

LICENSE AGREEMENT AND MEMORANDUM OF UNDERSTANDING
ANTELOPE VALLEY SENIOR CENTER RENOVATION PROJECT

This LICENSE AGREEMENT AND MEMORANDUM OF UNDERSTANDING (the "Agreement") is hereby made and entered into on this _____ days of _____, 2016 by and between the COUNTY OF LOS ANGELES, a body corporate and politic and a political subdivision of the State of California (the "County") and the CITY OF LANCASTER, a California municipal corporation and charter city (the "City") (collectively, the "Parties"), pursuant to Government Code sections 25526.6 and 26227, as of the date set forth below.

RECITALS

The following recitals are a substantive part of this Agreement.

A. The County is the owner of certain real property located at 777 West Jackman Street, Lancaster, CA 93534, more particularly described as Assessor's Parcel No. 3133-029-906 (the "Property"). The Property has been improved with an approximately 13,800 square foot single-story structure which the County uses and operates as the Antelope Valley Senior Center ("Senior Center").

B. The County desires to expand and improve the Senior Center by constructing an addition or accessory structure to the existing building, renovating, reconfiguring and/or remodeling certain portions of the existing building, and installing furnishings, fixtures and equipment associated with said construction, renovation and remodeling (collectively, the "Project" or "Design-Build Project"). The County deems the Project/Design-Build Project for expansion and improvement of the Senior Center to be necessary to meet the social needs of the population of the County, including meeting the welfare needs of aged persons.

C. The County has authorized a budget of \$1,500,000 for development and completion of the Project in its entirety, to be funded from the Fifth Supervisorial District Project and Facilities Development Budget.

D. The County determines this Agreement with the City will further the social needs of the County, and the terms and conditions of this Agreement to be in the best interests of the County and the general public.

E. The County desires that the City oversee and manage all phases of the Project, and the City is willing to so oversee and manage the Project.

F. The County will continue to have possession of the Property and sole operational responsibility for the Senior Center at all times through the completion of the Project and at all times this Agreement is in effect.

G. The County desires to allow the City, its officers, employees, representatives, contractors and subcontractors to enter onto certain portions of the Property for all uses associated with the Project. The County finds that said entrance by the City will not substantially conflict or interfere with the use of the Property by the County.

NOW, THEREFORE, the Parties hereby agree as follows:

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this section shall, for the purposes of this Agreement, have the meaning herein specified:

- 1.01 Acceptance Date. “Acceptance Date” means the date on which the County’s Designated Representative has confirmed in writing the completion of the Project in accordance with the design concept, plans, and specifications as approved by the Project Review Board, or the date on which final payment/release of Project Funds has been tendered to the City, whichever is later.
- 1.02 Board. “Board” means the Board of Supervisors of the County of Los Angeles.
- 1.03 City’s Designated Representative. The City Council of the City of Lancaster has designated the City Manager as its sole representative with respect to the matters set forth in this Agreement who, until further notice to the County, shall have the full authority and responsibility to act on behalf of the City as required in this Agreement and whose address, for purposes of any notices to be given regarding matters pertaining to this Agreement, is as set forth in Section 24.
- 1.04 County’s Designated Representative. The Board of Supervisors of the County of Los Angeles has designated Kevin Webb as its representative with respect to the matters set forth in this Agreement, who, until further notice to the City, shall have the full authority and responsibility to act on behalf of the County as required in this Agreement and whose address, for purposes of any notices to be given regarding matters pertaining to this Agreement, is as set forth in Section 24.
- 1.05 Operator. “Operator” means the County of Los Angeles Department of Community and Senior Services, 3175 West Sixth Street, Los Angeles, CA 90020, or other County department designated by the County’s Designated Representative, which, for purposes of this Agreement, will have authority and responsibility for operating and maintaining the Senior Center at all times the License is in effect.
- 1.06 Project Review Board. The “Project Review Board” means the ad hoc committee formed for the duration of the Project, comprised of employees and/or representatives of the City and of the County, to be designated by the City and County Designated Representatives, respectively, for the purpose of undertaking overall review and approval of the Project as described more particularly in Section 6 of this Agreement. The City and County shall each designate three (3) persons to serve on the Project Review Board.

Section 2. Description of Project. The Project will generally consist of the design and construction of an approximately 3,000 square foot addition onto or accessory structure adjacent to the Senior Center building; design and renovation, reconfiguration and/or remodeling of a portion of the interior of the existing Senior Center building; and design, procurement and installation of furnishings, fixtures and equipment, plumbing, electrical, mechanical and/or other such installations associated with said construction, renovation and remodeling, as well as the tie-in and/or connection of same to existing fixtures, equipment, installations, lines and systems, as outlined in Exhibit A, attached hereto and incorporated herein by this reference. The Design-Build Project shall be more particularly described in a Request for Qualifications and Proposal for Design-Build Team Services to be prepared by the City and in the design concept, plans, specifications and scope of services to be prepared by the Design-Build consultant/contractor (the "Project Team") subsequently selected by the Project Review Board.

Section 3. Grant of License. Subject to the provisions of this Section, the County hereby grants to the City, the City's officers, employees, representatives, contractors, subcontractors, and City members of the Project Review Board a non-exclusive license (the "License") to enter the Property for the following purposes: (A) to enter and use those exterior portions of the Property as depicted as the shaded area on the site map attached hereto as Exhibit "A" and incorporated herein by reference, for all activities necessary for the performance of the Project, including but not limited to, site inspection, project management, construction work, storage of construction materials and equipment, and other related uses (the "Primary Project Area"); (B) to enter and use those interior portions of the Senior Center building where remodeling and/or renovation work shall be performed, as depicted as the cross-hatched area(s) in Exhibit "A"; and (C) to access those portions of the Senior Center and the Property where the addition's or adjacent structure's plumbing, electrical, mechanical, and other such installations shall tie into and/or otherwise be connected to existing plumbing, electrical, mechanical and/or other such installations, lines and systems, said areas to be determined by the Project Team (collectively, B and C may be referred to as the "Renovation Area").

Section 4. Term. The term of this Agreement shall commence upon its execution by all Parties. This Agreement shall terminate on the Acceptance Date or on December 31, 2017, whichever is later, or unless earlier terminated in accordance with this Agreement; provided, however, that the Parties may mutually agree in writing to extend the Term of this Agreement.

Section 5. City's Duties Concerning the Project. In addition to its responsibilities concerning the Property as set forth in Section 8 of this Agreement, the City shall undertake the following duties related to the Project:

- (a) Oversee and manage all aspects of the procurement process for the Design-Build Project, and ensure the process complies with all relevant laws and regulations as described in Section 10 of this Agreement;
- (b) Enter into appropriate construction/professional services contract(s) with the Project Team selected by the Project Review Board for the Project ("Contract");
 - (i) All proposals shall be submitted with itemized line items, in accordance with the requirements set forth in the RFQ/P;

(ii) Contracted Project Team shall submit schedule of values for itemized line items that correlates with construction progress payments, for review and approval, prior to issuance of Construction Phase Notice to Proceed;

(c) Oversee and manage the design and development phase of the Project;

(d) Perform the functions of Project construction manager, to work in collaboration with the Project Team, to ensure the expeditious performance of work on the Project.

(e) Perform all required interim and final inspections of the construction and renovation work performed on the Project.

Section 6. Project Review Board.

(a) The City and County Designated Representatives have designated their respective members of the Project Review Board as follows:

(i) City: Capital Program Manager; Senior Construction Manager; Building Official;

(ii) County: Ellie Wolfe, Department of Community and Senior Services, Michele Vega, Fifth Supervisorial District, Christine Borzaga, Fifth Supervisorial District and Kevin Webb, Chief Executive Office.

(b) The Project Review Board members shall work cooperatively to undertake their duties in an expeditious manner.

(c) The Project Review Board will be responsible for the following:

(i) Reviewing, approving and/or recommending modifications to the Request for Qualifications and Proposal for Design-Build Team Services to be prepared by the City;

(ii) Undertaking the evaluation of the submitted proposals and the selection of the Project Team;

(iii) Reviewing and approving the Project design concept, plans, specifications and scope of work. It is anticipated that design submittals for review by the Project Review Board will include a conceptual plan (30% design level), final plan specifications and estimate (90% PS&E design level), FFE submittal (1) and materials boards (1);

(iv) Reviewing and approving the Project Budget and any construction change order submittals. In the event a change order is submitted for a cost of \$10,000 or greater, the change order shall be subject to final written approval by the County designated representative or its designee. The change order may be denied by the County designated representative (or its designee) or modifications

to the change order scope of work may be issued by the County designated representative (or its designee).

(d) The City and County Designated Representatives may authorize the Project Review Board to undertake additional duties related to the Project by prior mutual written agreement.

Section 7. Operator's Obligations Concerning the Property. At all times during the term of this Agreement, the Operator shall be responsible for the following:

(a) Performing the ordinary repair and maintenance of all portions of the Senior Center building and the Property, except for maintenance of the Primary Project Area as provided in Section 8 of this Agreement;

(b) Operating the Senior Center and all programs, activities and services associated therewith;

(c) Maintaining and paying for all utilities and grounds maintenance;

(d) Coordinating with the City, its officers, employees, representatives, contractors and subcontractors to provide access to the Renovation Area as needed for performance of work related to the Project.

Section 8. City's Obligations Concerning the Property. At all times from the commencement of the Project construction and renovation work and the City's exercise of the License to enter and use the Primary Project Area and/or Renovation Area until the expiration or termination of this Agreement, the City shall be responsible for the following:

(a) Performing work in and maintaining the Primary Project Area in a manner and condition that protects the health and safety of the Operator's employees, volunteers, agents and representatives, any persons utilizing the programs, activities and/or services at the Senior Center and other guests, invitees or visitors of the Senior Center;

(b) Ensuring that the work in the Primary Project Area shall be performed in a manner that will minimize disruption, damage or inconvenience to other portions of the Property and/or to the programs, activities and services offered at the Senior Center.

(c) Coordinating with the Operator to schedule the performance of work in the Renovation Area at days and times and in a manner that will minimize disruption, damage or inconvenience to the Senior Center's programs, activities and services, and to the Operator's employees, volunteers, agents and representatives, any persons utilizing the Senior Center's programs, activities and/or services and other guests, invitees or visitors of the Senior Center.

Section 9. County Maximum Financial Obligation; Payment Procedure.

(a) The County's maximum financial obligation to the City for the Project shall not exceed one million, five hundred thousand dollars (\$1,500,000.00) (the "Project Funds"), unless the County grants prior written authorization for additional funds.

Notwithstanding the foregoing, if the County's Board of Supervisors or its delegee requests additional or modified work after approval of the design concept, plans, specifications and scope of services by the Project Review Board that will result in costs that exceed \$1,500,000, the County shall be responsible for obtaining and providing the funding for such additional or modified work. For purposes of this Section 9, Project costs include reimbursement for the City's costs associated with fulfilling the City's obligations under this Agreement, including, but not limited to, any permit, licensing and/or other approval-related fees and City staff time in conducting interim and final inspections of the Project ("City costs"). In no event shall the City be obligated to pay any portion of the Project Funds. City agrees to refund County any unused portion of the Project Funds provided by County under this Agreement upon completion of this Project or termination of this Agreement.

(b) The County shall transfer \$1,500,000 to the City within sixty (60) days of executing this Agreement and receiving an invoice from the City. Such funds shall be used by the City for design, engineering, permits, construction, inspection furniture, fixtures, and equipment expenses incurred by City under this Agreement. Prior to payment by City to its contractors, the City shall submit to the County designated representative copies of invoices and supportive documentation. Upon its review, the County designated representative shall authorize payment within 10 days of receiving the invoice, as long as the invoiced amount is consistent with the initial schedule of values. If the invoiced amount is inconsistent with the initial schedule of values, the County designated representative may request additional documentation and/or negotiate a modified invoice amount and the approval process may exceed 10 days. It is expressly understood between the Parties that the City shall not be deemed in breach of its performance obligations set forth in this Agreement for any delay in progress of the Project as a result of County's review of invoices, nor shall City be liable or responsible for any damages, claims or costs incurred as a result of such delay. The City shall provide to the County designated representative and the Project Review Board monthly project accounting reports documenting the invoices and amounts previously paid by City to its contractors, and any outstanding invoices as well as a projected final balance. The City shall incur its own costs for administrative services related to the Project.

(c) The City shall maintain all records of its costs and disbursements for the Project, and shall make such records available for County inspection and audit, for a period of five (5) years from the expiration or termination of this Agreement. If an audit reveals expenditures that cannot be verified, were paid in violation of the terms of this Agreement, or were for work performed outside the approved scope of work, the City agrees to reimburse the County for any such disallowed expenditure. The City may, within thirty (30) business days of notification from the County of its audit findings, dispute such findings in writing to the County and provide additional records and/or documentation to support its cost claims. The County has the sole discretion to make a determination as to the validity of the questioned expenditures.

Section 10. Compliance with Laws. The Project procurement process, the City's use of the Property pursuant to the License, and all work to be performed on the Project shall be in accordance with any and all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Los Angeles and the City of Lancaster, including but not limited to applicable provisions of the California Public Contracts Code, California Labor Code and the California Building Standards.

Section 11. CEQA Exemption. The Project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) and Class 1, Subsection (d) of the County of Los Angeles Environmental Document Reporting Procedures and Guidelines.

Section 12. Indemnification.

(a) The City shall indemnify, defend and hold harmless the County, its elected officials, trustees, officers, agents, volunteers, and employees from and against any and all liability, loss, expense (including reasonable attorney's fees), and/or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the sole active negligence or willful misconduct of the City, its elected officials, officers, employees, contractors and/or consultants.

(b) The County shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, contractors and/or consultants from and against any and all liability, loss, expense (including reasonable attorney's fees), and/or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the sole active negligence or willful misconduct of the County, its trustees, officers, agents or employees, its contractors and/or consultants. Nothing in this Agreement shall be construed to waive, limit, or supersede any of the County's rights or immunities under the California Labor Code, including but not limited to a waiver pursuant to Labor Code section 3864.

(c) The City shall require the design-build entity selected for the Project to indemnify, defend and hold the County, its Special Districts, the City and the City's and County's elected and appointed officers, employees, agents and/or representatives (collectively for purposes of this subsection, "Indemnitees"), harmless from and against all liability, including, but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the negligent acts or omissions, recklessness, or willful misconduct of the design-build entity. To the extent permitted by Civil Code Section 2782.8, this indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The design-build entity's indemnification obligation applies to Indemnitees' active as well as passive negligence but does not apply to Indemnitees' "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.8.

(d) The indemnification provisions of this section shall survive the expiration or termination of this Agreement.

Section 13. Termination.

(a) This Agreement may be terminated by the City or County for the convenience of either party. This Agreement may also be terminated by either party as a result of the default by the other party of its obligations under this Agreement. If terminated by City for convenience, City shall provide a full accounting of all funds expended pursuant to this Agreement within sixty (60) days following termination. Any unexpended Project funds shall be returned to the County within thirty (30) days following termination. All outstanding Project costs and expenses paid or incurred by the City shall be reimbursed within thirty (30) days following termination.

(b) Notice of termination shall be given in writing and shall be complete when delivered to the recipient (whether accepted or rejected) after deposit in the United States mail in a sealed envelope with postage paid and directed to the City or County at the address in Section 24 of this Agreement.

Section 14. Default. Either Party may terminate this Agreement if the other Party is in default with the terms and conditions herein. Notwithstanding any provision to the contrary, a Party shall not be in default and the Agreement shall not terminate if: (a) the Party cures the default within the thirty (30) days after notice is given, or (b) the default cannot reasonably be cured within the thirty (30) days after notice is given, but the Party reasonably commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default to completion. In the event of termination, Project funds shall be returned or reimbursed, as applicable, in accordance with Section 13.

Section 15. Waiver.

(a) Any waiver by either party or any breach of any one or more of the covenants, terms and conditions contained herein shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, term or condition, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, terms or condition be construed as in any manner changing the terms of this Agreement or stopping either party from enforcing the full provisions hereof.

(b) No option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given either party by this Agreement shall be cumulative.

Section 16. Conflict Of Interest. No County employee whose position in County service enables him/her to influence obtaining or awarding any lease, license or permit, and no spouse or economic dependent of such employee, shall be employed in any capacity by the City herein, or have any other direct or indirect financial interest resulting from this Agreement or the Project.

Section 17. Interpretation. Unless the context of this Agreement clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the

masculine, feminine and neuter genders shall be deemed to include the others; (iii) “or” is not exclusive; and (iv) “includes” and “including” are not limiting.

Section 18. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

Section 19. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and no addition or modification of any terms or provisions shall be effective unless set forth in writing, signed by both the City and County. In the event of any conflict between any provision of this Agreement and any exhibit made a part thereof, the provisions of this Agreement shall govern.

Section 20. Construction of Terms. This Agreement is jointly prepared by the County and the City. Therefore, this Agreement shall not be construed against any party on the basis such party drafted this Agreement or any provision within it.

Section 21. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then upon written agreement of the parties’ representatives, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

Section 22. Force Majeure. The respective duties and obligations of the parties pursuant to this Agreement shall be suspended while and so long as performance is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

Section 23. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be original, but altogether shall constitute but one and the same agreement, and it is also understood and agreed that separate counterparts of this agreement may be separately executed by the County and City, all with the same full force and effect as though the same counterpart has been executed simultaneously by both the County and City.

Section 24. Signature Authenticity Clause. Each individual executing this Agreement hereby personally covenants, guarantees, and warrants that he/she has the power and authority to obligate his/her respective party to the terms and conditions of this Agreement.

Section 25. Notices. Any notice required to be given under the terms of this Agreement or any law applicable thereto may be placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, and deposited in a post office, mailbox, sub post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service. The address to be used for any notice served by mail upon the City shall be:

Mark V. Bozigian City Manager
City of Lancaster
44933 Fern Avenue
Lancaster, CA, 93534

or such other place as may hereinafter be designated in writing to the County by the City.
Notice served by mail upon the County shall be addressed to:

Clerk of the Board of Supervisors
Kenneth Hahn Hall of Administration, Room 383
500 West Temple Street
Los Angeles, CA 90012

With copies to:

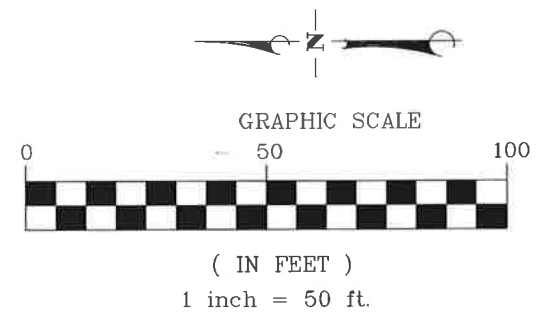
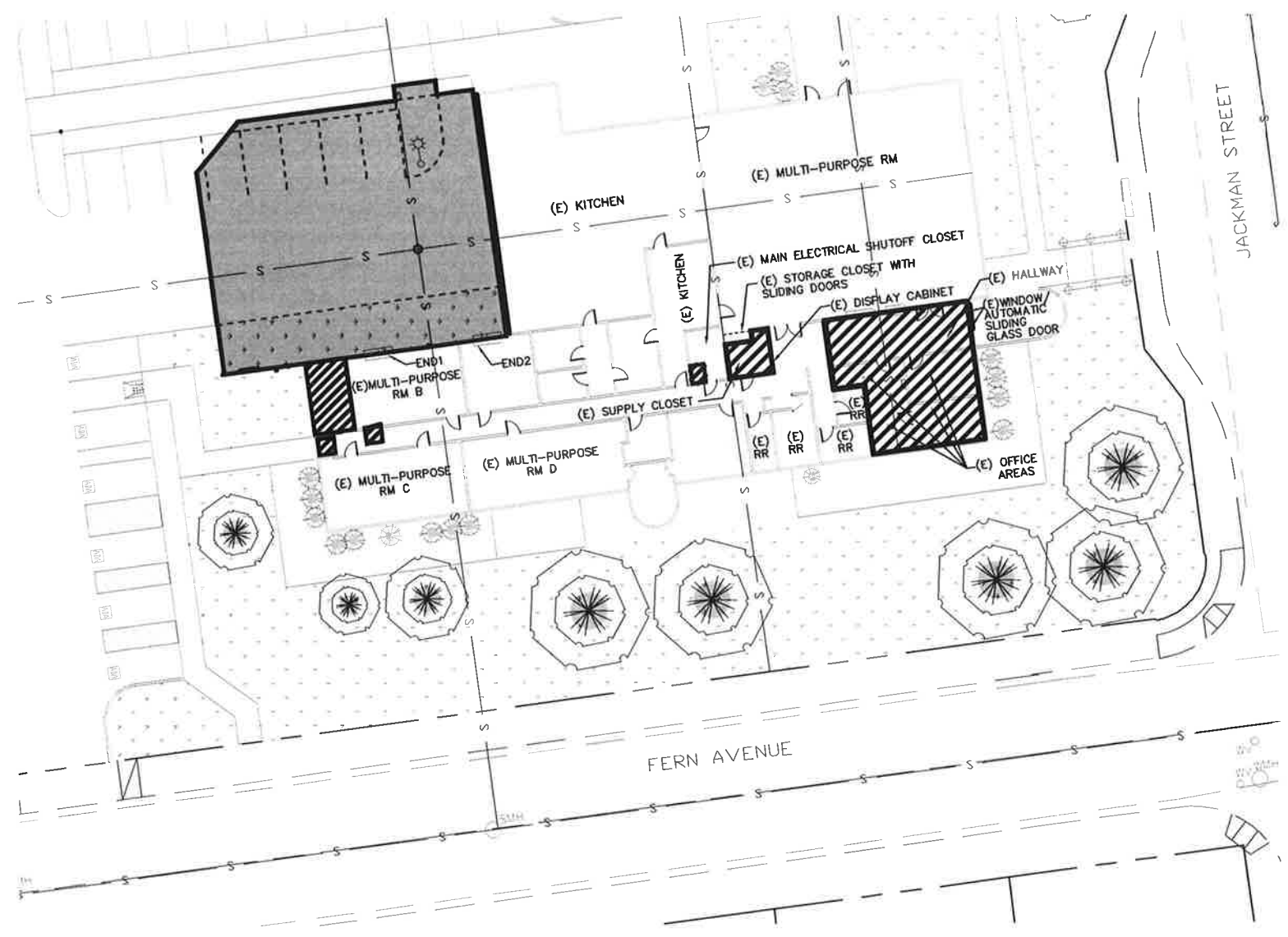
County of Los Angeles
Chief Executive Office
Attention: Director of Real Estate
Kenneth Hahn Hall of Administration, Room 754
500 West Temple Street
Los Angeles, CA 90012

or such other place as may hereinafter be designated in writing to the City by the County.
Service by mail shall be deemed complete upon deposit in the above-mentioned manner.
The County and City may, in writing, authorize their respective on-site representative to
accept any or all of the aforementioned notices by personal delivery or service.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

<p>CITY OF LANCASTER</p> <p>By _____ MARK V. BOZIGIAN City Manager</p> <p>Dated: _____</p> <hr/> <p>ATTEST:</p> <p>_____, City Clerk</p> <p>By _____</p> <hr/> <p>APPROVED AS TO FORM:</p> <p>_____, City Attorney</p> <p>By _____</p>	<p>COUNTY OF LOS ANGELES</p> <p>By _____ SACHI A. HAMAI Chief Executive Officer</p> <p>Dated: _____</p> <hr/> <p>ATTEST:</p> <p>Dean C. Logan Registrar-Recorder/County Clerk</p> <p>By _____ Deputy</p> <hr/> <p>APPROVED AS TO FORM:</p> <p>Mary C. Wickham County Counsel</p> <p>By _____ Deputy County Counsel</p>
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EXHIBIT "A"



SYMBOL AND HATCHING LEGEND

-  PROPOSED ADDITION AREA
-  PROPOSED INTERIOR RENEVATION AREA