACTOR’s name, conflict of interest or litigation status, CONTRACTOR must also provide an update to COUNTY of its status in these areas whenever requested by COUNTY.

X. DISPUTE RESOLUTION

A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be brought to the attention of the COUNTY Purchasing Agency by way of the following process:

1. CONTRACTOR shall submit to the COUNTY Purchasing Agency a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless COUNTY, on its own initiative, has already rendered such a final decision.

2. CONTRACTOR’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, CONTRACTOR shall include with the demand a written statement signed by an authorized representative indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which CONTRACTOR believes COUNTY is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, CONTRACTOR agrees to proceed diligently with the performance of services secured via this Contract, including the delivery of goods and/or provision of services. CONTRACTOR’s failure to proceed diligently shall be considered a material breach of this Contract.

C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final decision adverse to CONTRACTOR's contentions.
D. This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

XI. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Contract meet the citizenship or alien status requirements set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, subcontractors, and consultants for the period prescribed by the law.

XII. EQUIPMENT

A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by ADMINISTRATOR to assist in performing the services described in this Contract. “Relatively Permanent” is defined as having a useful life of one year or longer. Equipment which costs $5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between $600 and $5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than $600 but may contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Contract shall be depreciated according to GAAP.

B. CONTRACTOR shall obtain ADMINISTRATOR’s prior written approval to purchase any Equipment with funds paid pursuant to this Contract. Upon delivery of Equipment, CONTRACTOR shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.
C. Upon ADMINISTRATOR’s prior written approval, CONTRACTOR may expense to COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To “expense,” in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with COUNTY.

D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Contract, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if any.

E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any or all Equipment to COUNTY.

F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure approved by ADMINISTRATOR and the Notices Paragraph of this Contract. In addition, CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of Equipment are moved from one location to another or returned to COUNTY as surplus.

G. Unless this Contract is followed without interruption by another agreement between the parties for substantially the same type and scope of services, at the termination of this Contract for any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this Contract.

H. CONTRACTOR shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

I. The total cost of all Equipment purchases shall not exceed $50,000 annually.

XIII. FACILITIES, PAYMENTS AND SERVICES

CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance with this Contract. COUNTY shall compensate, and authorize, when applicable, said services. CONTRACTOR shall operate continuously throughout the term of this Contract with at least the minimum number and type of staff which meet applicable federal and state requirements, and which are necessary for the provision of the services hereunder.

XIV. INDEMNIFICATION AND INSURANCE

A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY’s Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services,
products or other performance provided by CONTRACTOR pursuant to this Contract. If judgment is
entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the
concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and
COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall
request a jury apportionment.

B. Prior to the provision of services under this Contract, CONTRACTOR agrees to purchase all
required insurance at CONTRACTOR’s expense, including all endorsements required herein, necessary
to satisfy COUNTY that the insurance provisions of this Contract have been complied with.
COUNTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements
on deposit with COUNTY during the entire term of this Contract. In addition, all subcontractors
performing work on behalf of CONTRACTOR pursuant to this Contract shall obtain insurance subject
to the same terms and conditions as set forth herein for CONTRACTOR.

C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
CONTRACTOR pursuant to this Contract shall be covered under CONTRACTOR’s insurance as an
Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
than the level of coverage required by COUNTY from CONTRACTOR under this Contract. It is the
obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
insurance must be maintained by CONTRACTOR through the entirety of this Contract for inspection by
COUNTY representative(s) at any reasonable time.

D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,
indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an
amount in excess of $50,000 ($5,000 for automobile liability) shall specifically be approved by the
CEO/Office of Risk Management upon review of CONTRACTOR’s current audited financial report. If
CONTRACTOR’s SIR is approved, CONTRACTOR, in addition to, and without limitation of, any
other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all
liability, claim, demand or suit resulting from CONTRACTOR’s, its agents, employee’s or
subcontractor’s performance of this Contract, CONTRACTOR shall defend the COUNTY at its sole
cost and expense with counsel approved by Board of Supervisors against same; and

2. CONTRACTOR’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 the CONTRACTOR’s SIR provision shall be
interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.
E. If CONTRACTOR fails to maintain insurance as required in this Paragraph XII (INDEMNIFICATION AND INSURANCE) for the full term of this Contract, such failure shall constitute a breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to terminate this Contract.

F. QUALIFIED INSURER

1. 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).

2. 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.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td></td>
<td>$2,000,000 aggregate</td>
</tr>
<tr>
<td>Automobile Liability including coverage</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>for owned, non-owned and hired vehicles</td>
<td></td>
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<tr>
<td>(4 passengers or less)</td>
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<tr>
<td>Passenger vehicles (7 passengers or less)</td>
<td>$2,000,000 per occurrence</td>
</tr>
<tr>
<td>Passenger vehicles (8 passengers or more)</td>
<td>$5,000,000 per occurrence</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims made</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 aggregate</td>
</tr>
<tr>
<td>Network Security and Privacy Liability</td>
<td>$1,000,000 per claims made</td>
</tr>
<tr>
<td>Sexual Misconduct Liability</td>
<td>$1,000,000 per occurrence</td>
</tr>
</tbody>
</table>
H. REQUIRED COVERAGE FORMS

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

2. The Business Automobile 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 coverage at least as broad.

I. REQUIRED ENDORSEMENTS

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:
   a. 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, agents and employees* as Additional Insureds, or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN AGREEMENT*.
   b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the CONTRACTOR’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

2. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the COI:
   a. An Additional Insured endorsement naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds for its vicarious liability.
   b. A primary and non-contributing endorsement evidencing that the Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

J. All insurance policies required by this Contract 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.

K. The Workers’ Compensation policy 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*, or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN AGREEMENT*.

L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and within ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to suspend or terminate this Contract.

M. If CONTRACTOR’s Professional Liability and/or Network Security & Privacy Liability are “Claims-Made” policies, CONTRACTOR shall agree to maintain coverage for two (2) years following the completion of the Contract.
N. 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 0001 policy).

O. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

P. If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

Q. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

R. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

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

T. SUBMISSION OF INSURANCE DOCUMENTS

1. The COI and endorsements shall be provided to COUNTY as follows:
   a. Prior to the start date of this Contract.
   b. No later than the expiration date for each policy.
   c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.

2. The COI and endorsements shall be provided to the COUNTY at the address as specified in the Referenced Contract Provisions of this Contract.

3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance provisions stipulated in this Contract by the above specified due dates, ADMINISTRATOR shall have sole discretion to impose one or both of the following:
   a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any and all Contracts between COUNTY and CONTRACTOR until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to ADMINISTRATOR.
   b. CONTRACTOR may be assessed a penalty of one hundred dollars ($100) for each late COI or endorsement for each business day, pursuant to any and all Contracts between COUNTY and
CONTRACTOR, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Contract are submitted to ADMINISTRATOR.

c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from CONTRACTOR’s monthly invoice.

4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

XV. INSPECTIONS AND AUDITS

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall to the extent permissible under applicable law have access to any books, documents, and records, including but not limited to, financial statements, general ledgers, relevant accounting systems, medical and Client records, of CONTRACTOR that are directly pertinent to this Contract, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Contract. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Contract, and the premises in which they are provided.

B. CONTRACTOR shall actively participate and cooperate with any person specified in Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this Contract, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.

C. CONTRACTOR shall make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal/Drug Medi-Cal enrollees, Medi-Cal/Drug Medi-Cal-related activities, services and activities furnished under the terms of the Contract or determinations of amounts payable available at any time for inspection, examination of copying by the State, CMS, HHS Inspector General, the United States Comptroller General, their designees, and other authorized federal and state agencies. (42 CFR §438.3(h)) This audit right will exist for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later. (42 CFR §438.230(c)(3)(iii).) The State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CONTRACTOR at any time if there is a reasonable possibility of fraud or similar risk, then. (42 CFR §438.230(c)(3)(iv).)

D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare an annual Single Audit as required by 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal
Awards. CONTRACTOR shall forward the Single Audit to ADMINISTRATOR within fourteen (14) calendar days of receipt.

E. ADMINISTRATOR shall inform providers and CONTRACTOR, at the time they enter into a contract, of the following:


2. The beneficiary’s right to file grievances and appeals and the requirements and timeframes for filing.

3. The availability of assistance to the beneficiary with filling grievances and appeals.

4. The beneficiary’s right to request continuation of benefits that the ADMINISTRATOR seeks to reduce or terminate during an appeal or state fair hearing filing, if filed within the allowable timeframes, although the beneficiary may be liable for the cost of any continued benefits while the appeal or state fair hearing is pending if the final decision is adverse to the beneficiary.

5. The conduction of random reviews to ensure beneficiaries are being notified in a timely manner.

F. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR’s operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Contract.

XVI. LICENSES AND LAWS

A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Contract, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be cause for termination of this Contract. In addition, all treatment providers will be certified by the State Department of Health Care Services as a Drug Medi-Cal provider and must meet any additional requirements established by COUNTY as part of this certification.

B. CONTRACTOR shall comply with all applicable governmental laws, regulations, and requirements as they exist now or may be hereafter amended or changed. These laws, regulations, and requirements shall include, but not be limited to, the following:

1. ARRA of 2009.


3. CCC §§56 through 56.37, Confidentiality of Medical Information.
4. CCC §§1798.80 through 1798.84, Customer Records.
5. CCC §1798.85, Confidentiality of Social Security Numbers.
6. CCR, Title 9, Rehabilitative and Developmental Services, Division 4; and Title 22 Social Security.
7. HSC, Divisions 10.5 Alcohol and Drug Programs and 10.6. Drug and Alcohol Abuse Master Plans.
8. HSC, §§11839 through 11839.22, Narcotic Treatment Programs.
9. HSC, §11876, Narcotic Treatment Programs.
13. 2 CFR 376, Nonprocurement, Debarment and Suspension.
15. 42 CFR 2, Confidentiality of Alcohol and Drug Abuse Patient Records.
16. 42 CFR 54, Charitable choice regulations applicable to states receiving substance abuse prevention and treatment block grants and/or projects for assistance in transition from homelessness grants.
17. 45 CFR 93, New Restrictions on Lobbying.
18. 45 CFR 96.127, Requirements regarding Tuberculosis.
19. 45 CFR 96.132, Additional Agreements.
20. 45 CFR 96.135, Restrictions on Expenditure of Grant.
22. 45 CFR 162, Administrative Requirements.
23. 45 CFR 164, Security and Privacy.
24. 48 CFR 9.4, Debarment, Suspension, and Ineligibility.
26. 31 USC §1352, Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions.
27. 42 USC §§285n through 285o, National Institute on Alcohol Abuse and Alcoholism; National Institute on Drug Abuse.
28. 42 USC §§290aa through 290kk-3, Substance Abuse and Mental Health Services Administration.
29. 42 USC §290dd-2, Confidentiality of Records.
30. 42 USC §1320(a), Uniform reporting systems for health services facilities and organizations.
31. 42 USC §§1320d through 1320d-9, Administrative Simplification.
35. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
37. Fact Sheet Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for Co-Occurring Disorders, Mental Health Services Oversight and Accountability Commission, 1/17/08.
39. State of California, Department of Alcohol and Drug Programs, Alcohol and/or Other Drug Program Certification Standards, March 2004.
40. CCR Title 22, §§70751(c), 71551(c), 73543(a), 74731(d), 75055(a), 75343(a), and 77143(a).
42. State of California, Department of Health Care Services DPFS Manual.
43. HSC §123145.
44. Title 45 CFR, §164.501; §164.524; §164.526; §164.530(c) and (j).
45. Title 22, CCR, §51009, Confidentiality of Records.
49. Federal Medicare Cost reimbursement principles and cost reporting standards.
51. Orange County Medi-Cal Mental Health Managed Care Plan.
52. 42 CFR, Section 438, Managed Care Regulations.
55. Drug Medi-Cal Certification Standards for Substance Abuse Clinics (Document 2E).
56. Title 22, CCR, Sections 51341.1, 51490.1, and 51516.1, (Document 2C).
57. Standards for Drug Treatment Programs (October 21, 1981) (Document 2F);
58. Title 9, CCR, Division 4, Chapter 4, Subchapter 1, Sections 10000, et seq.;
59. Title 22, CCR, Division 3, Chapter 3, sections 51000 et. seq.
60. Title 9, CCR, Section 1810.435.
61. Title 9, CCR, Section 1840.105.
XVII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

A. Any written information or literature, including educational or promotional materials, distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related to this Contract must be approved at least thirty (30) days in advance and in writing by ADMINISTRATOR before distribution. For the purposes of this Contract, distribution of written materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such as the Internet.

B. Any advertisement through radio, television broadcast, or the Internet, for educational or promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this Contract must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) in support of the services described within this Contract, CONTRACTOR shall develop social media policies and procedures and have them available to ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media used to either directly or indirectly support the services described within this Contract. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. CONTRACTOR shall also include any required funding statement information on social media when required by ADMINISTRATOR.

D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by COUNTY, unless ADMINISTRATOR consents thereto in writing.

E. CONTRACTOR shall also clearly explain through these materials that there shall be no unlawful use of drugs or alcohol associated with the services provided pursuant to this Contract, as specified in HSC, §11999–11999.3.

XVIII. MAXIMUM OBLIGATION

A. The Total Maximum Obligation of COUNTY for services provided in accordance with this Contract, and the separate Maximum Obligations for each period under this Contract, are as specified in the Referenced Contract Provisions of this Contract, except as allowed for in Subparagraph B. below.

B. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten percent (10%) of the first year of funding for this Contract.

XIX. MINIMUM WAGE LAWS

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its employees that directly or indirectly provide services pursuant to this Contract, in any manner whatsoever. CONTRACTOR shall require and verify that all
its contractors or other persons providing services pursuant to this Contract on behalf of

CONTRACTOR shall also pay their employees no less than the greater of the federal or California Minimum
Wage.

B. CONTRACTOR shall comply and verify that its contractors comply with all other federal and
State of California laws for minimum wage, overtime pay, record keeping, and child labor standards
pursuant to providing services pursuant to this Contract.

C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
where applicable, shall comply with the prevailing wage and related requirements, as provided for in
accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

XX. NONDISCRIMINATION

A. EMPLOYMENT

1. During the term of this Contract, CONTRACTOR and its Covered Individuals shall not
unlawfully discriminate against any employee or applicant for employment because of his/her race,
religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
orientation, or military and veteran status. Additionally, during the term of this Contract,
CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall
not unlawfully discriminate against any employee or applicant for employment because of his/her race,
religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
orientation, or military and veteran status.

2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or
applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or
recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection
for training, including apprenticeship.

3. CONTRACTOR shall not discriminate between employees with spouses and employees
with domestic partners, or discriminate between domestic partners and spouses of those employees, in
the provision of benefits.

4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for
employment, notices from ADMINISTRATOR and/or the United States Equal Employment
Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

5. All solicitations or advertisements for employees placed by or on behalf of
CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration
for employment without regard to race, religious creed, color, national origin, ancestry, physical
disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender
identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed fulfilled by use of the term EOE.

6. Each labor union or representative of workers with which CONTRACTOR and/or subcontractor has a collective bargaining agreement or other contract or understanding must post a notice advising the labor union or workers' representative of the commitments under this Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 – §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one or more of the factors identified above:

1. Denying a client or potential client any service, benefit, or accommodation.
2. Providing any service or benefit to a client which is different or is provided in a different manner or at a different time from that provided to other clients.
3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
4. Treating a client differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service or benefit.
5. Assignment of times or places for the provision of services.

C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all Clients through a written statement that CONTRACTOR’s and/or subcontractor’s Clients may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR or the U.S. Department of Health and Human Services’ OCR.

1. Whenever possible, problems shall be resolved at the point of service. CONTRACTOR shall establish an internal problem resolution process for Clients not able to resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with CONTRACTOR either orally or in writing.
a. COUNTY shall establish a formal resolution and grievance process in the event grievance is not able to be resolved at point of service.

2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, has the right to request a State Fair Hearing.

D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities; and if applicable, as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together with succeeding legislation.

E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.

F. In the event of non–compliance with this paragraph or as otherwise provided by federal and state law, this Contract may be canceled, terminated or suspended in whole or in part and CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal, state or county funds.

XXI. NOTICES

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Contract shall be effective:

1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by Email; or

4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.

B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of this Contract or as otherwise directed by ADMINISTRATOR and shall be effective when faxed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.
C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR.

D. For purposes of this Contract, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

XXII. NOTIFICATION OF DEATH

A. Upon becoming aware of the death of any person served pursuant to this Contract, CONTRACTOR shall immediately notify ADMINISTRATOR.

B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain the name of the deceased, the date and time of death, the nature and circumstances of the death, and the name(s) of CONTRACTOR’s officers or employees with knowledge of the incident.

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Contract; provided, however, weekends and holidays shall not be included for purposes of computing the time within which to give telephone notice and, notwithstanding the time limit herein specified, notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION
   a. NON–TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming aware of the death due to non–terminal illness of any person served pursuant to this Contract.
   b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within forty–eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant to this Contract.

C. If there are any questions regarding the cause of death of any person served pursuant to this Contract who was diagnosed with a terminal illness, or if there are any unusual circumstances related to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this Notification of Death Paragraph.

XXIII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in whole or in part by the COUNTY, except for those events or meetings that are intended solely to serve clients or occur in the normal course of business.

B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance of any applicable public event or meeting. The notification must include the date, time, duration,
location and purpose of the public event or meeting. Any promotional materials or event related flyers must be approved by ADMINISTRATOR prior to distribution.

**XXIV. PATIENT’S RIGHTS**

A. CONTRACTOR shall post the current California Department of Mental Health Patients’ Rights poster as well as the Orange County HCA Mental Health Plan Grievance and Appeals poster in locations readily available to Clients and staff and have Grievance and Appeal forms in the threshold languages and envelopes readily accessible to Clients to take without having to request it on the unit.

B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have an internal grievance processes approved by ADMINISTRATOR, to which the beneficiary shall have access.

1. CONTRACTOR's grievance processes shall incorporate COUNTY's grievance, patients' rights, and/or utilization management guidelines and procedures. The patient has the right to utilize either or both grievance process simultaneously in order to resolve their dissatisfaction.

2. Title IX Rights Advocacy. This process may be initiated by a Client who registers a statutory rights violation or a denial or abuse complaint with the County Patients’ Rights Office. The Patients’ Rights office shall investigate the complaint, and Title IX grievance procedures shall apply, which involve ADMINISTRATOR’S Director of Behavioral Health Care and the State Patients’ Rights Office.

C. The parties agree that Clients have recourse to initiate an expression of dissatisfaction to CONTRACTOR, appeal to the County Patients’ Rights Office, file a grievance, and file a Title IX complaint. The Patients’ Advocate shall advise and assist the Client, investigate the cause of the grievance, and attempt to resolve the matter.

D. No provision of this Contract shall be construed as to replacing or conflicting with the duties of County Patients' Rights Office pursuant to Welfare and Institutions Code Section 5500.

**XXV. RECORDS MANAGEMENT AND MAINTENANCE**

A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Contract, prepare, maintain and manage records appropriate to the services provided and in accordance with this Contract and all applicable requirements.

1. CONTRACTOR shall maintain records that are adequate to substantiate the services for which claims are submitted for reimbursement under this Contract and the charges thereto. Such records shall include, but not be limited to, individual patient charts and utilization review records.

2. CONTRACTOR shall keep and maintain records of each service rendered to each MSN Patient, the identity of the MSN Patient to whom the service was rendered, the date the service was rendered, and such additional information as ADMINISTRATOR or DHCS may require.

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3. CONTRACTOR shall maintain books, records, documents, accounting procedures and practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature claimed to have been incurred in the performance of this Contract and in accordance with Medicare principles of reimbursement and GAAP.

4. CONTRACTOR shall ensure the maintenance of medical records required by §70747 through and including §70751 of the CCR, as they exist now or may hereafter be amended, the medical necessity of the service, and the quality of care provided. Records shall be maintained in accordance with §51476 of Title 22 of the CCR, as it exists now or may hereafter be amended.

B. CONTRACTOR shall implement and maintain administrative, technical and physical safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of PHI in violation of the HIPAA, federal and state regulations. CONTRACTOR shall mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in violation of federal or state regulations and/or COUNTY policies.

C. CONTRACTOR’s participant, client, and/or patient records shall be maintained in a secure manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish and implement written record management procedures.

D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the termination of the contract, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.

E. CONTRACTOR shall retain all client and/or patient medical records for ten (10) years following discharge of the participant, client and/or patient.

F. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges, billings, and revenues available at one (1) location within the limits of the County of Orange. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide written approval to CONTRACTOR to maintain records in a single location, identified by CONTRACTOR.

G. CONTRACTOR shall notify ADMINISTRATOR of any PRA requests related to, or arising out of, this Contract, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR all information that is requested by the PRA request.

H. CONTRACTOR shall ensure all HIPAA DRS requirements are met. HIPAA requires that clients, participants and/or patients be provided the right to access or receive a copy of their DRS and/or request addendum to their records. Title 45 CFR §164.501, defines DRS as a group of records maintained by or for a covered entity that is:

1. The medical records and billing records about individuals maintained by or for a covered health care provider;

2. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

I. CONTRACTOR may retain client, and/or patient documentation electronically in accordance with the terms of this Contract and common business practices. If documentation is retained electronically, CONTRACTOR shall, in the event of an audit or site visit:

1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit or site visit.

2. Provide auditor or other authorized individuals access to documents via a computer terminal.

3. Provide auditor or other authorized individuals a hardcopy printout of documents, if requested.

J. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and security of PII and/or PHI. CONTRACTOR shall, upon discovery of a Breach of privacy and/or security of PII and/or PHI by CONTRACTOR, notify federal and/or state authorities as required by law or regulation, and copy ADMINISTRATOR on such notifications.

K. CONTRACTOR may be required to pay any costs associated with a Breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification. CONTRACTOR shall pay any and all such costs arising out of a Breach of privacy and/or security of PII and/or PHI.

L. CONTRACTOR shall obtain an NPI for each site identified as a location for providing contractual services. Provider’s site NPIs must be submitted to the ADMINISTRATOR prior to rendering services to clients. Contractors providing direct or indirect services for State reporting must also submit rendering (individual) provider NPIs to ADMINISTRATOR for each staff member providing Medi-Cal billable services. Contractor reimbursement will not be processed unless NPIs are on file with ADMINISTRATOR in advance of providing services to clients. It is the responsibility of each contract provider site and individual staff member that bills Medi-Cal to obtain an NPI from the NPPES. Each contract site, as well as every staff member that provides billable services, is responsible for notifying the NPPES within thirty (30) calendar days of any updates to personal information, which may include, but is not limited to, worksite address, name changes, taxonomy code changes, etc.

XXVI. RESEARCH AND PUBLICATION

CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out of, or developed, as a result of this Contract for the purpose of personal or professional research, or for publication.

XXVII. REVENUE

A. CLIENT FEES – CONTRACTOR shall not charge a fee to DMC beneficiaries to whom services are provided pursuant to this Contract, their estates and/or responsible relatives, unless a Share of Cost is determined per Medi-Cal eligibility.
B. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Contract may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR’s usual and customary charges. An Assignment of Benefits must be present in a Participant’s file when applicable. CONTRACTOR must use the third-party billing and reimbursement administrator designated by ADMINISTRATOR during the term of this Contract, if any, as directed by ADMINISTRATOR.

C. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately ensure proper billing and collection procedures. CONTRACTOR’s procedures shall specifically provide for the identification of delinquent accounts and methods for pursuing such accounts.

D. OTHER REVENUES – CONTRACTOR shall charge for services, supplies, or facility use by persons other than individuals or groups eligible for services pursuant to this Contract.

XXVIII. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Contract or application thereof to any person or circumstances to be invalid or if any provision of this Contract contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Contract or the application thereof shall remain valid, and the remaining provisions of this Contract shall remain in full force and effect, and to that extent the provisions of this Contract are severable.

XXIX. SPECIAL PROVISIONS

A. CONTRACTOR shall not use the funds provided by means of this Contract for the following purposes:

1. Making cash payments to intended recipients of services through this Contract.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s staff, volunteers, or members of the Board of Directors or governing body.
5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing body for expenses or services.
6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
8. Severance pay for separating employees.

9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.

10. Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.

11. Satisfying any expenditure of non–federal funds as a condition for the receipt of federal funds (matching).

12. Contracting or subcontracting with any entity other than an individual or nonprofit entity.

13. Producing any information that promotes responsible use, if the use is unlawful, of drugs or alcohol.

14. Promoting the legalization of any drug or other substance included in Schedule 1 of the Controlled Substance Act (21 USC 812).

15. Distributing or aiding in the distribution of sterile needles or syringes for the hypodermic injection of any illegal drug.

16. Assisting, promoting, or deterring union organizing.

17. Providing inpatient hospital services or purchasing major medical equipment.

B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Contract for the following purposes:

1. Funding travel or training (excluding mileage or parking).

2. Making phone calls outside of the local area unless documented to be directly for the purpose of client care.

3. Payment for grant writing, consultants, certified public accounting, or legal services.

4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Contract.

5. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s clients.

C. Neither Party shall be responsible for delays or failures in performance resulting from acts beyond the control of the affected Party. Such acts shall include, but not be limited to, acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight, embargo, public related utility, or governmental statutes or regulations imposed after the fact.

XXX. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Contract. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Contract shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR.
or any of CONTRACTOR’s employees, agents, consultants, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of COUNTY’s employees and shall not be considered in any manner to be COUNTY’s employees.

XXXI. TERM

A. The term of this Contract shall commence as specified in the Referenced Contract Provisions of this Contract or the execution date, whichever is later. This Contract shall terminate as specified in the Referenced Contract Provisions of this Contract unless otherwise sooner terminated as provided in this Contract. CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting, and accounting.

B. Any administrative duty or obligation to be performed pursuant to this Contract on a weekend or holiday may be performed on the next regular business day.

XXXII. TERMINATION

A. Either Party may terminate this Contract, without cause, upon ninety (90) calendar days’ written notice given the other Party.

B. Unless otherwise specified in this Contract, COUNTY may terminate this Contract upon five (5) calendar days’ written notice if CONTRACTOR fails to perform any of the terms of this Contract. At ADMINISTRATOR’s sole discretion, CONTRACTOR may be allowed up to thirty (30) calendar days for corrective action.

C. COUNTY may terminate this Contract immediately, upon written notice, on the occurrence of any of the following events:

1. The loss by CONTRACTOR of legal capacity.

2. Cessation of services.

3. The delegation or assignment of CONTRACTOR’s services, operation or administration to another entity without the prior written consent of COUNTY.

4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty required pursuant to this Contract.

5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this Contract.

6. The continued incapacity of any physician or licensed person to perform duties required pursuant to this Contract.

//
7. Unethical conduct or malpractice by any physician or licensed person providing services pursuant to this Contract; provided, however, COUNTY may waive this option if CONTRACTOR removes such physician or licensed person from serving persons treated or assisted pursuant to this Contract.

D. CONTINGENT FUNDING

1. Any obligation of COUNTY under this Contract is contingent upon the following:
   a. The continued availability of federal, state and county funds for reimbursement of COUNTY’s expenditures, and
   b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s) approved by the Board of Supervisors.

2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend, terminate or renegotiate this Contract upon ninety (90) calendar days’ written notice given CONTRACTOR. If COUNTY elects to renegotiate this Contract due to reduced or terminated funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

E. In the event this Contract is terminated by either Party pursuant to Subparagraphs B., C. or D. above, CONTRACTOR shall do the following:

1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of quality care and prudent business practice.

2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract performance during the remaining contract term.

3. Until the date of termination, continue to provide the same level of service required by this Contract.

4. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.

5. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with client’s best interests.

6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.

7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and supplies purchased with funds provided by COUNTY.

8. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personal services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.
9. Provide written notice of termination of services to each client being served under this Contract, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendars day period.

F. COUNTY may terminate this Contract, without cause, upon thirty (30) calendar days’ written notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Contract.

XXXIII. THIRD–PARTY BENEFICIARY

Neither Party hereto intends that this Contract shall create rights hereunder in third–parties including, but not limited to, any subcontractors or any clients provided services pursuant to this Contract.

XXXIV. WAIVER OF DEFAULT OR BREACH

Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this Contract shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any default or any breach by CONTRACTOR shall not be considered a modification of the terms of this Contract.
IN WITNESS WHEREOF, the parties have executed this Contract, in the County of Orange, State of California.

TELECARE CORPORATION

BY: [Signature] [Signature] DATED: 10/27/2020

TITLE: Senior VP for Development

COUNTY OF ORANGE

BY: [Signature] [Signature] DATED: 10/27/2020

HEALTH CARE AGENCY

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

BY: [Signature] [Signature] DATED: 10/27/2020

DEPUTY

If the contracting Party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President, and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her signature alone is required by ADMINISTRATOR.
EXHIBIT A

TO CONTRACT FOR PROVISION OF
ADULT RESIDENTIAL DRUG MEDI-CAL
SUBSTANCE USE DISORDER TREATMENT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
TELECARE CORPORATION
NOVEMBER 3, 2020 THROUGH JUNE 30, 2022

I. SERVICES TO BE PROVIDED

CONTRACTOR agrees to provide the following Adult Residential Drug Medi-Cal Substance Use Disorder Treatment Services pursuant to the terms and conditions specified in the Contract for provision of such services by and between COUNTY and CONTRACTOR dated November 3, 2020 as hereinafter indicated. CONTRACTOR and COUNTY may mutually agree, in writing, to add or delete services to be provided by CONTRACTOR.

Adult Residential Treatment Services as specified in Exhibit C  ___X___

Adult Co-Occurring Residential Treatment Services as specified in Exhibit C  ___X___

Adult Clinically Managed Withdrawal Management Services as specified in Exhibit C  ___X___

Services shall be provided at the following location, or at any other location approved in advance, in writing, by ADMINISTRATOR:

265 South Anita Drive
Orange, CA 92868
EXHIBIT B
TO CONTRACT FOR PROVISION OF
ADULT RESIDENTIAL DRUG MEDI-CAL
SUBSTANCE USE DISORDER TREATMENT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
TELECARE CORPORATION
NOVEMBER 3, 2020 THROUGH JUNE 30, 2022

I. COMMON TERMS AND DEFINITIONS

A. The Parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in this Contract.

1. **AB109** means services for those Clients deemed eligible by Assembly Bill 109, Public Safety Realignment, under which the Client’s last offense was non-violent, non-sexual, and non-serious.

2. **AB109 Supervision** means an offender released from prison to OCPD, or sentenced under AB109 and is doing their incarceration in jail instead of prison.

3. **ASAM Criteria** is a comprehensive set of guidelines for placement, continued stay and transfer/discharge of Clients with addiction and co-occurring conditions.

4. **ASAM-Designated Levels of Care** means a designation that is issued by DHCS to a residential program based on the services provided at the facility. For the purposes of this Contract, CONTRACTOR shall provide services in accordance with one of the following ASAM-Designated Levels of Care:

   a. **3.1 - Clinically Managed Low-Intensity Residential Services**: 24-hour structure with available trained personnel; at least five (5) hours of clinical service/week and prepare for outpatient treatment and/or sober living.

   b. **3.3 - Clinically Managed Population-Specific High-Intensity Residential Services**: 24-hour care with trained counselors to stabilize multidimensional imminent danger. Less intense milieu and group treatment with at least five (5) hours of clinical service/week for those with cognitive or other impairments unable to use full active milieu or therapeutic community and prepare for outpatient treatment.

   c. **3.5 - Clinically Managed High-Intensity Residential Services**: 24-hour care with trained counselors to stabilize multidimensional imminent danger, at least five (5) hours of clinical service/week, and prepare for outpatient treatment. Clients are able to tolerate and use full milieu or therapeutic community.

5. **Bed Day** means one (1) calendar day during which CONTRACTOR provides Residential Treatment Services as described in Exhibit A of the Contract. A Bed Day will include the day of
admission; but, not the day of discharge. If admission and discharge occur on the same day, one (1) Bed Day will be charged.

6. CalOMS is a statewide Client-based data collection and outcomes measurement system as required by the State to effectively manage and improve the provision of alcohol and drug treatment services at the State, COUNTY, and provider levels.

7. Case Management means services that assist a Client to access needed medical, educational, social, prevocational, vocational, rehabilitative, or other community services.

8. CESI/CEST are self-administered survey instruments designed to assess Clients’ motivation for change, engagement in treatment, social and peer support, and other psychosocial indicators of progress in recovery.

9. Client means a person who has a substance use disorder, for whom a COUNTY-approved intake and admission for Residential Treatment Services as appropriate have been completed pursuant to this Contract.

10. Clinical Component means services designed to improve a Client’s ability to structure and organize tasks of daily living and recovery.

11. Completion means the completion of the Residential Treatment Services program whereby the Client has successfully completed all goals and objectives documented in the Client’s treatment plan within the maximum authorized length of stay authorized by ADMINISTRATOR.

12. Co-Occurring is when a person has at least one substance use disorder and one mental health disorder that can be diagnosed independently of each other.

13. DATAR is the DHCS system used to collect data on SUD treatment capacity and waiting lists.

14. EPSDT means the federally mandated Medicaid benefit that entitles full-scope Medi-Cal-covered beneficiaries less than twenty-one (21) years of age to receive any Medicaid service necessary to correct or help to improve a defect, mental illness, or other condition, such as a substance-related disorder, that is discovered during a health screening.

15. Incidental Medical Services means optional services, approved by DHCS to be provided at a licensed adult alcoholism or drug use residential treatment facility by or under the supervision of a LPHA that addresses medical issues associated with either detoxification or substance use.

16. Intake means the initial face-to-face meeting between a Client and CONTRACTOR staff in which specific information about the Client is gathered including the ability to pay and standard admission forms pursuant to this Contract.

17. IRIS is a collection of applications and databases that serve the needs of programs within HCA and includes functionality such as registration and scheduling, laboratory information system, invoices and reporting capabilities, compliance with regulatory requirements, electronic medical records and other relevant applications.
18. **Linkage** means connecting a Client to ancillary services such as outpatient and/or residential treatment and supportive services which may include self-help groups, social services, rehabilitation services, vocational services, job training services, or other appropriate services.

19. **LPHA** means any Physician, Nurse Practitioners, Physician Assistants, Registered Nurses, Registered Pharmacists, Licensed Clinical Psychologists, Licensed Clinical Social Worker, Licensed Professional Clinical Counselor, Licensed Marriage and Family Therapists, or Licensed Eligible Practitioners working under the supervision of Licensed Clinicians.

20. **MAT Services** means the use of Federal Drug Administration-approved medications in combination with behavioral therapies to provide a whole Client approach to treating substance use disorders.

21. **Perinatal** means the condition of being pregnant or postpartum.

22. **Perinatal Residential Treatment Services** means AOD treatment services that are provided to a woman, eighteen (18) years and older, who is pregnant and/or has custody of dependent children up to twelve (12) years of age, in her care; who has a primary problem of substance use disorder, and who demonstrates a need for perinatal substance use disorder residential treatment services. Services are provided in a twenty-four (24) hour residential program. These services are provided in a non-medical, residential setting that has been licensed and certified by DHCS to provide perinatal services.

23. **Postpartum** means the 60-day period beginning on the last day of pregnancy, regardless of whether other conditions of eligibility are met. Eligibility shall end on the last day of the calendar month in which the 60th day occurs.

24. **Recovery Services** means billable services available after the client has completed a course of treatment. Recovery services emphasize the client's central role in managing their health, use effective self-management support strategies, and organize internal and community resources to provide ongoing self-management support to patients.

25. **Residential Treatment Authorization** means the approval that is provided by the county for a Client to receive residential services after the DSM and ASAM Criteria are reviewed to ensure that the beneficiary meets the requirements for the service.

26. **RTS** means alcohol and other drug treatment services that are provided to Clients at a twenty-four (24) hour residential program. Services are provided in an alcohol and drug free environment and support recovery from alcohol and/or other drug related problems. These services are provided in a non-medical, residential setting that has been licensed and certified by DHCS.

27. **Self-Help Meetings** means a non-professional, peer participatory meeting formed by people with a common problem or situation offering mutual support to each other towards a goal or healing or recovery.

28. **Structured Therapeutic Activities** means organized program activities that are designed to meet treatment goals and objectives for increased social responsibility, self-motivation, and integration into the larger community. Such activities would include participation in the social structure of the
residential program. It also includes the Client's progression, with increasing levels of responsibility and independence through job and other assignments culminating in employment seeking and employment-initiation activities in the community.

29. SUD means a condition in which the use of one or more substances leads to a clinically significant impairment or distress per the DSM-5.

30. Token means the security device which allows an individual user to access IRIS.

B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Common Terms and Definitions Paragraph of this Exhibit B to the Contract.

II. PAYMENTS

A. Start-up Costs - $237,598 Aggregate:

1. CONTRACTOR shall submit with invoice to ADMINISTRATOR, the supporting documentation for all start-up purchases including, but not limited to, quotes; invoices; and/or packing slips. For start-up personnel costs, the supporting documentation shall include:

   a. Staffing plan, including number of full time equivalent staff.

   b. Job description or duty statement for each position, including minimum qualifications and any licensing or certification preferred or required.

   c. Documentation of salary or hourly wage rate, if applicable.

   d. Documentation of employer’s contribution of benefits.

   e. Documentation that confirms salaries and benefits to be paid are consistent with the CONTRACTOR’s compensation policies.

2. CONTRACTOR’s invoices shall be on a form approved or supplied by COUNTY and provide such information as is required by ADMINISTRATOR. Invoices are due the tenth (10th) day of the month. Invoices received after the due date may not be paid within the same month. Payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice. Failure to comply with any of the provisions of the Contract may result in ADMINISTRATOR delaying or withholding any payment to CONTRACTOR.

3. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete financial records of its costs. Such records will reflect the actual start-up costs for which payment is claimed and shall serve as the basis for reconciliation of the provisional payment in the following month to actual costs incurred for start-up and 3 months operational costs.

B. Adult Residential Drug Medi-Cal Substance Use Disorder Treatment Services:

BASIS FOR REIMBURSEMENT – As compensation to CONTRACTOR for services provided pursuant to the Contract, COUNTY shall pay CONTRACTOR monthly in arrears at the following rates of reimbursement; provided, however, the total of all such payments to CONTRACTOR shall not exceed COUNTY’s Maximum Obligation as set forth in the Referenced Contract Provisions of the Contract; and provided further, that CONTRACTOR’s costs are allowable pursuant to applicable
COUNTY, federal, and state regulations. Furthermore, if CONTRACTOR is ineligible to provide services due to non-compliance with licensure and/or certification standards of the state, COUNTY or OCPD, ADMINISTRATOR may elect to reduce COUNTY’s maximum obligation proportionate to the length of time that CONTRACTOR is ineligible to provide services. CONTRACTOR shall ensure compliance with all DMC billing and documentation requirements when entering Units of Service into COUNTY IRIS system. ADMINISTRATOR may reduce, withhold or delay any payment associated with non-compliant billing practices. If CAPs are not completed within timeframes as determined by ADMINISTRATOR, payments may be reduced accordingly.

1. For Medi-Cal services provided pursuant to the Contract, COUNTY shall claim reimbursement to the State Medi-Cal unit on behalf of CONTRACTOR to the extent these services are eligible.

2. CONTRACTOR shall submit appropriate Medi-Cal billing to ADMINISTRATOR on a monthly basis. ADMINISTRATOR shall review billing and remit to Accounting for submission to the State Medi-Cal unit.

3. CONTRACTOR shall assume responsibility for any audit disallowances or penalties imposed on COUNTY by the State related to amounts or services claimed by COUNTY on behalf of CONTRACTOR. CONTRACTOR shall reimburse COUNTY for any such disallowances or penalties within thirty (30) days of written notification by COUNTY.

<table>
<thead>
<tr>
<th>Modes of Service</th>
<th>Reimbursement Rate</th>
<th>Reimbursement Rate</th>
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<td>Period Two</td>
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B. PAYMENT METHOD – COUNTY shall pay CONTRACTOR monthly in arrears the actual cost of the services, less revenues that are actually received by CONTRACTOR provided, however, that the total of such payments shall not exceed the COUNTY’s Maximum Obligation. CONTRACTOR’s invoices shall be on a form approved or provided by ADMINISTRATOR and shall provide such information as is required by ADMINISTRATOR. Invoices are due by the twentieth (20th) calendar day of each month, and payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days after receipt of the correctly completed invoice form.

C. Monthly payments are interim payments only, and subject to Final Settlement in accordance with the Cost Report Paragraph of this Contract. Invoices received after the due date may not be paid in accordance with Subparagraph II.B of this Exhibit B to the Contract.

D. All invoices to COUNTY shall be supported, at CONTRACTOR’s facility, by source documentation including, but not limited to, ledgers, books, vouchers, journals, time sheets, payrolls, appointment schedules, schedules for allocating costs, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

E. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of this Contract.

F. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of this Contract.

G. COUNTY shall not reimburse CONTRACTOR for services provided by ineligible staff.

H. In conjunction with Subparagraph II.A above, CONTRACTOR shall not enter Units of Service into the COUNTY IRIS system for services not rendered. If such information has been entered, CONTRACTOR shall make corrections within ten (10) calendar days from notification by ADMINISTRATOR. Additionally, to assist in the protection of data integrity, CONTRACTOR shall create a procedure to ensure separation of duties between the individual performing direct services (LPHA, clinicians, counselors, etc.), and the clerical staff who enter information into the IRIS system. Clerical staff shall enter data into IRIS using the chart information provided by the direct service staff.

I. CONTRACTOR shall ensure compliance with all DMC billing and documentation requirements when entering Units of Service into COUNTY IRIS system. ADMINISTRATOR shall withhold payment for non-compliant Units of Service, and may reduce, withhold or delay any payment associated with non-compliant billing practices.

J. CONTRACTOR may be required to have an audit conducted in accordance with federal OMB Circular A-133. CONTRACTOR shall be responsible for complying with any federal audit requirements within the reporting period specified by OMB Circular A-133.

K. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Payments Paragraph of this Exhibit B to the Contract.

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III. RECORDS

A. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete financial records of its costs and operating expenses. Such records shall reflect the actual costs of the type of service for which payment is claimed in accordance with generally accepted accounting principles.

1. Any apportionment of or distribution of costs, including indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and shall be made in accordance with generally accepted accounting principles.

2. CONTRACTOR shall account for funds provided through this Contract separately from other funds, and maintain a clear audit trail for the expenditure of funds.

3. CLIENT FEES – Pursuant to 42 CFR 438.106, CONTRACTOR shall not collect fees from a Medi-Cal beneficiary or persons acting on behalf of the beneficiary for any SUD or related administrative services provided under this Contract, except to collect other health insurance coverage, share of cost, and co-payments. Drug Medi-Cal is payment in full for treatment services rendered for Medi-Cal beneficiaries.

B. CLIENT RECORDS – CONTRACTOR shall maintain adequate records in accordance with the licensing authority, DHCS, the COUNTY Guidelines, and CCR, Title 22, related to DMC on each individual Client in sufficient detail to permit an evaluation of services, which shall include, but not limited to:


2. Documentation that RTS for substance use disorders are appropriate for the Client. This shall include initial medical necessity determination for the DMC-ODS benefit performed through a face-to-face review by a LPHA. Additionally the ASAM Criteria assessment will be applied to determine placement into the level of assessed services and documented in the Client record.

3. Intake and admission data, including, if applicable, a physical examination;

4. Treatment plans;

5. Reassessments of client functioning based on ASAM criteria;

6. Progress notes;

7. Continuing services justifications;

8. Laboratory test orders and results;

9. Referrals;

10. Counseling notes;

11. Discharge plan;

12. Discharge summary;

13. Any other information relating to the treatment services rendered to the Client; and

C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Records Paragraph of this Exhibit B to the Contract.

IV. REPORTS

A. MONTHLY PROGRAMMATIC

1. CONTRACTOR shall submit a monthly programmatic report to ADMINISTRATOR, including information required and on a form approved or provided by ADMINISTRATOR. These monthly programmatic reports should be submitted to ADMINISTRATOR no later than the twentieth (20th) calendar day of the month following the report month.

2. CONTRACTOR shall be responsible for including in the monthly programmatic report any problems in implementing the provisions of this Contract, pertinent facts or interim findings, staff changes, status of license(s) and/or certification(s), changes in population served, and reasons for any changes. Additionally, a statement that the CONTRACTOR is or is not progressing satisfactorily in achieving all the terms of the Contract shall be included.

3. FOLLOW-UPS – CONTRACTOR shall conduct follow-ups with Clients after discharge at intervals designated by ADMINISTRATOR. ADMINISTRATOR shall provide information/questions to CONTRACTOR for follow up. CONTRACTOR shall track data on Client functioning which at minimum shall include current substance use.

B. FISCAL

1. In support of the monthly invoice, CONTRACTOR shall submit monthly Expenditure and Revenue Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by ADMINISTRATOR and shall report actual costs and revenues for each of the CONTRACTOR’s program(s) or cost center(s) described in the Services Paragraph of Exhibit A to the Contract. CONTRACTOR shall submit these reports by no later than twenty (20) calendar days following the end of the month reported.

2. CONTRACTOR shall submit Year-End Projection Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report anticipated year-end actual costs and revenues for CONTRACTOR’s program(s) or cost center(s) described in the Services Paragraph of Exhibit A to the Contract. Such reports shall include actual monthly costs and revenue to date and anticipated monthly costs and revenue to the end of the fiscal year. Year-End Projection Reports shall be submitted at the same time as the monthly Expenditure and Revenue Reports

C. MONTHLY IRIS – CONTRACTOR shall input all Units of Service provided in COUNTY’s IRIS database for the preceding month no later than the fifth (5th) calendar day of the month following the report month.

D. CalOMS – CONTRACTOR shall complete a CalOMS encounter and a CalOMS admission record in IRIS within seven (7) calendar days of Client admission. CONTRACTOR shall complete a
CalOMS discharge record in IRIS within seven (7) calendar days of Client discharge. CONTRACTOR shall run a CalOMS error report and correct any errors within two (2) business days of submitting the CalOMS admission or discharge, and continue to recheck until error free.

E. MONTHLY DATAR – CONTRACTOR shall provide reports under the DATAR, and/or any other State reporting system in a manner prescribed by ADMINISTRATOR, no later than the fifth (5th) calendar day of the month following the report month.

F. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports as required by ADMINISTRATOR concerning CONTRACTOR’s activities as they affect the services hereunder. ADMINISTRATOR will be specific as to the nature of the information requested and the timeframe the information is needed.

G. CONTRACTOR agrees to enter psychometrics into COUNTY’s EHR system as requested by ADMINISTRATOR. Said psychometrics are for the COUNTY’s analytical uses only, and shall not be relied upon by CONTRACTOR to make clinical decisions. CONTRACTOR agrees to hold COUNTY harmless, and indemnify pursuant to Section XI, from any claims that arise from non-COUNTY use of said psychometrics.

H. CONTRACTOR agrees to submit reports as required by the ADMINISTRATOR and/or the State.

I. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Reports Paragraph of this Exhibit B to the Contract.

V. GENERAL REQUIREMENTS

A. MEETINGS – CONTRACTOR’s Executive Director or designee shall participate, when requested, in meetings facilitated by ADMINISTRATOR related to the provision of services pursuant to this Contract.

B. ALCOHOL AND/OR DRUG SCREENING

1. CONTRACTOR shall have a written policy and procedure statement regarding drug screening that includes random drug and/or alcohol screen at a minimum of one (1) time per month for the first thirty (30) calendar days and two (2) times per month for the remaining term of the Contract for all Clients. All urine specimen collections shall be observed by same-sex staff. This policy shall be approved by ADMINISTRATOR. A Client shall not be denied admittance to treatment for a positive alcohol and/or drug screen at admission if they meet all other criteria for admission. CONTRACTOR shall:

   a. Establish procedures that protect against the falsification and/or contamination of any body specimen sample collected for drug screening; and,

   b. Assure that all urine specimen collections shall be observed by same-sex staff.

   c. Document results of the drug screening in the Client's record.

2. In the event CONTRACTOR wishes to utilize a COUNTY-contracted laboratory for drug
screening purposes, CONTRACTOR shall collect and label samples from Clients. Such testing shall be provided at COUNTY’s expense. For tests not already covered in the County-contracted laboratory agreement, CONTRACTOR must receive approval from ADMINISTRATOR prior to using COUNTY-contracted laboratory for drug screenings.

3. In the event that any Client receives a drug test result indicating any substance abuse, CONTRACTOR shall formulate and implement a plan of corrective action which shall be documented in the Client record. CONTRACTOR shall notify ADMINISTRATOR within two (2) business days of receipt of such test results via an incident report indicating the corrective action to be taken by the Client if the Client is allowed to remain in the program.

C. CESI/CEST – CONTRACTOR shall have all Clients complete the CESI at the time of intake. The CEST shall be completed at mid-point and at completion, and information incorporated in the formulation of treatment plan.

1. CONTRACTOR shall ensure that surveys are completed as designated by ADMINISTRATOR and accurately by designated Clients. This includes, but is not limited to, ensuring surveys contain CONTRACTOR number, Client ID number, responses to all psychosocial questions, along with other important Client and CONTRACTOR information, and fields filled and/or marked appropriately.

2. CONTRACTOR shall photocopy the CESI and CEST surveys, place them in Client files, and submit the originals to ADMINISTRATOR once a month, by the tenth (10th) calendar day of each month.

3. CONTRACTOR shall adhere to all COUNTY CESI and CEST, reporting, and any other guidelines, as stipulated by ADMINISTRATOR, as they may now exist or as they may be revised and/or amended in the future, for the review, use and analysis of the CESI and CEST.

D. CULTURAL COMPETENCY – CONTRACTOR shall provide culturally competent services. CONTRACTORs must ensure that their policies, procedures, and practices are consistent with the principles outlined and are embedded in the organizational structure, as well as being upheld in day-to-day operations. Translation services must be available for beneficiaries, as needed. CONTRACTOR shall maintain documentation of such efforts which may include; but not be limited to: records of participation in COUNTY-sponsored or other applicable training; recruitment and hiring policies and procedures; copies of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to, individuals who are physically challenged.

E. CONTRACTOR shall include bilingual/bicultural services to meet the needs of threshold languages as determined by COUNTY. Whenever possible, bilingual/bicultural staff should be retained. Any clinical vacancies occurring at a time when bilingual and bicultural composition of the clinical staffing does not meet the above requirement must be filled with bilingual and bicultural staff unless ADMINISTRATOR consents, in writing, to the filling of those positions with non-bilingual staff.
Salary savings resulting from such vacant positions may not be used to cover costs other than salaries and employees benefits unless otherwise authorized in writing, in advance, by ADMINISTRATOR.

F. POSTINGS – CONTRACTOR shall post the following in a prominent place within the facility:
   1. State Licensure and Certification
   2. Business License
   3. Conditional Use Permit (if applicable)
   4. Fire clearance
   5. Client rights
   6. Grievance procedure
   7. Employee Code of Conduct
   8. Evacuation floor plan
  10. Name, address, telephone number for fire department, crisis program, local law enforcement, and ambulance service.
  11. List of resources within community which shall include medical, dental, mental health, public health, social services and where to apply for determination of eligibility for Federal, State, or County entitlement programs.
  12. Information on self-help meetings. AA, NA, and non-12 step meetings shall be included.

G. NO PROSELYTIZING POLICY – CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources, with respect to any person who has been referred to CONTRACTOR by COUNTY under the terms of this Contract. Further, CONTRACTOR agrees that the funds provided hereunder shall not be used to promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian institution, or religious belief.

H. AUTHORITY – CONTRACTOR shall recognize the authority of OCPD as officers of the court, and shall extend cooperation to OCPD within the constraints of CONTRACTOR’s program of substance use disorder residential services.

I. NON-SMOKING POLICY – CONTRACTOR shall establish a written non-smoking policy which shall be reviewed and approved by ADMINISTRATOR. At a minimum, the non-smoking policy shall specify that the facility is “smoke free” and that designated smoking areas are outside the visiting areas at the facility.

J. CLIENT SIGN IN/OUT LOG AND SCHEDULE – CONTRACTOR shall maintain a resident sign in/out log for all residents, which shall include, but not be limited to, the following:
   1. Client’s schedule for treatment, work, education or other activities;
   2. Location and telephone number where the Client may be reached; and
   3. Requirement for all Clients to notify the program of any change in his/her schedule.

K. GOOD NEIGHBOR POLICY – CONTRACTOR shall establish a Good Neighbor Policy, which shall be reviewed and approved by ADMINISTRATOR. The policy shall include, but not be
limited to, staff training to deal with neighbor complaints, staff contact information available to
neighboring residents and complaint procedures. CONTRACTOR shall also contact city management
in each city where Client services are provided to inform them of the nature of the services provided
under this Contract. CONTRACTOR shall work collaboratively with city management to resolve any
concerns regarding community relations.

L. VISITATION POLICY – CONTRACTOR shall establish a written Visitation Policy, which
shall be reviewed and approved by ADMINISTRATOR, which shall include, but not be limited to, the
following:

1. Sign in logs;
2. Visitation hours; and
3. Designated visiting areas at the Facility.

M. TRANSGENDER POLICY – CONTRACTOR shall establish a written Transgender Policy,
which shall be reviewed and approved by ADMINISTRATOR. The policy shall include, but not limited
to, the following:

1. Admission
2. Housing arrangement
3. Bathroom privacy
4. Drug testing

N. MEDICATION POLICY – CONTRACTOR shall establish a written Medication Policy, which
shall be reviewed and approved by ADMINISTRATOR. The policy shall include but not be limited to
the securing, handling, and administration of medication(s) prescribed to the Client. The policy shall
address Medications that are prescribed for substance and mental health disorders and medications
disallowed by CONTRACTOR. Clients shall be allowed to have Medications during their stay with the
program, and/or to have the ability to get refill(s).

O. OPIOID OVERDOSE EMERGENCY TREATMENT – CONTRACTOR shall have available
at each program site at minimum one (1) Naloxone Nasal Spray for the treatment of known or suspected
opioid overdose. At least one (1) staff per shift shall be trained in administering the Naloxone Nasal
Spray. Naloxone Nasal Spray is not a substitute for emergency medical care. CONTRACTOR shall
always seek emergency medical assistance in the event of a suspected, potentially life-threatening opioid
emergency.

P. TOKENS – ADMINISTRATOR will provide CONTRACTOR the necessary number of Tokens
for appropriate individual staff to access IRIS at no cost to the CONTRACTOR.

1. CONTRACTOR recognizes that a Token is assigned to a specific individual staff member
with a unique password. Tokens and passwords shall not be shared with anyone.
2. CONTRACTOR shall maintain an inventory of the Tokens, by serial number, and the staff
member to whom each is assigned.
3. CONTRACTOR shall indicate in the monthly staffing report, the serial number of the
Token for each staff member assigned a Token.

4. CONTRACTOR shall return to ADMINISTRATOR all Tokens under the following conditions:
   a. Token of each staff member who no longer supports this Contract.
   b. Token of each staff member who no longer requires access to IRIS.
   c. Token of each staff member who leaves employment of CONTRACTOR.
   d. Tokens malfunctioning.

5. ADMINISTRATOR will issue Tokens for CONTRACTOR’s staff members who require access to the IRIS upon initial training or as a replacement for malfunctioning Tokens. CONTRACTOR shall reimburse the COUNTY for Tokens lost, stolen, or damaged through acts of negligence.

Q. FACILITY – CONTRACTOR shall operate a DHCS licensed substance use disorder residential treatment facility in accordance with the standards established by COUNTY and the State within the specifications stated below, unless otherwise authorized by the ADMINISTRATOR. Program shall have DMC certification and must be designated by DHCS as capable of delivering care consistent with ASAM treatment criteria. The environment shall be healthy and safe and the facility shall be clean and in good repair. Unless otherwise authorized in writing by ADMINISTRATOR, CONTRACTOR shall maintain regularly scheduled service hours, seven (7) days a week, twenty-four (24) hours per day, three hundred sixty-five (365) days a year.

R. MEDI-CAL ELIGIBILITY- MEDICAL NECESSITY

1. CONTRACTOR must verify the Medicaid eligibility determination of potential Clients. The verification shall be reviewed and approved by the ADMINISTRATOR prior to payment for services, unless the individual is eligible to receive services from tribal health programs operating under the Indian Self Determination and Education Assistance Act (ISDEAA – Pub.L 93-638, as amended) and urban Indian organizations operating under Title V of the IHCIA. If the individual is eligible to receive services from tribal health programs operating under the ISDEAA, then the determination shall be conducted as set forth in the Tribal Delivery System – Attachment BB to the STCs.

2. The initial medical necessity determination for an individual to receive a DMC-ODS benefit must be performed through a face-to-face review or telehealth by a LPHA. After establishing a diagnosis, the ASAM Criteria shall be applied by the diagnosing individual to determine placement into the level of assessed services. In residential treatment the ASAM criteria will be reapplied at thirty (30) days after admission and sixty (60) days after admission to reassess for appropriate level of care. It shall also be used to justify a treatment extension request if appropriate.

3. Medical necessity for an adult [an individual age twenty-one (21) and over] is determined using the following criteria:
   a. The individual must have received at least one diagnosis from the DSM for Substance-Related and Addictive Disorders with the exception of Tobacco-Related Disorders and Non-Substance-Related Disorders;
b. The individual must meet the ASAM Criteria definition of medical necessity for services based on the ASAM Criteria.

4. Individuals under age twenty-one (21) are eligible to receive Medicaid services pursuant to the EPSDT mandate. Under the EPSDT mandate, beneficiaries under the age twenty-one (21) are eligible to receive all appropriate and medically necessary services needed to correct and ameliorate health conditions that are coverable under section 1905(a) Medicaid authority.

5. Medical necessity for an adolescent individual [an individual under the age of twenty-one (21)] is determined using the following criteria:
   a. The adolescent individual must be assessed to be at risk for developing a SUD; and
   b. The adolescent individual must meet the ASAM adolescent treatment criteria.

S. ADMISSIONS

1. CONTRACTOR shall accept any person with Orange County Medi-Cal; and who is physically and mentally able to comply with the program's rules and regulations. Said persons shall include persons with a concurrent diagnosis of mental illness, i.e., those identified as having a co-occurring diagnosis. Persons with co-occurring disorders and others who require prescribed medication shall not be precluded from acceptance or admission solely based on their licit use of prescribed medications.

2. Beneficiaries shall be referred to CONTRACTOR by access points determined by ADMINISTRATOR. Beneficiaries will not be able to admit to program without referral from ADMINISTRATOR access point.

3. CONTRACTOR shall have policies and procedures in place to screen for emergency medical conditions and immediately refer beneficiaries to emergency medical care.

4. CONTRACTOR shall have a policy that requires a Client who shows signs of any communicable disease or through medical disclosure during the intake process admits to a health related problem that would put others at risk, to be cleared medically before services are provided.

6. CONTRACTOR’s Admission Policy shall reflect all applicable federal, state, and county regulations. CONTRACTOR shall have the right to refuse admission of a person only in accordance with its written Admission Policy; provided, however, CONTRACTOR complies with the Nondiscrimination provisions of this Contract.

7. CONTRACTOR shall initial services within reasonable promptness and shall have a documented system for monitoring and evaluating the quality, appropriateness, and accessibility of care, including a system for addressing problems that develop regarding admission wait times.

T. INFORMING MATERIALS – CONTRACTOR is responsible to distribute informing materials and provider lists that meet the content requirements of 42 CRF 438.100 to beneficiaries when they first access SUD services through the DMC-ODS and on request. Informing materials will be provided by ADMINISTRATOR.
VI. STAFFING

A. CONTRACTOR shall provide twenty-four (24) hour supervision with at least one (1) staff member on-site at all times. Residential programs shall require twenty-four (24)-hour awake supervision.

B. CONTRACTOR shall make its best effort to provide services pursuant to the Contract in a manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR shall maintain documents of such efforts which may include; but not be limited to: records of participation in COUNTY-sponsored or other applicable training; recruitment and hiring P&Ps; copies of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to, individuals who are physically challenged.

C. Professional staff shall be licensed, registered, certified or recognized under California scope of practice statutes. Professional staff shall provide services within their individual scope of practice and receive supervision required under their scope of practice laws.

D. Non-professional staff shall receive appropriate onsite orientation and training prior to performing assigned duties. Non-professional staff shall be supervised by professional and/or administrative staff.

E. Professional and Non-professional staff are required to have appropriate experience and any necessary training at the time of hiring.

F. Registered and certified SUD counselors shall adhere to all requirements in the CCR, Title 9, Division 4, Chapter 8.

G. Pursuant to the CCR, Title 9, Division 4, Chapter 8, Subchapter 2, at least thirty percent (30%) of CONTRACTOR staff providing counseling services shall be licensed or certified. All other counseling staff shall be registered.

H. CONTRACTOR must have a Medical Director who, prior to the delivery of services under this Contract with COUNTY has enrolled with DHCS under applicable state regulations, has been screened in accordance with 42 CFR 455.450(a) as a “limited” categorical risk within a year prior to serving as a Medical Director under this Contract.

I. CONTRACTOR’s certification to participate in the DMC program shall automatically terminate in the event that the CONTRACTOR or its owners, officers or directors are convicted of Medi-Cal fraud, abuse or malfeasance. For purposes of this section, a conviction shall include a plea of guilty or nolo contendere.

J. VOLUNTEERS/INTERNS – CONTRACTOR may augment the above paid staff with volunteers or part-time student interns. Unless waived by ADMINISTRATOR, prior to providing services pursuant to this Contract, interns shall be Master's Candidates in Counseling or Social Work or
have a Bachelor's Degree in a related field or be participating in any state recognized counselor certification program. CONTRACTOR shall provide a minimum of one (1) hour supervision for each ten (10) hours of work by interns or consistent with school or licensing Board requirements. CONTRACTOR shall provide supervision to volunteers as specified in the respective job descriptions or work contracts. Volunteer or student intern services may not comprise more than twenty percent (20%) of the services provided, unless approved in advance by ADMINISTRATOR.

K. STAFF CONDUCT – CONTRACTOR shall establish written Policies and Procedures for employees, volunteers, interns, and members of the Board of Directors which shall include, but not be limited to, standards related to the use of drugs and/or alcohol; staff-Client relationships; prohibition of sexual conduct with Clients; prohibition of forging or falsifying documents or drug tests; and real or perceived conflict of interest. Situations that may be perceived as a conflict of interest shall be brought to the ADMINISTRATOR’s attention prior to the occurrence. Prior to providing any services pursuant to this Contract all employees, volunteers, and interns shall agree in writing to maintain the standards set forth in the said Policies and Procedures. A copy of the said Policies and Procedures shall be posted in writing in a prominent place in the treatment facility and updated annually by the Board of Directors.

L. STAFF/VOLUNTEER/INTERN SCREENING – CONTRACTOR shall provide pre-employment “live scan” screening of any staff person providing services pursuant to this Contract. All new staff, volunteers, and interns shall pass a one-time “live scan” finger printing background check prior to employment. All staff shall be subject to sanction screening as referenced in the Compliance paragraph on a bi-annual basis. All staff shall also be screened by Megan’s Law, OC Courts and OC Sheriff’s Department on an annual basis. The results of the fingerprint checks will be sent directly from the Department of Justice to CONTRACTOR. Results must remain in staff file.

1. All staff/volunteers/interns, prior to starting services, shall meet the following requirements:
   a. No person shall have been convicted of a sex offense for which the person is required to register as a sex offender under PC section 290;
   b. No person shall have been convicted of an arson offense – Violation of PC sections 451, 451.1, 451.5, 452, 45231, 453, 454, or 455;
   c. No person shall have been convicted of any violent felony as defined in PC section 667.5, which involves doing bodily harm to another person, for which the staff member was convicted within five (5) years prior to employment;
   d. No person shall be on parole or probation;
   e. No person shall participate in the criminal activities of a criminal street gang and/or prison gang; and
   f. No person shall have prior employment history of improper conduct, including but not limited to, forging or falsifying documents or drug tests, sexual assault or sexual harassment, or inappropriate behavior with staff or residents at another treatment Facility.

2. Exceptions to staffing requirements set forth above, may be requested if CONTRACTOR
deems the decision will benefit the program. Requests for exceptions shall be submitted in writing and approved in advance by ADMINISTRATOR.

M. STAFF TRAINING – CONTRACTOR shall develop a written plan for staff training. All Staff training shall be documented and maintained as part of the training plan and shall adhere to requirements set forth by HCA Authority and Quality Improvement Services Policies and Procedures. At minimum CONTRACTOR shall ensure that all treatment staff complete:

a. Training in the ASAM criteria I and II prior to providing services;

b. Annual provider training,

c. SUD documentation training

d. Motivational Interviewing,

d. Training in the two minimum evidence based practices utilized at the program;

e. Naloxone Administration Training; and

f. CPR Training.

g. All LPHAs shall complete 5 CEU/CMEs in addiction medicine annually

N. All personnel files shall be complete and made readily accessible to ADMINISTRATOR for purposes of audits and investigations or any other reason deemed necessary by ADMINISTRATOR.

O. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing Paragraph of this Exhibit B to the Contract.
EXHIBIT C
TO CONTRACT FOR PROVISION OF
ADULT RESIDENTIAL DRUG MEDI-CAL
SUBSTANCE USE DISORDER TREATMENT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
TELECARE CORPORATION
NOVEMBER 3, 2020 THROUGH JUNE 30, 2022

I. ADULT RESIDENTIAL TREATMENT SERVICES
A. LENGTH OF STAY
   1. Adults, ages twenty-one (21) and over, may receive no more than (2) residential treatment
      episodes per three hundred sixty-five (365) day period. A residential treatment episode is defined as one
      (1) residential stay in a DHCS licensed facility for a maximum of ninety (90) days if medically
      necessary per three hundred sixty-five (365) day period. An adult Client may receive one thirty (30) day
      extension, with prior authorization, if that extension is medically necessary, per three hundred sixty-five
      (365) day period.
   2. Adolescents, under the age of twenty-one (21), shall receive continuous residential services
      for a maximum of thirty (30) days. Adolescent beneficiaries may receive up to a thirty (30) day
      extension if that extension is determined to be medically necessary by Medical Director or LPHA.
      Adolescent beneficiaries are limited to one extension per year. Adolescent beneficiaries receiving
      residential treatment shall be stabilized as soon as possible and moved down to a less intensive level of
      treatment.
   3. If determined to be medically necessary, perinatal beneficiaries may receive longer lengths
      of stay than those described above, in accordance with State perinatal guidelines.

B. PERSONS TO BE SERVED – In order to receive services through the DMC-ODS, the Client
   must be enrolled in Medi-Cal, reside in Orange County, and meet medical necessity criteria.

C. RESIDENTIAL TREATMENT AUTHORIZATION - All residential treatment admissions
   require prior authorization from the ADMINISTRATOR.

D. SERVICES – CONTRACTOR shall provide a non-institutional, twenty-four (24) hour non-
   medical, short-term residential program that provides rehabilitation services to beneficiaries in
   accordance with an individualized treatment plan. These services are intended to be individualized to
   treat the functional deficits identified in the ASAM Criteria. CONTRACTOR and beneficiary work
   collaboratively to define barriers, set priorities, establish goals, create treatment plans, and solve
   problems. Goals include sustaining abstinence, preparing for relapse triggers, improving personal health
and social functioning, and engaging in continuing care. CONTRACTOR shall provide services in accordance with ASAM-Designated Level of Care 3.1. Services shall include:

1. Intake: The process of determining that a Client meets the medical necessity criteria and a Client is admitted into a substance use disorder treatment program. Intake includes the evaluation or analysis of substance use disorders; the diagnosis of substance use disorders; and the assessment of treatment needs to provide medically necessary services. Intake may include a physical examination and laboratory testing necessary for substance use disorder treatment.

2. Individual Counseling: Contacts between a Client and a therapist or counselor.

3. Group Counseling: Face-to-face contacts in which one or more therapists or counselors treat two or more Clients at the same time with a maximum of twelve (12) in the group, focusing on the needs of the individuals served.

4. Family Therapy: Family members can provide social support to the Client, help motivate their loved one to remain in treatment, and receive help and support for their own family recovery as well.

5. Client Education: Provide research based education on addiction, treatment, recovery and associated health risks.

6. Medication Storage: Facilities will store all Client medication and facility staff members will oversee resident’s self-administration of medication.

7. Collateral Services: Sessions with therapists or counselors and significant persons in the life of the Client, focused on the treatment needs of the Client in terms of supporting the achievement of the Client’s treatment goals. Significant persons are individuals that have a personal, not official or professional, relationship with the Client.

8. Crisis Intervention Services: Contact between a therapist or counselor and a Client in crisis. Services shall focus on alleviating crisis problems. “Crisis” means an actual relapse or an unforeseen event or circumstance which presents to the Client an imminent threat of relapse. Crisis intervention services shall be limited to the stabilization of the Client’s emergency situation.

9. Treatment Planning: The CONTRACTOR shall prepare an individualized written treatment plan, based upon information obtained in the intake and assessment process and in adherence to documentation standards set forth in AQIS SUD documentation manual. The treatment plan will be consistent with the qualifying diagnosis and will be signed by the Client and the LPHA.

10. Structured Therapeutic Activities: Residential Treatment Services shall consist of a minimum of twenty (20) hours of structured activity per week.

11. EBPs: CONTRACTORs will implement at least two of the following EBPs. The two EBPs are per CONTRACTOR per service modality. The required EBP include:

a. Motivational Interviewing: A Client-centered, empathetic, but directive counseling strategy designed to explore and reduce a person’s ambivalence toward treatment. This approach
frequently includes other problem-solving or solution-focused strategies that build on Clients' past successes.

b. Cognitive-Behavioral Therapy: Based on the theory that most emotional and behavioral reactions are learned and that new ways of reacting and behaving can be learned.

c. Relapse Prevention: A behavioral self-control program that teaches individuals with substance addiction how to anticipate and cope with the potential for relapse. Relapse prevention can be used as a stand-alone substance use treatment program or as an aftercare program to sustain gains achieved during initial substance use treatment.

d. Trauma-Informed Treatment: Services must take into account an understanding of trauma, and place priority on trauma survivors’ safety, choice and control.

e. Psycho-Education: Psycho-educational groups are designed to educate Clients about substance abuse, and related behaviors and consequences. Psycho-educational groups provide information designed to have a direct application to Clients’ lives; to instill self-awareness, suggest options for growth and change, identify community resources that can assist Clients in recovery, develop an understanding of the process of recovery, and prompt people using substances to take action on their own behalf.

12. Case Management: Case Management services may be provided by a LPHA or registered/certified counselor and will be provided based on the frequency documented in the individualized treatment plan. Case management shall provide advocacy and care coordination to physical health, mental health, and transportation, housing, vocational, educational, and transition services for reintegration into the community. CONTRACTOR shall provide Case Management services for the Client during treatment, transition to other levels of care and follow ups, to encourage the Client to engage and participate in an appropriate level of care or Recovery Services after discharge. Case Management becomes the responsibility of the next treating provider after successful transition to a different level of care. Contractor shall ensure that Case Management services focus on coordination of SUD care, integration around primary care especially for beneficiaries with a chronic SUD, and interaction with the criminal justice system, if needed. Case Management services may be provided face-to-face, by telephone, or by telehealth with the Client and may be provided anywhere in the community.

13. MAT: CONTRACTORs will have procedures for linkage/integration for beneficiaries requiring MAT. CONTRACTOR staff will regularly communicate with physicians of Clients who are prescribed these medications in compliance with 42 CFR part 2.

14. Care Coordination for Mental and Physical Health: Programs must screen for mental health issues and provide or refer for needed services. CONTRACTOR shall notify Client’s medical home provider of Client’s admission to treatment within seven (7) days of admission and request medical records/physical exam. If Client does not have a medical home, identifying one shall be on the treatment plan.
15. Physician Consultation: Physician Consultation Services include DMC physicians’ consulting with addiction medicine physicians, addiction psychiatrists or clinical pharmacists. Physician consultation services are designed to assist DMC physicians by allowing them to seek expert advice with regards to designing treatment plans for specific DMC-ODS beneficiaries. Physician consultation services may address medication selection, dosing, side effect management, adherence, drug interactions, or level of care considerations. ADMINISTRATOR will provide one or more physicians or pharmacists to provide consultation services.

16. Discharge Services: The process to prepare the Client for referral into another level of care, post treatment return or reentry into the community, and/or the linkage of the individual to essential community treatment, housing and human services. CONTRACTOR shall provide or arrange for transportation of Clients to aftercare destination. CONTRACTOR shall begin discharge planning immediately after enrollment. The exit plan shall be completed and signed by CONTRACTOR staff and Client. The exit plan shall be documented in the Client’s chart.

17. Recovery Services: Clients may access recovery services after completing their course of treatment to prevent relapse. Recovery Services are not offered for clients in the Withdrawal management level of care. Recovery services may be provided face-to-face, by telephone, or by telehealth with the Client and may be provided anywhere in the community. Recovery services shall be made available to DMC-ODS beneficiaries when a Medical Director or LPHA has determined that recovery services are medically necessary in accordance with their individualized treatment plan. The components of Recovery Services are:
   a. Outpatient counseling services in the form of individual or group counseling to stabilize the Client and then reassess if the Client needs further care;
   b. Recovery Monitoring: Recovery coaching, monitoring via telephone and internet;
   c. Substance Abuse Assistance: Peer-to-peer services and relapse prevention;
   d. Education and Job Skills: Linkages to life skills, employment services, job training, and education services;
   e. Family Support: Linkages to childcare, parent education, child development support services, family/marriage education;
   f. Support Groups: Linkages to self-help and support, spiritual and faith-based support;
   g. Ancillary Services: Linkages to housing assistance, transportation, case management, individual services coordination.

18. Food and Other Services: CONTRACTOR shall provide a clean, safe environment, toiletries, clean linen, and food service.

19. Support Services: CONTRACTOR shall provide housekeeping, which may be done by Clients and laundry access.

20. Health, Medical, Psychiatric and Emergency Services – CONTRACTOR shall ensure that all persons admitted for Residential Treatment services have a health questionnaire completed using
form DHCS 5103 form, or may develop their own form provided it contains, at a minimum, the
information requested in the DHCS 5103 form.

a. The health questionnaire is a Client's self-assessment of his/her current health status
and shall be completed by Client.

1) CONTRACTOR shall review and approve the health questionnaire form prior to
Client's admission to the program. The completed health questionnaire shall be signed and dated by
CONTRACTOR and Client, prior to admission.

2) A copy of the questionnaire shall be filed in the Client's record.

b. CONTRACTOR shall, based on information provided by Client on the health
questionnaire form, refer Client to licensed medical professionals for physical and laboratory
examinations as appropriate.

1) CONTRACTOR shall obtain a copy of Client's medical clearance or release prior
to Client's admission to the program when applicable.

2) A copy of the referral and clearance shall be filed in the Client's file.

3) CONTRACTOR shall provide directly or by referral: HIV education, voluntary,
HIV antibody testing and risk assessment and disclosure counseling.

4) The programs shall have written procedures for obtaining medical or psychiatric
evaluation and emergency and non-emergency services.

5) The programs shall post the name, address, and telephone number for the fire
department, a crisis program, local law enforcement, and ambulance service.

6) CONTRACTOR shall provide TB services to the Clients by referral to the
COUNTY or another appropriate provider. TB services shall be provided within seven (7) calendar
days of admission. These TB services shall consist of the following:

a) Counseling with respect to TB;

b) Testing to determine whether the individual has been infected and to determine
the appropriate form of treatment;

c) Provision for, or referral of, infected Clients for medical evaluation, treatment
and clearance. CONTRACTOR shall ensure that a TB-infected Client is medically cleared prior to
commencing treatment.

21. Transportation Services

a. COUNTY shall only pay for medical ambulance or medical van transportation to and
from designated residential substance use disorder treatment programs or health facilities through the
COUNTY’s Medical Transportation Contract under the following conditions:

1) Ambulance transportation shall be used for services requiring immediate attention
for a Client due to any sudden or serious illness or injury requiring immediate medical attention, where
delay in providing such services may aggravate the medical condition or cause the loss of life.
2) When any Client needs non-emergency transportation as identified in Subparagraph 22.b below, and CONTRACTOR cannot transport Client due to unforeseen circumstances including, but not limited to, staffing constraints, CONTRACTOR vehicle access within a timely manner or Client’s physical condition and/or limitations.

3) CONTRACTOR shall utilize the COUNTY’s Ambulance Monthly Rotation Call Log to request transportation services from Ambulance Providers designated for transportation within the city of the CONTRACTOR’s facility for each said month as identified on the log.

4) CONTRACTOR shall use its best efforts to contact Ambulance Providers identified on the Monthly Rotation Call Log as those providers who offer van transportation services if and when an ambulance is not required.

5) CONTRACTOR shall be held liable and may be billed by the Ambulance Provider for services requested by CONTRACTOR that are deemed inappropriate for use and not a covered service under this section by the COUNTY.

b. Non-Emergency Transportation – CONTRACTOR shall transport Client to locations that are considered necessary and/or important to the Client's recovery plan including, but not limited to, Social Security Administration offices for Supplemental Security Income benefits and for non-emergency medical or mental health services not identified in Subparagraph 22.a. above, that require treatment at a physician office, urgent care, or emergency room when an ambulance provider is not necessary or required for transportation based on the level of severity and/or services required by the Client.

E. PERFORMANCE OUTCOMES

1. CONTRACTOR shall achieve performance objectives, tracking and reporting Performance Outcome Objective statistics in monthly programmatic reports, as appropriate. ADMINISTRATOR recognizes that alterations may be necessary to the following services to meet the objectives, and, therefore, revisions to objectives and services may be implemented by mutual agreement between CONTRACTOR and ADMINISTRATOR.

2. Performance Outcome Objectives
   a. Objective 1: CONTRACTOR shall demonstrate Client satisfaction as measured by 90% of clients responding “agree” or “strongly agree” that they are “overall satisfied with the services received” and by 90% of clients responding “agree” or “strongly agree” that they “would recommend the program to someone they know”.
   b. Objective 2: Upon successful completion of treatment, seventy-five percent (75%) of Clients will report at thirty (30) days that their life is more manageable than it was when they entered treatment.

F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Adult Residential Treatment Services Paragraph of this Exhibit C to the Contract.
II. ADULT CO-OCCURRING RESIDENTIAL TREATMENT SERVICES

A. LENGTH OF STAY

1. Adults, ages twenty-one (21) and over, may receive no more than (2) residential treatment episodes per three hundred sixty-five (365) day period. A residential treatment episode is defined as one (1) residential stay in a DHCS licensed facility for a maximum of ninety (90) days if medically necessary per three hundred sixty-five (365) day period. An adult Client may receive one thirty (30) day extension, with prior authorization, if that extension is medically necessary, per three hundred sixty-five (365) day period.

2. Adolescents, under the age of twenty-one (21), shall receive continuous residential services for a maximum of thirty (30) days. Adolescent beneficiaries may receive up to a thirty (30) day extension if that extension is determined to be medically necessary by Medical Director or LPHA. Adolescent beneficiaries are limited to one extension per year. Adolescent beneficiaries receiving residential treatment shall be stabilized as soon as possible and moved down to a less intensive level of treatment.

3. If determined to be medically necessary, perinatal beneficiaries may receive longer lengths of stay than those described above, in accordance with State perinatal guidelines.

B. PERSONS TO BE SERVED – In order to receive services through the DMC-ODS, the Client must be enrolled in Medi-Cal, reside in Orange County, and meet medical necessity criteria.

C. RESIDENTIAL TREATMENT AUTHORIZATION - All residential treatment admissions require prior authorization from the ADMINISTRATOR.

D. SERVICES – CONTRACTOR shall provide a non-institutional, twenty-four (24) hour non-medical, short-term residential program that provides rehabilitation services to beneficiaries in accordance with an individualized treatment plan. These services are intended to be individualized to treat the functional deficits identified in the ASAM Criteria. CONTRACTOR and beneficiary work collaboratively to define barriers, set priorities, establish goals, create treatment plans, and solve problems. Goals include sustaining abstinence, preparing for relapse triggers, improving personal health and social functioning, and engaging in continuing care. CONTRACTOR shall provide services in accordance with ASAM-Designated Levels of Care 3.3 or 3.5. Residential Treatment program shall consist of the following:

1. Intake: The process of determining that a Client meets the medical necessity criteria and a Client is admitted into a substance use disorder treatment program. Intake includes the evaluation or analysis of substance use disorders; the diagnosis of substance use disorders; and the assessment of treatment needs to provide medically necessary services. Intake may include a physical examination and laboratory testing necessary for substance use disorder treatment.

2. Individual Counseling: Contacts between a Client and a therapist or counselor.
3. Group Counseling: Face-to-face contacts in which one or more therapists or counselors treat two or more Clients at the same time with a maximum of twelve (12) in the group, focusing on the needs of the individuals served.

4. Family Therapy: Family members can provide social support to the Client, help motivate their loved one to remain in treatment, and receive help and support for their own family recovery as well.

5. Client Education: Provide research based education on addiction, treatment, recovery and associated health risks.

6. Medication Storage: Facilities will store all Client medication and facility staff members will oversee resident’s self-administration of medication.

7. Collateral Services: Sessions with therapists or counselors and significant persons in the life of the Client, focused on the treatment needs of the Client in terms of supporting the achievement of the Client’s treatment goals. Significant persons are individuals that have a personal, not official or professional, relationship with the Client.

8. Crisis Intervention Services: Contact between a therapist or counselor and a Client in crisis. Services shall focus on alleviating crisis problems. “Crisis” means an actual relapse or an unforeseen event or circumstance which presents to the Client an imminent threat of relapse. Crisis intervention services shall be limited to the stabilization of the Client’s emergency situation.

9. Treatment Planning: The CONTRACTOR shall prepare an individualized written treatment plan, based upon information obtained in the intake and assessment process and in adherence to documentation standards set forth in AQIS SUD documentation manual. The treatment plan will be consistent with the qualifying diagnosis and will be signed by the Client and the LPHA.

10. Structured Therapeutic Activities: Residential Treatment Services shall consist of a minimum of twenty (20) hours of structured activity per week.

11. EBPs: CONTRACTORS will implement at least two of the following EBPs. The two EBPs are per CONTRACTOR per service modality. The required EBP include:
   a. Motivational Interviewing: A Client-centered, empathetic, but directive counseling strategy designed to explore and reduce a person's ambivalence toward treatment. This approach frequently includes other problem-solving or solution-focused strategies that build on Clients' past successes.
   b. Cognitive-Behavioral Therapy: Based on the theory that most emotional and behavioral reactions are learned and that new ways of reacting and behaving can be learned.
   c. Relapse Prevention: A behavioral self-control program that teaches individuals with substance addiction how to anticipate and cope with the potential for relapse. Relapse prevention can be used as a stand-alone substance use treatment program or as an aftercare program to sustain gains achieved during initial substance use treatment.
d. Trauma-Informed Treatment: Services must take into account an understanding of trauma, and place priority on trauma survivors’ safety, choice and control.

e. Psycho-Education: Psycho-educational groups are designed to educate Clients about substance abuse, and related behaviors and consequences. Psycho-educational groups provide information designed to have a direct application to Clients’ lives; to instill self-awareness, suggest options for growth and change, identify community resources that can assist Clients in recovery, develop an understanding of the process of recovery, and prompt people using substances to take action on their own behalf.

12. Case Management: Case Management services may be provided by a LPHA or registered/certified counselor and will be provided based on the frequency documented in the individualized treatment plan. Case management shall provide advocacy and care coordination to physical health, mental health, and transportation, housing, vocational, educational, and transition services for reintegration into the community. CONTRACTOR shall provide Case Management services for the Client during treatment, transition to other levels of care and follow ups, to encourage the Client to engage and participate in an appropriate level of care or Recovery Services after discharge. Case Management becomes the responsibility of the next treating provider after successful transition to a different level of care. Contractor shall ensure that Case Management services focus on coordination of SUD care, integration around primary care especially for beneficiaries with a chronic SUD, and interaction with the criminal justice system, if needed. Case Management services may be provided face-to-face, by telephone, or by telehealth with the Client and may be provided anywhere in the community.

13. MAT: CONTRACTORs will have procedures for linkage/integration for beneficiaries requiring MAT. CONTRACTOR staff will regularly communicate with physicians of Clients who are prescribed these medications in compliance with 42 CFR part 2.

14. Care Coordination for Mental and Physical Health: Programs must screen for mental health issues and provide or refer for needed services. CONTRACTOR shall notify Client’s medical home provider of Client’s admission to treatment within seven (7) days of admission and request medical records/physical exam. If Client does not have a medical home, identifying one shall be on the treatment plan. Clients who are co-occurring with severe and persistent mental illness shall receive mental health services and support through Orange County Health Care Agency PACT program.

15. Physician Consultation: Physician Consultation Services include DMC physicians’ consulting with addiction medicine physicians, addiction psychiatrists or clinical pharmacists. Physician consultation services are designed to assist DMC physicians by allowing them to seek expert advice with regards to designing treatment plans for specific DMC-ODS beneficiaries. Physician consultation services may address medication selection, dosing, side effect management, adherence, drug interactions, or level of care considerations. ADMINISTRATOR will provide one or more physicians or pharmacists to provide consultation services.
16. Discharge Services: The process to prepare the Client for referral into another level of care, post treatment return or reentry into the community, and/or the linkage of the individual to essential community treatment, housing and human services. CONTRACTOR shall provide or arrange for transportation of Clients to aftercare destination. CONTRACTOR shall begin discharge planning immediately after enrollment. The exit plan shall be completed and signed by CONTRACTOR staff and Client. The exit plan shall be documented in the Client’s chart.

17. Recovery Services: Clients may access recovery services after completing their course of treatment to prevent relapse. Recovery Services are not offered for clients in the Withdrawal management level of care. Recovery services may be provided face-to-face, by telephone, or by telehealth with the Client and may be provided anywhere in the community. Recovery services shall be made available to DMC-ODS beneficiaries when a Medical Director or LPHA has determined that recovery services are medically necessary in accordance with their individualized treatment plan. The components of Recovery Services are:

   a. Outpatient counseling services in the form of individual or group counseling to stabilize the Client and then reassess if the Client needs further care;
   b. Recovery Monitoring: Recovery coaching, monitoring via telephone and internet;
   c. Substance Abuse Assistance: Peer-to-peer services and relapse prevention;
   d. Education and Job Skills: Linkages to life skills, employment services, job training, and education services;
   e. Family Support: Linkages to childcare, parent education, child development support services, family/marriage education;
   f. Support Groups: Linkages to self-help and support, spiritual and faith-based support;
   g. Ancillary Services: Linkages to housing assistance, transportation, case management, individual services coordination.

18. Food and Other Services: CONTRACTOR shall provide a clean, safe environment, toiletries, clean linen, and food service.

19. Support Services: CONTRACTOR shall provide housekeeping, which may be done by Clients and laundry access.

20. Health, Medical, Psychiatric and Emergency Services – CONTRACTOR shall ensure that all persons admitted for Residential Treatment services have a health questionnaire completed using form DHCS 5103 form, or may develop their own form provided it contains, at a minimum, the information requested in the DHCS 5103 form.

   a. The health questionnaire is a Client's self-assessment of his/her current health status and shall be completed by Client.

      1) CONTRACTOR shall review and approve the health questionnaire form prior to Client's admission to the program. The completed health questionnaire shall be signed and dated by CONTRACTOR and Client, prior to admission.
2) A copy of the questionnaire shall be filed in the Client's record.

b. CONTRACTOR shall, based on information provided by Client on the health questionnaire form, refer Client to licensed medical professionals for physical and laboratory examinations as appropriate.

1) CONTRACTOR shall obtain a copy of Client's medical clearance or release prior to Client's admission to the program when applicable.

2) A copy of the referral and clearance shall be filed in the Client's file.

3) CONTRACTOR shall provide directly or by referral: HIV education, voluntary, HIV antibody testing and risk assessment and disclosure counseling.

4) The programs shall have written procedures for obtaining medical or psychiatric evaluation and emergency and non-emergency services.

5) The programs shall post the name, address, and telephone number for the fire department, a crisis program, local law enforcement, and ambulance service.

6) CONTRACTOR shall provide TB services to the Clients by referral to the COUNTY or another appropriate provider. TB services shall be provided within seven (7) calendar days of admission. These TB services shall consist of the following:

a) Counseling with respect to TB;

b) Testing to determine whether the individual has been infected and to determine the appropriate form of treatment;

c) Provision for, or referral of, infected Clients for medical evaluation, treatment and clearance. CONTRACTOR shall ensure that a TB-infected Client is medically cleared prior to commencing treatment.

21. Transportation Services

a. COUNTY shall only pay for medical ambulance or medical van transportation to and from designated residential substance use disorder treatment programs or health facilities through the COUNTY’s Medical Transportation Contract under the following conditions:

1) Ambulance transportation shall be used for services requiring immediate attention for a Client due to any sudden or serious illness or injury requiring immediate medical attention, where delay in providing such services may aggravate the medical condition or cause the loss of life.

2) When any Client needs non-emergency transportation as identified in Subparagraph 22.b below, and CONTRACTOR cannot transport Client due to unforeseen circumstances including, but not limited to, staffing constraints, CONTRACTOR vehicle access within a timely manner or Client’s physical condition and/or limitations.

3) CONTRACTOR shall utilize the COUNTY’s Ambulance Monthly Rotation Call Log to request transportation services from Ambulance Providers designated for transportation within the city of the CONTRACTOR’s facility for each said month as identified on the log.
4) CONTRACTOR shall use its best efforts to contact Ambulance Providers identified on the Monthly Rotation Call Log as those providers who offer van transportation services if and when an ambulance is not required.

5) CONTRACTOR shall be held liable and may be billed by the Ambulance Provider for services requested by CONTRACTOR that are deemed inappropriate for use and not a covered service under this section by the COUNTY.

b. Non-Emergency Transportation – CONTRACTOR shall transport Client to locations that are considered necessary and/or important to the Client's recovery plan including, but not limited to, Social Security Administration offices for Supplemental Security Income benefits and for non-emergency medical or mental health services not identified in Subparagraph 22.a. above, that require treatment at a physician office, urgent care, or emergency room when an ambulance provider is not necessary or required for transportation based on the level of severity and/or services required by the Client.

E. PERFORMANCE OUTCOMES

1. CONTRACTOR shall achieve performance objectives, tracking and reporting Performance Outcome Objective statistics in monthly programmatic reports, as appropriate. ADMINISTRATOR recognizes that alterations may be necessary to the following services to meet the objectives, and, therefore, revisions to objectives and services may be implemented by mutual agreement between CONTRACTOR and ADMINISTRATOR.

2. Performance Outcome Objectives

a. Objective 1: CONTRACTOR shall demonstrate Client satisfaction as measured by 90% of clients responding “agree” or “strongly agree” that they are “overall satisfied with the services received” and by 90% of clients responding “agree” or “strongly agree” that they “would recommend the program to someone they know”.

b. Objective 2: Upon successful completion of treatment, seventy-five percent (75%) of Clients will report at thirty (30) days that their life is more manageable than it was when they entered treatment.

F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Adult Co-Occurring Residential Treatment Services Paragraph of this Exhibit C to the Contract.

III. ADULT CLINICALLY MANAGED WITHDRAWAL MANAGEMENT SERVICES

A. LENGTH OF STAY

1. Length of stay is based on medical necessity for withdrawal management in adherence with observation protocols established by Medical Director.

B. PERSONS TO BE SERVED – In order to receive services through the DMC-ODS, the Client must be enrolled in Medi-Cal, reside in Orange County, and meet medical necessity criteria.

C. SERVICES - Clinically managed withdrawal management services shall consist of the
following:

1. Intake: The process of determining that a Client meets the medical necessity criteria and a Client is admitted into a substance use disorder treatment program. Intake includes the evaluation or analysis of substance use disorders; the diagnosis of substance use disorders; and the assessment of treatment needs to provide medically necessary services. Intake may include a physical examination and laboratory testing necessary for substance use disorder treatment.

2. Observation:
   a. At least one staff member or volunteer shall be assigned to the observation of Withdrawal Management Clients at all times and be certified in cardiopulmonary resuscitation, first aid, and Naloxone administration. In facilities with sixteen (16) or more clients, two (2) staff or volunteers shall be present at all times.
   b. Staff or volunteer shall physically check each Client for breathing by a face-to-face physical observation at least every thirty (30) minutes at a minimum during the first 72 hours following admission. The close observation and physical checks shall continue beyond the initial 72 hour period for as long as the withdrawal signs and symptoms warrant. After 24 hours, close observations and physical checks may be discontinued or reduced based upon a determination by a staff member trained in providing Withdrawal Management Services. Documentation of the information that supports a decrease in close observation and physical checks shall be recorded in the client's file.
   c. Documentation of observations and physical checks shall be recorded in a systematic manner in the Client file including information supporting a decrease in observation and physical checks and signature of staff.
   d. Only program staff that have been trained in the provisions of Withdrawal Management Services may conduct observations and physical checks of clients receiving Withdrawal Management Services. Training shall include information on detoxification medications, and signs and symptoms that require referral to a higher level of care. Training shall also include first aid cardiopulmonary resuscitation, and Naloxone administration. Copies of detoxification training records shall be kept in personnel files.

3. Individual Counseling: Contacts between a Client and a therapist or counselor.

4. Group Counseling: Face-to-face contacts in which one or more therapists or counselors treat two or more Clients at the same time with a maximum of twelve (12) in the group, focusing on the needs of the individuals served.

5. Client Education: Provide research based education on addiction, treatment, recovery and associated health risks.

6. Medication Storage: Facilities will store all Client medication and facility staff members will oversee resident’s self-administration of medication.

7. Collateral Services: Sessions with therapists or counselors and significant persons in the life of the Client, focused on the treatment needs of the Client in terms of supporting the achievement of the
Client’s treatment goals. Significant persons are individuals that have a personal, not official or professional, relationship with the Client.

8. Crisis Intervention Services: Contact between a therapist or counselor and a Client in crisis. Services shall focus on alleviating crisis problems. “Crisis” means an actual relapse or an unforeseen event or circumstance which presents to the Client an imminent threat of relapse. Crisis intervention services shall be limited to the stabilization of the Client’s emergency situation.

9. Treatment Planning: The CONTRACTOR shall prepare an individualized written treatment plan, based upon information obtained in the intake and assessment process and in adherence to documentation standards set forth in AQIS SUD documentation manual. The treatment plan will be consistent with the qualifying diagnosis and will be signed by the Client and the LPHA.

10. Structured Therapeutic Activities: Residential Treatment Services shall offer a minimum of twenty (20) hours of structured activity per week.

11. EBPs: CONTRACTORS will implement at least two of the following EBPs. The two EBPs are per CONTRACTOR per service modality. The required EBP include:

   a. Motivational Interviewing: A Client-centered, empathetic, but directive counseling strategy designed to explore and reduce a person’s ambivalence toward treatment. This approach frequently includes other problem-solving or solution-focused strategies that build on Clients' past successes.

   b. Cognitive-Behavioral Therapy: Based on the theory that most emotional and behavioral reactions are learned and that new ways of reacting and behaving can be learned.

   c. Relapse Prevention: A behavioral self-control program that teaches individuals with substance addiction how to anticipate and cope with the potential for relapse. Relapse prevention can be used as a stand-alone substance use treatment program or as an aftercare program to sustain gains achieved during initial substance use treatment.

   d. Trauma-Informed Treatment: Services must take into account an understanding of trauma, and place priority on trauma survivors’ safety, choice and control.

   e. Psycho-Education: Psycho-educational groups are designed to educate Clients about substance abuse, and related behaviors and consequences. Psycho-educational groups provide information designed to have a direct application to Clients’ lives; to instill self-awareness, suggest options for growth and change, identify community resources that can assist Clients in recovery, develop an understanding of the process of recovery, and prompt people using substances to take action on their own behalf.

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Client during treatment, transition to other levels of care and follow ups, to encourage the Client to engage and participate in an appropriate level of care or Recovery Services after discharge. Case Management becomes the responsibility of the next treating provider after successful transition to a different level of care. Contractor shall ensure that Case Management services focus on coordination of SUD care, integration around primary care especially for beneficiaries with a chronic SUD, and interaction with the criminal justice system, if needed. Case Management services may be provided face-to-face, by telephone, or by telehealth with the Client and may be provided anywhere in the community.

13. MAT: CONTRACTORs will have procedures for linkage/integration for beneficiaries requiring MAT. CONTRACTOR staff will regularly communicate with physicians of Clients who are prescribed these medications in compliance with 42 CFR part 2.

14. Care Coordination for Mental and Physical Health: Programs must screen for mental health issues and provide or refer for needed services. CONTRACTOR shall notify Client’s medical home provider of Client’s admission to treatment within seven (7) days of admission and request medical records/physical exam. If Client does not have a medical home, identifying one shall be on the treatment plan.

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16. Discharge Services: The process to prepare the Client for referral into another level of care, post treatment return or reentry into the community, and/or the linkage of the individual to essential community treatment, housing and human services. CONTRACTOR shall provide or arrange for transportation of Clients to aftercare destination. CONTRACTOR shall begin discharge planning immediately after enrollment. The exit plan shall be completed and signed by CONTRACTOR staff and Client. The exit plan shall be documented in the Client’s chart.

17. Food and Other Services: CONTRACTOR shall provide a clean, safe environment, toiletries, clean linen, and food service.

18. Support Services: CONTRACTOR shall provide housekeeping, which may be done by Clients and laundry access.

19. Health, Medical, Psychiatric and Emergency Services – CONTRACTOR shall ensure that all persons admitted for Residential Treatment services have a health questionnaire completed using form DHCS 5103 form, or may develop their own form provided it contains, at a minimum, the information requested in the DHCS 5103 form.
a. The health questionnaire is a Client's self-assessment of his/her current health status and shall be completed by Client.

1) CONTRACTOR shall review and approve the health questionnaire form prior to Client's admission to the program. The completed health questionnaire shall be signed and dated by CONTRACTOR and Client, prior to admission.

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b. CONTRACTOR shall, based on information provided by Client on the health questionnaire form, refer Client to licensed medical professionals for physical and laboratory examinations as appropriate.

1) CONTRACTOR shall obtain a copy of Client's medical clearance or release prior to Client's admission to the program when applicable.

2) A copy of the referral and clearance shall be filed in the Client's file.

3) CONTRACTOR shall provide directly or by referral: HIV education, voluntary, HIV antibody testing and risk assessment and disclosure counseling.

4) The programs shall have written procedures for obtaining medical or psychiatric evaluation and emergency and non-emergency services.

5) The programs shall post the name, address, and telephone number for the fire department, a crisis program, local law enforcement, and ambulance service.

6) CONTRACTOR shall provide TB services to the Clients by referral to the COUNTY or another appropriate provider. TB services shall be provided within seven (7) calendar days of admission. These TB services shall consist of the following:

   a) Counseling with respect to TB;

   b) Testing to determine whether the individual has been infected and to determine the appropriate form of treatment;

   c) Provision for, or referral of, infected Clients for medical evaluation, treatment and clearance. CONTRACTOR shall ensure that a TB-infected Client is medically cleared prior to commencing treatment.

20. Transportation Services

a. COUNTY shall only pay for medical ambulance or medical van transportation to and from designated residential substance use disorder treatment programs or health facilities through the COUNTY’s Medical Transportation Contract under the following conditions:

1) Ambulance transportation shall be used for services requiring immediate attention for a Client due to any sudden or serious illness or injury requiring immediate medical attention, where delay in providing such services may aggravate the medical condition or cause the loss of life.

2) When any Client needs non-emergency transportation as identified in Subparagraph 22.b below, and CONTRACTOR cannot transport Client due to unforeseen circumstances including, but not limited to, staffing constraints, CONTRACTOR vehicle access within a timely
1. **D. PERFORMANCE OUTCOMES**

   1. CONTRACTOR shall demonstrate provision of effective withdrawal management services as measured by client retention and completion rates of at least 75%.

      a. Retention Rates shall be calculated by using the number of Clients currently enrolled in or successfully completing their treatment program divided by the total number of Clients served during the evaluation period.

      b. Completion Rates shall be calculated by using the number of Clients successfully completing the treatment program divided by the total number of Clients discharged during the evaluation period.

   2. CONTRACTOR shall increase access to other levels of SUD services, as measured by 75% linkage to outpatient or residential treatment services as appropriate upon discharge as measured by the number of Clients transitioned to outpatient or residential treatment, divided by the number of Clients discharged.

   3. CONTRACTOR shall demonstrate Client satisfaction as measured by 90% of clients responding “agree” or “strongly agree” that they are “overall satisfied with the services received” and by 90% of clients responding “agree” or “strongly agree” that they “would recommend the program to someone they know”.

E. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Adult Clinically Managed Withdrawal Management Services Paragraph of this Exhibit C to the Contract.
EXHIBIT D
TO CONTRACT FOR PROVISION OF
ADULT RESIDENTIAL DRUG MEDI-CAL
SUBSTANCE USE DISORDER TREATMENT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
TELECARE CORPORATION
NOVEMBER 3, 2020 THROUGH JUNE 30, 2022

I. BUSINESS ASSOCIATE CONTRACT
A. GENERAL PROVISIONS AND RECITALS
   1. The parties agree that the terms used, but not otherwise defined in the Common Terms and
      Definitions Paragraph of Exhibit B to the Contract or in Subparagraph B below, shall have the same
      meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at 45
      CFR Parts 160 and 164 (the HIPAA regulations) as they may exist now or be hereafter amended.
   2. The parties agree that a business associate relationship under HIPAA, the HITECH Act,
      and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that
      CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of
      COUNTY pursuant to, and as set forth in, the Contract that are described in the definition of “Business
      Associate” in 45 CFR § 160.103.
   3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the
      terms of the Contract, some of which may constitute PHI, as defined below in Subparagraph B.10, to be
      used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the
      Contract.
   4. The parties intend to protect the privacy and provide for the security of PHI that may be
      created, received, maintained, transmitted, used, or disclosed pursuant to the Contract in compliance
      with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH
      Act, and the HIPAA regulations as they may exist now or be hereafter amended.
   5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA
      regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by
      other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.
   6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
      Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the
      covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
      terms of this Business Associate Contract, as it exists now or be hereafter updated with notice to
      CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the

TELECARE CORPORATION

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Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and
electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract.

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to
manage the selection, development, implementation, and maintenance of security measures to protect
electronic PHI and to manage the conduct of CONTRACTOR’s workforce in relation to the protection
of that information.

2. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted
under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

   a. Breach excludes:

      1) Any unintentional acquisition, access, or use of PHI by a workforce member or
         person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use
         was made in good faith and within the scope of authority and does not result in further use or disclosure
         in a manner not permitted under the Privacy Rule.

      2) Any inadvertent disclosure by a person who is authorized to access PHI at
         CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
         care arrangement in which COUNTY participates, and the information received as a result of such
disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

      3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
         that an unauthorized person to whom the disclosure was made would not reasonably have been able to
         retain such information.

   b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
based on a risk assessment of at least the following Factors:

   1) The nature and extent of the PHI involved, including the types of identifiers and the
      likelihood of re-identification;

   2) The unauthorized person who used the PHI or to whom the disclosure was made;

   3) Whether the PHI was actually acquired or viewed; and

   4) The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy
Rule in 45 CFR § 164.501.

4. “DRS” shall have the meaning given to such term under the HIPAA Privacy Rule in 45
CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45
CFR § 160.103.
6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.


10. “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that protect ePHI and control access to it.

17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of HHS in the guidance issued on the HHS Web site.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to CONTRACTOR other than as permitted or required by this Business Associate Contract or as required by law.

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2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract, to prevent use or disclosure of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY other than as provided for by this Business Associate Contract.

3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.

4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Business Associate Contract.

5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which CONTRACTOR becomes aware. CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E below and as required by 45 CFR § 164.410.

6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply through this Business Associate Contract to CONTRACTOR with respect to such information.

7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an EHR with PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR shall provide such information in an electronic format.

8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY in writing no later than ten (10) calendar days after said amendment is completed.

9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY’s compliance with the HIPAA Privacy Rule.

10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, and to make information related to such Disclosures available as would be required for COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

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11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in a time and manner to be determined by COUNTY, that information collected in accordance with the Contract, in order to permit COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY’s obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all employees, subcontractors, and agents who have access to the Social Security data, including employees, agents, subcontractors, and agents of its subcontractors.

14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a criminal proceeding for a violation of HIPAA. COUNTY may terminate the Contract, if CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may terminate the Contract, if a finding or stipulation that CONTRACTOR has violated any standard or requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined. COUNTY will consider the nature and seriousness of the violation in deciding whether or not to terminate the Contract.

15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting CONTRACTOR in the performance of its obligations under the Contract, available to COUNTY at no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against COUNTY, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its subcontractor, employee, or agent is a named adverse party.

16. The Parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon COUNTY’s request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY concerning an amendment to this Business Associate Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. COUNTY may terminate the Contract upon thirty (30) days written notice in the event:

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a. CONTRACTOR does not promptly enter into negotiations to amend this Business Associate Contract when requested by COUNTY pursuant to this Subparagraph F; or

b. CONTRACTOR does not enter into an amendment providing assurances regarding the safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations.

17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall develop and maintain a written information privacy and security program that includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of CONTRACTOR’s operations and the nature and scope of its activities.

2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Part 164, Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its current and updated policies upon request.

3. CONTRACTOR shall ensure the continuous security of all computerized data systems containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

   a. Complying with all of the data system security precautions listed under Subparagraphs E, below;

   b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in conducting operations on behalf of COUNTY;

   c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the OMB in OMB Circular No. A–130, Appendix III – Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies;

4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained in this Subparagraph D of this Business Associate Contract.
5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with Subparagraph E below and as required by 45 CFR § 164.410.

6. CONTRACTOR shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this paragraph and for communicating on security matters with COUNTY.

E. DATA SECURITY REQUIREMENTS

1. Personal Controls

   a. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of COUNTY in connection with Contract, or access or disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, must complete information privacy and security training, at least annually, at CONTRACTOR’s expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member’s name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following the termination of Contract.

   b. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with any provisions of CONTRACTOR’s privacy P&Ps, including termination of employment where appropriate.

   c. Confidentiality Statement. All persons that will be working with PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to such PHI. The statement must be renewed annually. The CONTRACTOR shall retain each person’s written confidentiality statement for COUNTY inspection for a period of six (6) years following the termination of the Contract.

   d. Background Check. Before a member of the workforce may access PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The CONTRACTOR shall retain each workforce member’s background check documentation for a period of three (3) years.

2. Technical Security Controls

   a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY either directly or temporarily must be encrypted using a FIPS 140–2 certified algorithm.
which is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by
the COUNTY.

b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
must have sufficient administrative, physical, and technical controls in place to protect that data, based
upon a risk assessment/system security review.

c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses
to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
required to perform necessary business functions may be copied, downloaded, or exported.

d. Removable media devices. All electronic files that contain PHI COUNTY discloses to
CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,
floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140–2 certified
algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered “removed from the
premises” if it is only being transported from one of CONTRACTOR’s locations to another of
CONTRACTOR’s locations.

e. Antivirus software. All workstations, laptops and other systems that process and/or
store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
transmits on behalf of COUNTY must have installed and actively use comprehensive anti–virus
software solution with automatic updates scheduled at least daily.

f. Patch Management. All workstations, laptops and other systems that process and/or
store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
transmits on behalf of COUNTY must have critical security patches applied, with system reboot if
necessary. There must be a documented patch management process which determines installation
timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable
patches must be installed within thirty (30) days of vendor release. Applications and systems that
cannot be patched due to operational reasons must have compensatory controls implemented to
minimize risk, where possible.

g. User IDs and Password Controls. All users must be issued a unique user name for
accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
changed upon the transfer or termination of an employee with knowledge of the password, at maximum
within twenty–four (24) hours. Passwords are not to be shared. Passwords must be at least eight
characters and must be a non–dictionary word. Passwords must not be stored in readable format on the
computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days.
Passwords must be changed if revealed or compromised. Passwords must be composed of characters
from at least three (3) of the following four (4) groups from the standard keyboard:
h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or US DoD 5220.22–M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800–88. Other methods require prior written permission by COUNTY.

i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.

j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after occurrence.

l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.

m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140–2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E–Mail.

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls
   
a. System Security Review. CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

   b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a routine procedure in place to review system logs for unauthorized access.

   c. Change Control. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity/Disaster Recovery Control
   
a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY kept in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Contract for more than twenty-four (24) hours.

   b. Data Backup Plan. CONTRACTOR must have established documented procedures to backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data. BCP for contractor and COUNTY (e.g. the application owner) must merge with the DRP.

5. Paper Document Controls
   
a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Such PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of through confidential means, such as cross cut shredding and pulverizing.

d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises of the CONTRACTOR except with express written permission of COUNTY.

e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of COUNTY to use another method is obtained.

F. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

   b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY Privacy Officer. CONTRACTOR’s notification may be oral, but shall be followed by written notification within twenty-four (24) hours of the oral notification.

   3. CONTRACTOR’s notification shall include, to the extent possible:

      a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
b. Any other information that COUNTY is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the COUNTY.

5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)–(5) above, if not yet provided, to permit COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR’s initial report of the Breach to COUNTY pursuant to Subparagraph F.2 above.

8. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of five (5) business days after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests for further information, or follow–up information after report to COUNTY, when such request is made by COUNTY.

9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs.
in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Contract, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

   a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, for the proper management and administration of CONTRACTOR.

   b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the proper management and administration of CONTRACTOR or to carry out the legal responsibilities of CONTRACTOR, if:

      1) The Disclosure is required by law; or

      2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

   c. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to carry out legal responsibilities of CONTRACTOR.

3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of COUNTY.

4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as required by law.

H. PROHIBITED USES AND DISCLOSURES

1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC § 17935(d)(2).
I. OBLIGATIONS OF COUNTY

1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect CONTRACTOR’s Use or Disclosure of PHI.

2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR’s Use or Disclosure of PHI.

3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect CONTRACTOR’s Use or Disclosure of PHI.

4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

J. BUSINESS ASSOCIATE TERMINATION

1. Upon COUNTY’s knowledge of a material Breach or violation by CONTRACTOR of the requirements of this Business Associate Contract, COUNTY shall:
   a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract, if CONTRACTOR is unwilling or unable to cure the material Breach or end the violation within thirty (30) days, provided termination of the Contract is feasible.

2. Upon termination of the Contract, CONTRACTOR shall either destroy or return to COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of CONTRACTOR.
   b. CONTRACTOR shall retain no copies of the PHI.
   c. In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.

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EXHIBIT E
TO CONTRACT FOR PROVISION OF
ADULT RESIDENTIAL DRUG MEDI-CAL
SUBSTANCE USE DISORDER TREATMENT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
TELECARE CORPORATION
NOVEMBER 3, 2020 THROUGH JUNE 30, 2022

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in

effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall
include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the
CIPA, CCC § 1798.29(d).

3. "CMPPA Agreement" means the CMPPA Agreement between the SSA and CHHS.

4. "DHCS PI" shall mean Personal Information, as defined below, accessed in a database
maintained by the COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or
acquired or created by CONTRACTOR in connection with performing the functions, activities and
services specified in the Contract on behalf of the COUNTY.

5. "IEA" shall mean the IEA currently in effect between the SSA and DHCS.

6. "Notice–triggering PI" shall mean the PI identified in CCC § 1798.29(e) whose
unauthorized access may trigger notification requirements under CCC § 1709.29. For purposes of this
 provision, identity shall include, but not be limited to, name, identifying number, symbol, or other
identifying particular assigned to the individual, such as a finger or voice print, a photograph or a
biometric identifier. Notice–triggering PI includes PI in electronic, paper or any other medium.

7. "PII" shall have the meaning given to such term in the IEA and CMPPA.

8. "PI" shall have the meaning given to such term in CCC § 1798.3(a).

9. "Required by law" means a mandate contained in law that compels an entity to make a use
or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court
orders and court–ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental
or tribal inspector general, or an administrative body authorized to require the production of
information, and a civil or an authorized investigative demand. It also includes Medicare conditions of
participation with respect to health care providers participating in the program, and statutes or
regulations that require the production of information, including statutes or regulations that require such
information if payment is sought under a government program providing public benefits.

10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure,
modification, or destruction of PI, or confidential data utilized in complying with this Contract; or
interference with system operations in an information system that processes, maintains or stores PI.

B. TERMS OF CONTRACT

1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as
otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform
functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the Contract
provided that such use or disclosure would not violate the CIPA if done by the COUNTY.

2. Responsibilities of CONTRACTOR

CONTRACTOR agrees:

a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or
required by this Personal Information Privacy and Security Contract or as required by applicable state
and federal law.

b. Safeguards. To implement appropriate and reasonable administrative, technical, and
physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect
against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use
or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and
Security Contract. CONTRACTOR shall develop and maintain a written information privacy and
security program that include administrative, technical and physical safeguards appropriate to the size
and complexity of CONTRACTOR's operations and the nature and scope of its activities, which
incorporate the requirements of Subparagraph (c), below. CONTRACTOR will provide COUNTY with
its current policies upon request.

c. Security. CONTRACTOR shall ensure the continuous security of all computerized data
systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing
DHCS PI and PII. These steps shall include, at a minimum:

   1) Complying with all of the data system security precautions listed in Subparagraph
      E of the Business Associate Contract, Exhibit E to the Contract; and

   2) Providing a level and scope of security that is at least comparable to the level and
      scope of security established by the Office of Management and Budget in OMB Circular No. A–130,
      Appendix III–Security of Federal Automated Information Systems, which sets forth guidelines for
      automated information systems in Federal agencies.

   3) If the data obtained by CONTRACTOR from COUNTY includes PII,
      CONTRACTOR shall also comply with the substantive privacy and security requirements in the
      CMPPA Agreement between the SSA and the CHHS and in the Agreement between the SSA and
      DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security
requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that any of CONTRACTOR’s agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that apply to CONTRACTOR with respect to such information.

d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or its subcontractors in violation of this Personal Information Privacy and Security Contract.

e. CONTRACTOR’s Agents and Subcontractors. To impose the same restrictions and conditions set forth in this Personal Information and Security Contract on any subcontractors or other agents with whom CONTRACTOR subcontracts any activities under the Contract that involve the disclosure of DHCS PI or PII to such subcontractors or other agents.

f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or COUNTY for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including employees, contractors and agents of its subcontractors and agents.

g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist the COUNTY to the extent necessary to ensure the DHCS’s compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such Breach to the affected individual(s).

h. Breaches and Security Incidents. During the term of the Contract, CONTRACTOR agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII or security incident. CONTRACTOR agrees to give notification of any beach of unsecured DHCS PI and PII or security incident in accordance with Subparagraph F, of the Business Associate Contract, Exhibit E to the Contract.

i. Designation of Individual Responsible for Security. CONTRACTOR shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Personal Information Privacy and Security Contract and for communicating on security matters with the COUNTY.
Contract Summary Form

Telecare Corporation
Adult Residential Drug Medi-Cal
Substance Use Disorder Treatment Services

SUMMARY OF SIGNIFICANT CHANGES

This is a new Contract for provision of Adult Residential Drug Medi-Cal Substance Use Disorder Treatment Services which will commence as of November 3, 2020.

SUBCONTRACTORS

This contract allows for subcontracting pursuant to Section IX. Delegation, Assignment and Subcontracts of the Contract within the contract amount for the term specified. Should the addition of a subcontractor impact the scope of work and/or contract amount, the department will bring the item back to the Board of Supervisors for approval.

This contract includes the following subcontractors or pass through to other providers.

<table>
<thead>
<tr>
<th>Subcontractor(s) Name</th>
<th>Service(s)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various</td>
<td>Psychiatric/Medication Support</td>
<td>$ 57,151 maximum</td>
</tr>
</tbody>
</table>

CONTRACT OPERATING EXPENSES

This contract does not include a specific budget, as services are reimbursed at established Fee-for-Service rates against a Maximum Obligation.

Term: November 3, 2020 through June 30, 2022

Period One means the period from November 3, 2020 through June 30, 2021
Period Two means the period from July 1, 2021 through June 30, 2022

Maximum Obligation:

<p>| Period One Maximum Obligation:     | $ 1,642,035 |
| Period Two Maximum Obligation:     | 5,404,063   |
| TOTAL MAXIMUM OBLIGATION:          | $ 7,046,098 |</p>
<table>
<thead>
<tr>
<th>Modes of Service</th>
<th>Reimbursement Rate</th>
<th>Reimbursement Rate</th>
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<tr>
<td></td>
<td>Period One</td>
<td>Period Two</td>
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<td>Withdrawal Management Residential Services level 3.2 (per bed day)</td>
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<td>Residential Treatment Services level 3.1 (per bed day)</td>
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<td>Residential Treatment Services level 3.1 Room and Board (per bed day)</td>
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<td>Co-Occurring Residential Treatment Services (per bed day)</td>
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<td>Co-Occurring Residential Treatment Services Room and Board (per bed day)</td>
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<td>$88.90</td>
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October 29, 2020

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 3, 2020, Board Hearing.

Agency: Sheriff-Coroner Department
Subject: Resolution Ratifying Emergency Proclamation for Silverado and Blue Ridge Fires
Districts: All Districts

Reason for supplemental: This Agenda Staff Report needs to be heard as soon as possible to initiate the process to receive matching funds from the Cal OES and Federal Emergency Management Administration to aid County agencies with the damage recovery and recover some of the expenses associated with services provided during and after the Silverado and Blue Ridge Fires. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

[Signature]
Michelle Steel, Chairwoman of the Board of Supervisors

cc: Board of Supervisors
    County Executive Office
    County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/3/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Sheriff-Coroner
DEPARTMENT HEAD REVIEW:

Department Head Signature

DEPARTMENT CONTACT PERSON(S):
Jeff Hallock (714) 647-1804
Donna Boston (714) 628-7059

SUBJECT: Adopt Resolution Ratifying Proclamation of Local Emergency for the 2020 Silverado and Blue Ridge Fires and Related High Winds, Power Outages and Resulting Debris Management

<table>
<thead>
<tr>
<th>CEO CONCUR</th>
<th>COUNTY COUNSEL REVIEW</th>
<th>CLERK OF THE BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michelle Aguirre</td>
<td>Approved Resolution as to Form</td>
<td>Discussion 4/5 Vote</td>
</tr>
</tbody>
</table>

| Budgeted: No | Current Year Cost: See Financial Impact Section | Annual Cost: N/A |
| Staffing Impact: N/A | # of Positions: | Sole Source: |
| Current Fiscal Year Revenue: N/A | Funding Source: See Financial Impact Section | County Audit in last 3 years No |

Prior Board Action: N/A

RECOMMENDED ACTION(S)
Adopt resolution ratifying the Chairwoman of the Emergency Management Council’s Proclamation of Local Emergency for the 2020 Silverado and Blue Ridge fires and related high winds, power outages, and resulting debris management.

SUMMARY:
Adopting the resolution to ratify the proclamation will allow the County to obtain necessary resources to mitigate the damages caused by the October 2020 Silverado and Blue Ridge fires and related high winds, power outages, and resulting debris management.

BACKGROUND INFORMATION:
On October 26, 2020, multiple uncontained wildfires erupted across the County of Orange (County). High wind, high temperatures and low humidity had created conditions which triggered Red Flag Advisories and
Public Safety Power Shutoff Program implementation by local power companies as early as Friday, October 23, 2020. On October 26, 2020, at 6:47 a.m., the Silverado Fire was reported, and then at 12:56 p.m., the Blue Ridge Fire was reported. Public agencies, businesses and thousands of residents were impacted by the winds, power outages, Silverado and Blue Ridge Fires. At its peak, over 100,000 Orange County community members were evacuated.

As of the filing of this Agenda Staff Report, the Blue Ridge Fire has burned approximately 14,334 acres and is 30 percent contained. Damages include one home destroyed and damaged seven other homes. In the Silverado Fire, at the time of the filing of this Agenda Staff Report, 13,390 acres have burned and the fire is 40 percent contained. No structures were damaged or destroyed in the Silverado Fire.

Two Orange County Fire Authority firefighters were critically injured and burned and remain hospitalized. Three other firefighters assigned to the incident sustained minor injuries and have been released from the hospital.

Orange County Operational Area (Operational Area) jurisdictions are assessing and quantifying damages related to these incidents. Known infrastructure damaged includes Orange County Waste and Recycling’s Frank R. Bowerman landfill and the Transportation Corridor Agency’s Toll Roads.

The fires are anticipated to create an increased risk of erosion, flooding, and debris flows, and other hazards resulting from the destruction of vegetation and infrastructure which will require related debris management and removal. CalFire will coordinate a Watershed Emergency Repair Team to complete assessment which will aid the County in developing debris flow planning products.

On October 27, 2020, Supervisor Steel, the Chairwoman of the Emergency Management Council, proclaimed the existence of a local emergency in Orange County. Pursuant to Government Code Section 8630 and Section 3-1-6(a) of the Codified Ordinances of the County of Orange, this Proclamation of Local Emergency is presented to the Board of Supervisors (Board) for ratification.

Public Assistance efforts with the California Governor’s Office of Emergency Services (CalOES) have begun. The County has requested that the Governor declare a State of Emergency and make all relevant funds available to the County and all eligible organizations. The County also requests that the Governor request the President of the United States make a Presidential declaration of emergency for the County, and make all relevant funds available including but not limited to: California Disaster Assistance Acts funds, State Private Non-profit Organization Assistance Program funds, Stafford Act, Federal Highways Administration funds and the Small Business Administration funding.

At the time this Agenda Staff Report was submitted, the Orange County Fire Authority had obtained Fire Management Assistance Grant (FMAG) approvals separately for the Silverado Fire (FMAG 5380) and Blue Ridge Fire (FMAG 5381), which may allow for emergency response cost recuperation. Simultaneously, the local, state and federal emergency proclamation process is being pursued to obtain Federal Public Assistance. Public Assistance is dependent upon meeting financial damage thresholds which will be documented through an Initial Damage Assessment Process.

Once the Initial Damage Assessment Process has been approved by CalOES, the Orange County Sheriff-Coroner Department (Sheriff), Emergency Management Division will coordinate the arrival and escort of preliminary damage assessment teams from the state and federal agencies. The Board will be kept apprised of this process by the Sheriff’s Emergency Management Division.
FINANCIAL IMPACT:
Emergency response and initial damage reports from the Operational Area are in process. Depending upon the damages, County agencies and jurisdictions may be able to recover through the FMAG or Public Assistance process some of the expenses associated with services provided during and after the high winds, power outages, fires and resulting debris management.

STAFFING IMPACT:
N/A

ATTACHMENT(S):
Attachment A - Proclamation of Local Emergency of the 2020 High Winds, Power Outages, Fires and Resulting Debris Management
Attachment B - Government Code Section 8630 and Section 3-1-6(a) of the Codified Ordinances of the County of Orange
Attachment C - Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988
Attachment D - Draft Resolution
COUNTY OF ORANGE
STATE OF CALIFORNIA
PROCLAMATION OF A LOCAL EMERGENCY
and
REQUEST FOR GOVERNOR TO DECLARE A STATE OF EMERGENCY

WHEREAS, in accordance with Government Code Section 8630, a local emergency may be proclaimed by the Board of Supervisors of the County of Orange or by an official so designated by ordinance adopted by the Board of Supervisors; and

WHEREAS, Section 3-1-6(a) of the Codified Ordinances of the County of Orange provides that the Director of Emergency Services shall request the Board of Supervisors to proclaim a local emergency when the Board of Supervisors is in session and the Chair of the Emergency Management Council to so proclaim when the Board of Supervisors is not in session; and

WHEREAS, the Board of Supervisors is not currently in session, and the Director of Emergency Services has requested that the Chair of the Emergency Management Council proclaim a local emergency; and

WHEREAS, the County of Orange is experiencing unusually high Red Flag winds resulting in planned and unplanned power outages;

WHEREAS, on October 26, 2020 multiple uncontrolled wildfires erupted and are currently burning in the County of Orange, which together with existing high fire hazard conditions and current and projected conditions of high Red Flag winds and hot and dry weather, create an increased risk of erosion, flooding and debris flows and other hazards resulting from the destruction of vegetation and infrastructure which will require related debris management and removal and collectively constitute conditions of extreme peril to the safety of persons and property within the territorial limits of the County of Orange.
which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the County of Orange, and require the combined forces of other political subdivisions to combat; and

WHEREAS, on October 26, 2020 mandatory and voluntary evacuations were issued for portions of Irvine, Lake Forest and other surrounding areas in response to the Silverado Fire; and

WHEREAS, on October 26, 2020 mandatory and voluntary evacuations were issued for portions of Yorba Linda, Brea and other surrounding areas in response to the Blue Ridge Fire; and

WHEREAS, total evacuations exceed 90,000 evacuees; therefore

IT IS HEREBY PROCLAIMED that a local emergency exists within the geographic area of the County of Orange due to multiple uncontained fires together with existing and projected high fire hazard conditions; and

IT IS FURTHER PROCLAIMED AND ORDERED that as of this date all County departments and agencies take those actions, measures and steps deemed necessary to assure the safety and welfare of Orange County residents and property, including requesting mutual aid to the extent such aid is necessary.

ACCORDINGLY, THE CHAIR OF THE BOARD OF SUPERVISORS ACTING AS THE CHAIR OF THE EMERGENCY MANAGEMENT COUNCIL HEREBY REQUESTS that the Governor declare a State of Emergency and make all relevant funds available to the County of Orange and all eligible community members and businesses, including but not limited to California Disaster Assistance Act funds and State Private Nonprofit Organizations Assistance Program funds, and that the
Governor request that the President of the United States make a Presidential Declaration of Emergency in and for the County of Orange and make all relevant funds available to the County of Orange and all eligible community members and businesses, including, but not limited to, aid provided by the Small Business Administration.

Date: 10/27/20

Signed: [Signature]

Michelle Steel
Chairwoman of the Board of Supervisors Acting as the Chair of the Emergency Management Council
County of Orange

Time Signed: 11:30 am/pm
California Code, Government Code - GOV § 8630

Search California Codes

Search by Keyword or Citation

Enter Keyword or Citation Enter Keyword or Citation

(a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.

(b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.

(c) The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.

(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

Read this complete California Code, Government Code - GOV § 8630 on Westlaw

FindLaw Codes are provided courtesy of Thomson Reuters Westlaw, the industry-leading online legal research system. For more detailed codes research information, including annotations and citations, please visit Westlaw.

FindLaw Codes may not reflect the most recent version of the law in your jurisdiction. Please verify the status of the code you are researching with the state legislature or via Westlaw before relying on it for your legal needs.
The Stafford Act

Robert T. Stafford
Disaster Relief and Emergency Assistance Act, as Amended

April 2013
Sec. 418. Emergency Communications (42 U.S.C. 5185)

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

Sec. 419. Emergency Public Transportation (42 U.S.C. 5186)

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

Sec. 420. Fire Management Assistance (42 U.S.C. 5187)

(a) IN GENERAL - The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

(b) COORDINATION WITH STATE AND TRIBAL DEPARTMENTS OF FORESTRY - In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.

(c) ESSENTIAL ASSISTANCE - In providing assistance under this section, the President may use the authority provided under section 5170b of this title [Section 403].

(d) RULES AND REGULATIONS - The President shall prescribe such rules and regulations as are necessary to carry out this section.

Sec. 421. Timber Sale Contracts (42 U.S.C. 5188)

(a) COST-SHARING ARRANGEMENT - Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than $1,000 for sales under one million board feet, (2) of more than $1 per thousand board feet for sales of one to three million board feet, or (3) of more than $3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) CANCELLATION OF AUTHORITY - If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.
RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
November 3, 2020

WHEREAS, Government Code section 8630 and section 3-1-6(a) of the Codified
Ordinances of the County of Orange empower the Director of Emergency Services to request the
Chair of the Emergency Management Council to proclaim the existence or threatened existence
of a local emergency, subject to ratification by the Board of Supervisors within seven days; and

WHEREAS, the County of Orange is experiencing unusually high Red Flag winds
resulting in planned and unplanned power outages;

WHEREAS, on October 26, 2020 multiple uncontained wildfires erupted and are
currently burning in the County of Orange, which together with existing high fire hazard
conditions and current and projected conditions of high Red Flag winds and hot and dry weather,
together with existing high fire hazard conditions, as well as the increased risk of erosion,
flooding and debris flows and other hazards resulting from the destruction of vegetation and
infrastructure which will require related debris management and removal and collectively
constitute conditions of extreme peril to the safety of persons and property within the territorial
limits of the County of Orange which conditions are or are likely to be beyond the control of the
services, personnel, equipment and facilities of the County of Orange, and require the combined
forces of other political subdivisions to combat, and

WHEREAS, on October 26, 2020 mandatory and voluntary evacuations were issued for
portions of Irvine, Lake Forest, and other surrounding areas in response to the Silverado Fire;
and

WHEREAS, on October 26, 2020 mandatory and voluntary evacuations were issued for
portions of Yorba Linda, Brea and other surrounding areas in response to the Blue Ridge Fire’
and
WHEREAS, total evacuations exceeded 100,000 evacuees at their peak; therefore
WHEREAS, County and local jurisdictions are actively engaged in damage assessment;
WHEREAS, at the request of the Director of Emergency Services, the Chairwoman of
the Emergency Management Council, on October 27, 2020, did proclaim the existence of local
emergency within the County of Orange; and
WHEREAS, the Board of Supervisors does hereby find that the aforesaid conditions did
warrant and necessitate the proclamation of the existence of a local emergency; and
WHEREAS, the Board of Supervisors also finds a local emergency does exist and shall
be deemed to continue to exist until its termination is proclaimed by the Board of Supervisors;
NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors
does hereby ratify the Chair of the Emergency Management Council’s October 27, 2020,
Proclamation of a Local Emergency.

BE IT FURTHER RESOLVED that all powers, functions, and duties of the emergency
organization of the County of Orange shall be vested in such persons as prescribed by federal
and state law, by County ordinances and resolutions, and by the Orange County Emergency Plan
now in effect.

BE IT FURTHER RESOLVED that all County departments and agencies take those
actions, measures, and steps deemed necessary to assure the safety and welfare of Orange
County citizens and property, including requesting mutual aid to the extent such aid is necessary.