LEASE (DRAFT VERSION)

THIS LEASE, made and entered into this_____day of _____, 2010, by and between the County of San Luis Obispo, a public entity in the State of California, hereinafter called the "County", and _____, a [entity], doing business as _____, hereinafter called "Lessee".

WHEREAS, the County owns approximately 3.25 acres at 840 W. Branch Street in the City of Arroyo Grande (a portion of APN 007-011-046), east of the South County Regional Center, accessed from Rodeo Drive, hereinafter called "Premises"; graphically depicted on Exhibit "A", and

WHEREAS, the property had been used as a Public Works road yard until it was vacated in December 2008; and

WHEREAS, the County Board of Supervisors declares this property to be surplus and not needed for County use; and

WHEREAS, in accordance with California Government Code, Section 54222, the County has notified other agencies of the availability of this property for lease and has received no letters of interest from other agencies; and

WHEREAS, the County has issued a Request for Proposal to Lease this property and has convened a review committee to evaluate the proposals; and

WHEREAS, the Lessee selected by the review committee has obtained a Temporary Use Permit through the City of Arroyo Grande to operate their business at the Premises; and

WHEREAS, in accordance with California Government Code, Section 25363, the County has the authority to lease the Premises to Lessee.

W I T N E S S E T H:

1. <u>Grant and Description of Premises</u>: County, for and in consideration of the promises contained herein, grants to Lessee the exclusive right and privilege to lease and to occupy the Premises, described as approximately 3.25 acres zoned Public/Quasi-Public (PE) District, fully fenced, with a 6,048 square-foot metal structure (containing six work bays, office area, and non-ADA compliant restroom), a small wooden storage building, wash rack, and

elevated vehicle work ramp.

2. **<u>Condition of Premises</u>:** The taking of possession of the subject premises by Lessee shall, in itself, constitute acknowledgment that the premises are in good and tenantable condition. Lessee agrees to accept said premises in their presently existing condition, "as is"; and County shall not be obligated to make any alterations, additions or betterment thereto. Lessee acknowledges County's disclosure of known existing conditions in Exhibit "B", attached.

3. **<u>Term</u>:** The term of this Lease shall begin [DATE]; provided however, as a condition precedent to this Lease becoming effective, Lessee shall submit verification of all required insurance and a letter of credit or in the amount of Ten Thousand Dollars ($10,000.00), as required by *Paragraphs 23 and 24* hereof, to the County. This Lease shall terminate on [DATE, 2 years from start date]. Upon the expiration or termination of this Lease as herein provided, Lessee shall remove from the Premises or otherwise dispose of in a manner satisfactory to the County all personal property belonging to Lessee located on the premises. Should Lessee fail to remove or dispose of Lessee's property as herein provided, County may, at its election, consider such property abandoned or may dispose of same at Lessee's expense, and Lessee shall reimburse County for said expense on demand. Also, at the expiration or termination of this Lease, Lessee shall quit and surrender the premises including real property improvements in a good state of repair, damage by matters over which Lessee has no control excepted, provided that such exculpatory provisions shall not extend to any risk which Lessee is required to insure against as herein provided.

4. **<u>Conditioned on Temporary Use Permit</u>:** The term of this Lease shall be conditioned upon tenant maintaining a current Temporary Use Permit or other permits as required of the Lessee by the City of Arroyo Grande or other agencies. In the event Lessees permits expire, the term of this Lease shall expire concurrently.

5. **<u>Rental</u>:**

(A) Rental payment shall be _____ ($_____.00) per month, payable in advance on the first of each month. Lessee has paid a good faith deposit of $1,000 during the evaluation process, which amount shall be credited toward the first month's rent payment due to County. *[If broker is representing Lessee, add rent credit for up to one month of rent]*.

(B) Lessee hereby acknowledges that the late payment of rent or any other sums due hereunder will cause County to incur costs not contemplated by this Lease. Such costs include

but are not limited to costs such as administrative processing of delinquent notices, increase accounting costs, etc. Accordingly, if any payment of rent as specified in the clause entitled Rental or any other sum due County is not received by County by the tenth day of the month, a late charge of Seven percent (7%) 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 County. If still unpaid for 30 days after the delinquency date the legal rate of interest shall apply.

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

(C) Payment to the County shall be made to the order of County of San Luis Obispo; General Services Agency, 1087 Santa Rosa Street, San Luis Obispo, California 93408, Attn: Real Property Manager. Lessee shall be responsible and liable for all rental payments due (and fees collected if applicable) until actual delivery of compensation to County.

6. <u>Use of Premises</u>:

A. Use of the property shall be for the Lessee's [type of business], as described in the Lessee's proposal dated _____, and no other use shall be approved without the written approval of the Director of the General Services Agency of the County ('Director"). Use of the premises is conditioned upon the Lessee maintaining in full force and effect Temporary Use Permit # _____ issued by the City of Arroyo Grande [if applicable].

B. Lessee's commercial interests shall at all times be in compliance with all laws, including but not limited to federal and state Constitutions, statutes, implementing regulations, ordinances and agency rulings whether or not these laws are enacted or promulgated as urgency measures under police powers or for health and safety reasons whether currently existing, amended or new enactments. Lessee agrees not to use the Premises as a residence.

C. Lessee expressly agrees at all times during the term of this Lease, at his own cost and expense to maintain and operate such premises and areas adjacent, in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future laws, rules, or regulations of any governmental

authority, now or at any time during the term of this Lease in force, relating to sanitation or public health, safety or welfare

D. Lessee shall be solely responsible for providing of all services, equipment, supplies, and personnel for the administration, staffing, operation and maintenance of the Lessee's business. Lessee shall comply with all labor laws, INS laws, and tax laws.

E. If the asphalt-surfaced area on the upper level is used for parking and vehicular traffic, Lessee shall install and maintain a County-approved method of biofiltration, clarifier, or other filtration system to protect the downstream watershed area. Lessee shall take all other measures to prevent stormwater pollution as required in the County's Stormwater Pollution Prevention ordinance. Lessee acknowledges that the property drains to a seasonal creek to the east of the Premises.

F. Lessee enters into this Lease solely and exclusively as an independent contractor and only in that capacity and not as a partner, employee or other agent of the County. All services performed by Lessee relating to operation and management of the premises in addition to the rent paid per *Paragraph 5* are intended as considerations supporting this Lease.

G. Lessee acknowledges that County's adjacent property to the north of the Premises has been rezoned to Residential Multifamily zoning, and housing may be constructed on the County's land during the term of this Lease.

8. **Lost Revenue:** If the Premises are closed for any reason, including, but not limited to, war, armed conflict, public emergency, public nuisance, calamity, fire, earthquake, flood, act of God, strike, or similar act which shall prevent performance of this Lease in accordance with the rights and privileges granted herein, the County shall not be liable to Lessee for any lost revenues.

If the Lessee's business is interrupted (ie: due to construction activities being undertaken by the City of Arroyo Grande), the County shall not be liable to Lessee for any lost revenues or claims against Lessee from third parties including but not limited to Lessee's employees.

9. **Signs**: Signs shall conform to the sign ordinance of the City of Arroyo Grande.

10. **Janitorial:** Lessee shall be solely responsible for complete janitorial services and the furnishing of janitorial supplies to the Premises.

11. **<u>Capital Improvements</u>:** Any and all Capital Improvements to be undertaken hereunder shall be administered as follows:

(A) Lessee agrees to submit to the Director or his designee for review and approval, all plans including specifications, working drawings, and other information required by the Director covering the projects to be accomplished by Lessee. Said plans shall be submitted to the Director for the Director's approval at least fourteen (14) days in advance of the initiation of any such projects. Additionally, if any of the proposed improvements require a licensed contractor, Lessee shall submit verification of the appropriate licensure and verification of sufficient insurance and bonding of the licensed contractor. If the Director objects to all or any portion of proposed plans, the Director shall state the objections specifically, and the Lessee shall make the changes specified and resubmit the plans as revised for the Director's approval as herein provided. No improvement or alteration shall be made to the premises or any portion thereof without the submission to and prior written approval of the plans by Director. Approval and authorization by the Director shall not be unreasonably withheld. Nothing contained herein shall be construed by Lessee to be a waiver by the Director of Lessee's need to acquire building and construction permits to include, but not be limited to, required permits from the City of Arroyo Grande, the County Environmental Health Department, and other applicable licenses or approvals through governmental processes.

(B) County General Services Agency shall perform a final inspection of the capital improvements. If County determines capital improvements are in compliance with aforementioned terms and conditions, then Director shall issue a written statement of compliance acknowledging completion of the capital improvement project. Nothing herein shall be construed to be a waiver by the Director of Lessee's need to obtain final inspections and approvals from other required entities. Lessee shall protect the Premises from any lien or charges whatsoever, by reason of said capital improvements.

(C) In addition to rent as specified in Paragraph 5, Lessee agrees to perform the following improvements, in accordance with Lessee's proposal dated _____:

IMPROVEMENT ESTIMATED DATE OF COMPLETION

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12. <u>Ownership of Improvements</u>: Title to improvements on the Premises at the commencement of this Lease is retained by the County. This Lease is subject to any rights of ownership in the improvements. The ownership of all approved improvements constructed by the Lessee, if any, shall remain in Lessee until expiration, or sooner termination, of the term of this Lease.

Upon termination of this Lease, all alterations, additions and improvements made in, to or on the Premises (including without limitation all electrical, lighting, plumbing, heating, air conditioning, and communications equipment and systems, alarms, doors, windows, partitions, drapery, carpeting, shelving, counters, and physically attached fixtures unless excluded in a written agreement signed by Lessee and Director), shall, without compensation to Lessee, become County property free and clear of all claims to or against them by Lessee or any third person, and Lessee shall defend and indemnify the County against all liability and loss arising from such claims or from the County's exercise of the rights conferred by this paragraph. Such improvements shall remain upon and be surrendered as a part of the Premises; provided however, upon County's request, Lessee shall remove those additions, alterations, signs or improvements as may be specified by County, and repair and restore the Premises to its original condition at Lessee's sole cost and expense prior to expiration of the Term.

13. <u>Lessee's Personal Property</u>: Title to all personal property, movable furniture, and movable equipment provided by the Lessee shall remain in the Lessee. Furniture and equipment affixed to the real property in any way shall be considered a capital improvement and shall be subject to the terms of *Paragraph 12.* Upon the removal of personal property by Lessee, whether such removal be upon termination of this Lease or at any time prior thereto, Lessee shall repair all damage to the Premises caused by the addition or removal of such property. County shall not be obligated to repair, restore, refurbish, or otherwise incur any expense regarding personal property of Lessee. If Lessee elects to attach an item of personal property to the Premises that Lessee does not wish to be considered a capital improvement, a written request to exclude this item from capital improvements shall be submitted to Director for Director's written approval prior to installation of the item.

14. <u>Equipment and Fixtures</u>: County shall not be obligated to repair, restore, refurbish, or otherwise incur any expense in improving and/or changing the condition of the equipment,

fixtures, furnishings, inventory, or other personal property of Lessee.

15. **Title:** Lessee hereby acknowledges that fee title to the Premises vested in the County of San Luis Obispo and hereby covenants and agrees never to challenge, contest or resist said title. Lessee may not acquire any right to premises by adverse possession or otherwise.

16. **County's Personal Property:** County shall retain title to all of County's personal property (i.e. gas heaters, picnic table, sprinkler system) during the term of this Lease. Any improvements hereafter added by County at County's expense shall remain County property.

17. **Utilities:** Lessee shall be responsible for payment of all utilities used on the Premises.

18. **Garbage:** Lessee shall be responsible for payment of all trash services on the Premises.

19. **Maintenance/Repairs:** Lessee shall be responsible for all costs of maintenance and repair of the Premises, including but not limited to electrical, plumbing, heating and air conditioning, roofing, paint, windows, door, landscaping, and asphalt.

If within 15 days of written notification by County, Lessee fails or neglects to commence maintenance and/or repair obligations as requested by County, County may, at its option, perform such necessary maintenance and/or repairs and bill Lessee for actual cost of said maintenance. Lessee shall promptly reimburse County upon demand.

In the event of an emergency, County may take action on the Premises as may be required for the protection of persons or property, and Lessee will reimburse County. Lessee shall, at all times and at Lessee's expense do all things reasonably necessary to protect the Premises used by Lessee.

The Lessee shall not grant, with respect to said Premises, easements, rights-of-way, licenses or permits.

21. **Business Hours:** It is understood and agreed that the hours of Lessee's business operations are [Hours and Days]. In the event that this schedule should change, Lessee agrees to notify County and to obtain approval of the City of Arroyo Grande, if required.

22. **Hold Harmless Agreement:** Lessee shall defend, indemnify and hold harmless the County, its officers and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or

in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission by the Lessee, or its agents, employees or other independent contractors directly responsible to Lessee, including, but not limited to, the following:

A. Violation of statute, ordinance, or regulation.

B. Professional malpractice.

C. Willful, intentional or other wrongful acts, or failures to act.

D. Negligence or recklessness.

E. Furnishing of defective or dangerous products.

F. Premises liability.

G. Strict liability.

H. Inverse Condemnation.

I. Violation of civil rights.

J. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting sales or payroll taxes, when the Lessee is not an independent contractor.

It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Lease and the remaining language shall be given full force and effect.

23. **Insurance:** Lessee shall obtain and maintain for the entire term of the Lease and Lessee shall not perform any work under this Lease until after he has obtained insurance complying

with the provisions of this paragraph, delivered verification of the required insurance to the County, and obtained County approval of all such policies. Said policies shall be issued by companies authorized to do business in the State of California, or otherwise approved by the County Risk Manager. Lessee shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. **Comprehensive Liability Insurance:** Lessee shall maintain in full force and effect for the period covered by this Lease, comprehensive liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Lessee's operations in the performance of this Lease, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage in the total amount of One Million Dollars ($1,000,000). The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. **Workers' Compensation Insurance:** In accordance with the provisions of sections 3700 of the California Labor Code, et seq., if Lessee has any employees, Lessee is required to be insured against liability for workers' compensation or to undertake self insurance. Lessee agrees to comply with such provisions before commencing the performance of this Lease.

C. **Additional Insureds to be Covered:** The professional liability and comprehensive liability policies shall name the "County of San Luis Obispo, its officers, employees, and agents" as additional insureds. The policy shall provide that the Lessee's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

D. **Certification of Coverage:** Prior to commencing work under this Lease,

Lessee shall furnish County with the following for each insurance policy required to be maintained by this Lease:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.

(2) A copy of the Lessee's Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.

(3) Upon further written request, the Lessee shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.

(4) Approval of Insurance by County shall not relieve or decrease the extent to which the Lessee may be held responsible for payment of damages resulting from Lessee's services or operations pursuant to this Lease. Further, County's act of acceptance of an insurance policy does not waive or relieve Lessee's obligations to provide the insurance coverage required by the specific written provisions of this Lease.

E. **Effect of Failure or Refusal:** If Lessee fails or refuses to procure or maintain the insurance required by this Lease, or fails or refuses to furnish County with the certifications required by subparagraph (D) above, County shall have the right, at it's option, to forthwith terminate the Lease for cause.

24. **Letter of Credit Requirements:** The Lessee agrees to furnish a letter of credit in the sum of Ten Thousand Dollars (**$10,000)**, it being understood and agreed that such letter of credit shall be in force at all times during the term of this Lease; and, if canceled, the Lessee shall immediately seek and obtain a similar replacement letter of credit or this Lease shall be terminated effective immediately. This security shall guarantee faithful performance of this Lease including all Lessee’s obligations and responsibilities under this Lease. Said letter of credit shall be kept by Lessee in full force and effect during the entire term of this Lease to insure faithful performance by Lessee of all the covenants, terms and conditions of this Lease, inclusive of, but not restricted to, the payment of all rentals, fees and charges. The institution issuing letter of credit shall give County notice in writing at least thirty (30) days prior to any expiration of the letter of credit of Lessee.

With the Director's approval, County may accept another form of security in lieu of the Letter of Credit providing Lessee provides evidence that a Letter of Credit is not available.

25. **Taxes:** During the term of this Lease, Lessee hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, levied or assessed against the premises and in connection with the premises and Lessee's operation thereof, including without limitation, taxes on Lessee's possessory interest hereunder or in the premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the premises, and on any personal property situated in, on, or about the premises, or in, on or about any structures or improvements thereon. **Lessee is hereby informed that a possessory interest subject to property taxation shall be created by this Lease and that the party to whom the possessory interest is vested (Lessee) shall be subject to the payment of property taxes levied on such interest and must pay such taxes.**

26. **Lessee's Responsibility for Compliance:** Lessee shall at all times observe and comply with, and shall cause all his agents, employees and sub-contractors to observe and comply with all present and future laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this Lease and any extensions thereof. If any future laws, rules, regulations or ordinances are passed by the County of San Luis Obispo and said legislative enactment has any impact fiscal or otherwise on Lessee, and if Lessee does not make a timely objection to County during course of legislative process, Lessee will be deemed to have waived any right to object at a later time and waives all damages flowing therefrom. Lessee shall and does hereby assume responsibility for payment of any and all licenses applicable to Lessee's operation on the premises.

27. **Notices:** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail as follows:

To the Lessee at: _____

_____

_____

To the County at: County of San Luis Obispo
General Services Agency
1087 Santa Rosa Street

San Luis Obispo, CA 93408
Attn: Real Property Manager

The address to which the notices may be mailed as aforesaid by either party may be changed by written notice given by such party to the other as herein before provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

28. **Modification:** This Lease constitutes the entire understanding of the parties hereto and no changes, amendments, or alterations shall be effective unless in writing and signed by both parties.

29. **Termination and Breach:** If any of the following occur, the Director shall have the right to terminate this Lease effective immediately for cause upon giving written notice to the Lessee:

A. Lessee fails to perform its duties to the satisfaction of the Director, including the accumulation of multiple less-significant instances of failure to perform in accordance with this Lease; or

B. Lessee fails to fulfill in a timely and professional manner its legal and contractual obligations under this Lease; or

C. Lessee, or its agents or employees, fail to exercise good behavior during working hours that is of such a nature as to bring discredit upon the County.

At the discretion of the Director, Lessee may be allowed ten (10) days after receiving written notice to correct any breach hereunder. Failure to correct the breach will result in immediate termination of the Lease and County shall have the right to immediate possession of the Premises.

The exercise of the remedies provided for in this section shall be cumulative and in no way affect or replace other remedies available to County.

30. **Assignment of Lease:** Lessee shall not assign, transfer, or delegate this Lease or any interest therein without the prior written consent of Director, and any such assignment, transfer, or delegation without the Director's written approval shall be considered null and void.

If Lessee be a partnership, a withdrawal or change, voluntary or involuntary, or by operation of law, or otherwise, of any of the partners thereof; or if Lessee be composed of more than one person, a purported assignment or transfer, voluntary or involuntary, or by operation of law, or otherwise, if any of the partners thereof; or if Lessee be composed of more than one person, a

purported assignment or transfer, voluntary or involuntary, or by operation of law, or otherwise, from one thereof unto the other or others thereof; or if Lessee be a corporation, a change in the ownership, voluntary or involuntary, or by operation of law, or otherwise, of fifty-one percent (51%) or more of the capital stock as owned as of the date of execution hereof, shall be deemed as assignment prohibited hereby, unless the written consent of County be obtained hereto.

Anything herein to the contrary notwithstanding, however, and subject to the covenants and conditions otherwise herein contained, Lessee shall have the right to assign or sell this Lease if required for the purposes of financing any additional improvement upon the Premises, as security therefor, provided the same be to a duly qualified and licensed institutional financing agency or duly qualified individual which shall entitle any such lending institution or individual to become the successor to Lessee's rights hereunder, in the event Lessee should default in the performance of their obligations to such lending institution or individual.

Anything herein to the contrary notwithstanding, it is further agreed that, in the event of the death of any partner, should Lessee be a partnership, or in the event of the death of any corporate shareholder resulting in a change in the ownership of fifty percent (50%) or more of the capital stock of said corporation, if Lessee be a corporation, the Executor, Estate, Heirs or Devisees of such deceased person shall be entitled to succeed to the interest herein of such deceased person, subject to the following qualifications:

a) That said designated person, persons or entity demonstrate to the satisfaction of the General Services Director that the person, persons or entity is competent and qualified to operate said Premises pursuant to the provisions of this Lease.

b) That said person, persons or entity first agree in writing to assume all obligations and duties of the said deceased Lessee as set forth in the Lease, and agree to be bound by all the provisions hereof and the activities and transactions of the deceased Lessee with respect thereto.

c) That all of the matters referred to in a) and b) above, be complied with within thirty (30) days after death of Lessee provided that said time limit may be extended by express written permission of the Director if good cause is shown therefor.

Any proposed assignee shall have at least three (3) years of experience in the management and/or operation of a facility substantially the same as the business operated by the Lessee in the

Premises. In lieu of such actual experience, the proposed assignee shall provide satisfactory evidence to the County that the proposed assignee will hire, as employees or independent contractors, personnel competent to inventory, merchandise, market and operate the business being conducted in the Premises.

County's consent to such assignment or subletting shall not constitute a waiver of any provision of this Lease and no further assignment or subletting shall be made without County's prior written consent. The assignee shall not further assign the Premises without County's prior written consent, and then only in compliance with all of the provisions contained in this paragraph.

In the event County consents to an assignment, Lessee shall provide County with any agreement between Lessee and assignee, whether it be written or oral.

In the event County consents to such assignment of this Lease, County shall reserve the right to change, modify or further amend the Lease in any way including the rental to be paid thereunder. Any changes, modifications or further amendments to the Lease shall be negotiated prior to Director's approval of the assignment.

Upon County's consent to an assignment, Assignee shall furnish a letter of credit in the sum of Ten Thousand Dollars ($10,000.00), it being understood and agreed that such letter of credit shall be in force at all times during the remaining term of this Lease; and, if canceled, the Assignee shall immediately seek and obtain a similar replacement letter of credit or this Lease shall be terminated. This security shall guarantee faithful performance of this Lease including all Assignee's obligations and responsibilities under this Lease. Said letter of credit shall be kept by Assignee in full force and effect during the entire term of this Lease to insure faithful performance by Assignee of all the covenants, terms and conditions of this Lease, inclusive of, but not restricted to, the payment of all rentals, fees and charges. The institution issuing said letter of credit shall give County notice in writing at least thirty (30) days prior to any expiration of the letter of credit of Assignee.

County may at its option sell, assign, transfer to or delegate the Premises to another governmental agency provided that such sale, assignment transfer or delegation shall not terminate this Lease.

31. <u>Waiver of Claim</u>: Lessee hereby unconditionally waives any claim against the County, its officers, agents or employees for damage or loss caused by any suit during the term of this Lease or in the future. Any action, proceeding or claim, directly or indirectly, attacking the

validity of this Lease, or any part thereof shall be the sole responsibility and liability of Lessee.

32. **Limitation on Actions:** Lessee shall have no other legal or equitable rights, entitlement or interests other than those expressly stated in this Lease. This shall apply regardless of any information exchanged or representations made by County staff or others during negotiations, prior to execution, or after execution. No representation by County staff shall be binding unless said provision is in writing and signed by the Board of Supervisors prior to the effective date.

33. **Eminent Domain:** If the whole of the premises shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasi public use or purpose, then the leasehold estate hereby created shall cease and terminate as of the date actual physical possession of the leased premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of Lessee, provided, however, that County shall be entitled to receive any award for the taking of or damage to County's equipment, fixtures, or any improvements made by County to the leased premises which County would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease.

In the event that there shall be partial taking of the leased premises during the Lease term under the power of eminent domain, this Lease shall terminate as to the portion of the leased premises so taken on the date when actual physical possession of said portion is taken by the condemnor, but this Lease shall at County's option, continue in force and effect. The compensation and damages for such partial taking shall belong to and be sole property of Lessee, provided, however, that County shall be entitled to receive any award made by County to the leased premises which County would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease, and, in the event that this Lease is continued as to the portion of the leased premises not condemned, any award made for alterations, modifications or repairs which may be reasonably required in order to place the remaining portion of the leased premises not taken in a suitable condition shall belong to County.

34. **Non-Discrimination:** Lessee shall not discriminate against any person or class of persons in violation of the Civil Rights Act of 1964 as amended or any other applicable laws prohibiting discrimination in the use of the premises.

35. **Americans With Disabilities Act:** The Lessee shall be responsible for physical

premises alterations necessary to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq.

36. **Hazardous Waste:** Lessee and County shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, fuels, gasoline, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials"). Lessee shall, except in the event of County's sole negligence, indemnify, defend, protect, and hold County, each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (a) The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Lessee's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises, or (b) Lessee's failure to comply with any Hazardous Materials Law. Lessee's or County's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Lessee and County and shall survive the expiration or earlier termination of the term of the Lease. For purposes of the release and indemnity provisions hereof, any acts or omissions of County, or by employees, agents, assignees, contractors or subcontractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

40. **Separability:** The invalidity of any provision of this Lease shall not affect the validity, enforceability of any other provision of this Lease.

41. **Law:** This Lease has been executed and delivered in the State of California and the

validity, enforceability and interpretation of any of the clauses of this Lease shall be determined and governed by the laws of the State of California.

42. **Venue:** San Luis Obispo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Lease.

43. **Entire Lease and Modifications:** This Lease supersedes all previous Leases and constitutes the entire understanding of the parties hereto. Lessee shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Lessee specifically acknowledges that in entering into the executing this Lease, Lessee relies solely upon the provisions contained in the Lease and no other Leases or oral discussions prior to entering this Lease.

44. **Corporate Authority:** Any individual executing this Lease on behalf of Lessee represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said Lessee, and that this Lease is binding upon said Lessee in accordance with its terms.

45. **Waiver of Lease Terms:** No waiver by either party at any time of any of the terms, conditions or covenants of this Lease shall be deemed as a waiver at any time thereafter of the same or of any other terms, condition or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of County to re-enter the premises or to exercise any right, power or privilege or option arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power or privilege or option or be construed as a waiver of such default or a relinquishment of any right or acquiescence therein. No notice to Lessee shall be required to restore or revive time as of the essence after the waiver by County of any default. No option, right, power, remedy or privilege of County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given to County by this Lease shall be deemed cumulative.

46. **Agent for Service of Process:** It is expressly agreed and understood that Lessee is a natural person and a resident of the State of California. If Lessee moves and is no longer domiciled in and a resident of the State of California, then Lessee shall file with County a designation of a natural person residing in the State of California, giving the name, residence and business address for the purpose of service of process in any court action arising out of or based upon this Lease. The

delivery to such person of a copy of any process in any such action shall constitute valid service upon Lessee; and it is further expressly agreed, coveted and stipulated that if for any reason service of such process upon such person is not possible, then in such event Lessee may be personally served with such process out of said State, including by publication in the County of San Luis Obispo, and that such service shall constitute valid service upon such Lessee; and it is further expressly agreed that Lessee is amenable to the process so served, submits to the jurisdiction of the court (said court being the Superior and/or Municipal Court in and for the County of San Luis Obispo) as acquired, and waives any and all objections and protests thereto.

47. Right of Entry as Agent: In any case in which provision is made herein for the termination of this Lease by County or in the case of abandonment or vacating of the premises by Lessee, the County, in lieu of declaring a forfeiture, may enter upon the premises. To such end, Lessee hereby irrevocably appoints County as agent to remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Lessee. In such case, County may re-let the premises upon such terms as it may deem proper, and if a sufficient sum shall not be realized thereby, after paying expenses of such re-letting, to satisfy the rent and other sums herein agreed to be paid by Lessee, Lessee agrees to save County harmless from any loss or damage or claim arising out of the action of County in pursuance of this article.

48. Terms Binding on Successors: All the terms, covenants and conditions of this Lease shall inure to the benefit of, and be binding upon, the successor and assigns of the parties hereto. The provisions of this article shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

49. Destruction of Premises: Should any matter or condition beyond the control of the parties hereto, such as war, public emergency, or calamity, fire, earthquake, flood, act of God, strike, or any other labor disturbance prevent performance of this Lease in accordance with the rights and privileges granted herein, this Lease shall immediately be terminated and the County shall be under no legal obligation to the Lessee by reason of said matter or condition.

Should any aforementioned matter or condition create eligibility for Federal, State, or any other governmental jurisdictional relief assistance and/or aid, both parties agree to take all reasonable steps necessary to procure such assistance and/or aid, in their respective capacities at the time of such application.

50. **Holding Over:** In the event Lessee shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease. Any holding over shall not constitute a lawful possession except for purposes of continuing the duties and obligations of Lessee and County's right to enforce the same.

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

/////////NOTHING FURTHER EXCEPT SIGNATURES PAST THIS POINT//////////

IN WITNESS WHEREOF, the parties hereto have executed this Lease this _____ day of _____, 2010.

COUNTY OF SAN LUIS OBISPO

By:

_____

Chairperson of the Board of Supervisors

Approved by the Board of Supervisors this _____ day of _____, 2010.

ATTEST:

_____

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN
County Counsel

By:_____
Assistant County Counsel

Date:_____

LESSEE:

By: _____

Date:_____

Corporate Certificate:

I, _____, certify that I am the Secretary of the Corporation named in the foregoing Lease; that _____, who signed said Lease on behalf of the Corporation, was then President of said Corporation; and said Lease was duly signed for and on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

By: _____
_____, Secretary

Date:_____

_____
(CORPORATE SEAL)

EXHIBIT "A"
PREMISES

EXHIBIT "B"
DISCLOSURE —COUNTY'S FORMER ARROYO GRANDE ROAD YARD

1. The lease site measures approximately 3.2 acres. The area inside the fence measures approximately 2.5 acres.

2. The lower parking lot contains an 18-inch concrete slab covered by a tarp and sandbags. An above-ground emulsion tank was located on the slab until it was removed about 3 years ago. The tank was burned in place, which created a residue on the slab. County accepts responsibility for any contamination issue related to this residue provided that Lessee keeps the residue covered and sandbagged at all times to prevent runoff.

3. The fire extinguishers have been removed from the property.

4. Lessee agrees to maintain the grease separator located under the steel cover at the wash rack.

5. If the upper, asphalt-surfaced area is use for parking and vehicular traffic, Lessee agrees to install a County-approved method of biofiltration, clarifier, or other filtration system to protect the downstream watershed area.

6. Gas heaters were once located in the office and dressing area. They have been removed and the gas pipes are capped.

7. The insulation in the enclosed work bays has lost its adhesion to the walls.

8. The building has been tested for asbestos, and no evidence of asbestos was found.

9. The rain gutters on the building are rusted through in many locations.

10. Below-ground gas and diesel tanks were once located by the entry gate to the lower parking lot. These tanks have been removed, and the emergency shut-off station at the gate is no longer operational.

11. A storage container belonging to the American Red Cross is located at the entrance to the lower parking lot, outside of the fence. The container holds supplies for civilian emergencies, and the container will remain in place. Lessee agrees to keep clear the access to the container at all times.