



County of San Bernardino

F A S

STANDARD CONTRACT

SECOND AMENDMENT

FOR COUNTY USE ONLY

<input type="checkbox"/> New	Vendor Code		<b>SC</b>	Dept.	<b>A</b>	Contract Number			
<input checked="" type="checkbox"/> Change						<b>00-824 A-2</b>			
<input type="checkbox"/> Cancel									
County Department				Dept.	Orgn.	Contractor's License No.			
Real Estate Services Department									
County Department Contract Representative				Telephone		Total Contract Amount			
David H. Slaughter, Director				(909) 387-7813		\$			
Contract Type									
<input type="checkbox"/> Revenue		<input type="checkbox"/> Encumbered		<input type="checkbox"/> Unencumbered		<input type="checkbox"/> Other:			
If not encumbered or revenue contract type, provide reason:									
Commodity Code		Contract Start Date		Contract End Date		Original Amount	Amendment Amount		
						\$	\$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount			
					<b>57001487</b>	\$			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
						\$			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
						\$			
Project Name				Estimated Payment Total by Fiscal Year					
<b>Twentynine Palms - TAD</b>				FY	Amount	I/D	FY	Amount	I/D
<b>73629 Sun Valley Dr.</b>									
Contract Type: 5A									

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name Sun Valley Partners, Inc. hereinafter called LANDLORD  
 Address 7340 Hopi Trail  
Yucca Valley, CA 92284  
 Telephone (760) 365-7170 Federal ID No. or Social Security No. \_\_\_\_\_

**IT IS HEREBY AGREED AS FOLLOWS:**

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WHEREAS, the COUNTY and LANDLORD have previously entered into a Lease Agreement, Contract No. 00-824, wherein LANDLORD agreed to lease certain property to the COUNTY; and,

WHEREAS, the COUNTY and LANDLORD now desire to amend the Lease Agreement, Contract No. 00-824, to exercise the first of two five-years options to extend the term through August 31, 2013; and,

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree the Lease Agreement, Contract No. 00-824, is amended as follows:

1. CHANGE the business name of the LANDLORD from "...Morrison & Herd Construction Company..." to read "...Sun Valley Partners, Inc...".

**Auditor/Controller-Recorder Use Only**

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

2. CHANGE the dates in Paragraph 3, TERM, to read as follows: "...This lease shall commence on September 1, 2001... and end August 31, 2013...".

3. DELETE the existing rent schedule in Paragraph 4, RENT, and SUBSTITUTE therefore the following as a new rent schedule Paragraph 4, RENT:

April 1, 2009 thru August 31, 2010 – monthly payments of \$8,090.00 (\$1.72/sq.ft.).  
Sept. 1, 2010 thru August 31, 2011 – monthly payments of \$8,373.00 (\$1.78/sq.ft.).  
Sept. 1, 2011 thru August 31, 2012 – monthly payments of \$8,655.00 (\$1.84/sq.ft.).  
Sept. 1, 2012 thru August 31, 2013 – monthly payments of \$8,937.00 (\$1.90/sq.ft.).

4. DELETE the existing Paragraph 4.b. and SUBSTITUTE therefore the following as a new Paragraph 4.b:

4.b. Rent for any partial month shall be prorated based on the actual number of days of the month. LANDLORD shall accept all rent and other payments from COUNTY under this Lease via electronic funds transfer (EFT) directly deposited into the LANDLORD's designated checking or other bank account. LANDLORD shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

5. DELETE the existing Paragraph 17, HOLD HARMLESS, and SUBSTITUTE therefore the following as a new Paragraph 17:

17. **HOLD HARMLESS:** The LANDLORD agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The LANDLORD's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civic Code Section 2782.

6. DELETE the existing Paragraph 18, INSURANCE, and SUBSTITUTE therefore the following as a new Paragraph 18, INSURANCE:

18. **INSURANCE:**

a. COUNTY is a self-insured public entity for purposes of professional liability, general liability and workers' compensation.

b. The LANDLORD agrees to provide insurance set forth in accordance with the requirements herein. If the LANDLORD uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the LANDLORD agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the lease hereunder.

Without in anyway affecting the indemnity herein provided and in addition thereto, the LANDLORD shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

1. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the LANDLORD and all risks to such persons under this lease agreement.

If LANDLORD has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Director of Risk Management.

If, LANDLORD is a non-profit corporation, organized under California or Federal law, volunteers for LANDLORD are required to be covered by Workers' Compensation insurance.

2. Commercial/General Liability Insurance – The LANDLORD shall carry General Liability Insurance covering all operations performed by or on behalf of the LANDLORD providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

3. Commercial Property Insurance providing all risk coverage for the leased premises, building, fixtures, equipment and all property constituting a part of the premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

4. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the LANDLORD is transporting one or more non-employee passengers in the use of this lease, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the LANDLORD owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

5. Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

c. If LANDLORD performs any construction of the Premises, LANDLORD shall also procure and maintain coverages as follows:

1. For construction contracts for projects over One Million Dollars (\$1,000,000) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars in General Liability and Auto Liability coverage.

2. For construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

3. For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (10,000,000) in General Liability and Auto Liability coverage.

4. Subcontractor Insurance Requirements. The LANDLORD agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this contract to provide insurance covering the contracted operation with the basic requirements for all contracts in B1 and the insurance sections for all contracts in B2, (including waiver of subrogation rights) and naming the COUNTY as an additional insured. The LANDLORD agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

5. Course of Construction/Installation (Builder's Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

7. CHANGE the numbers of existing Paragraphs 19 through 48 to read 20 through 49 sequentially.

8. ADD a new Paragraph 19, INSURANCE REQUIREMENTS, which shall read as follows:

19. **INSURANCE REQUIREMENTS:**

a. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this lease hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

b. Waiver of Subrogation Rights – The LANDLORD shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the LANDLORD and LANDLORD's employees or agents from waiving the right of subrogation prior to a loss or claim. The LANDLORD hereby waives all rights of subrogation against the COUNTY.

c. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

d. Severability of Interests – The LANDLORD agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the LANDLORD and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

e. Proof of Coverage – The LANDLORD shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RES D) administering the lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RES D, and LANDLORD shall maintain such insurance from the time LANDLORD commences use under the lease hereunder until the end of the period of the lease. Within fifteen (15) days of the commencement of this contract, the LANDLORD shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

f. Acceptability of Insurance Carrier – Unless otherwise approved by the County Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.

g. Insurance Review – Insurance requirements are subject to periodic review by the COUNTY. The County’s Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the County’s Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, the County’s Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this lease. LANDLORD agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RES D or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RES D or the COUNTY.

h. Failure to Procure Insurance. All insurance required must be maintained in force at all times by LANDLORD. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the COUNTY to give notice to immediately suspend all LANDLORD’s business activities on the Premises. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this agreement, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by LANDLORD to COUNTY upon demand but only for the pro rata period of non-compliance.

i. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with LANDLORD in LANDLORD's operations.

j. The LANDLORD agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of this lease to provide insurance covering such use with the basic requirements

and naming the COUNTY as additional insured. LICENSEE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

9. DELETE that portion of Paragraph 26, NOTICES, LANDLORD's address, and SUBSTITUTE therefore the following as a new LANDLORD's address:

LANDLORD's address: Sun Valley Partners, Inc.  
7340 Hopi Trail  
Yucca Valley, CA 92284

10. DELETE the existing Paragraph 40, JURY TRIAL WAIVER, and SUBSTITUTE therefore the following "Reserved".

11. DELETE the existing Paragraph 45, COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM, and SUBSTITUE therefore the following as a new Paragraph 45, FORMER COUNTY OFFICIALS:

45. **FORMER COUNTY OFFICIALS;** LANDLORD agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent LANDLORD. The information provided includes a list of former COUNTY administrative officials, principals, partners, associates, or members of the business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation or your business. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "C", List of Former County Officials.)"

12. ADD Paragraph 49, **HAZARDOUS SUBSTANCES**, which shall read as follows:

49. **HAZARDOUS SUBSTANCES:**

a. LANDLORD hereby represents and warrants that, to the best of LANDLORD's knowledge, information and belief: (i) the Premises have not been exposed to Hazardous Substances and are presently free of all Hazardous Substances; (ii) neither the LANDLORD nor any of the other current tenants, if any, on the property of which the Premises forms a part is in violation or subject to an existing, pending or threatened investigation by any governmental authority under any applicable federal, state or local law, regulation, ordinance or other legislation pertaining to air, water, or soil quality or the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances; (iii) any handling, transportation, storage, treatment or use of toxic or Hazardous Substances to date has been in compliance with applicable laws; and (iv) no reportable use has occurred on the Premises to date, and the soil, groundwater and vapor on or under the Premises is free of Hazardous Substances as of the Commencement Date.

b. LANDLORD shall indemnify, protect, defend and hold COUNTY, its agents and employees and the Premises, harmless from and against any and all losses and/or damages, liabilities, judgments, costs, claims, expenses, penalties, including attorneys' and consultant's fees, arising out of or involving the existence of any Hazardous Substances located in, about or under the Premises prior to the Commencement Date of this Lease. Additionally, the issuance of an order by any governmental authority directing the LANDLORD or any of LANDLORD's other tenants or licensees on the property of which the Premises forms a part to cease and desist any illegal action in connection with a Hazardous Substance, or to remediate a contaminated condition caused by the LANDLORD or any person acting under LANDLORD's direct control and authority is a breach of this

Contract, and LANDLORD shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by COUNTY in connection with or in response to such order. LANDLORD's obligations under this paragraph shall include, but shall not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by COUNTY, and the cost of investigation, removal, remediation, restoration and/or abatement thereof. LANDLORD's obligations under this provision shall survive the expiration or early termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and LANDLORD shall release LANDLORD from its obligations under this Lease with regard to Hazardous Substances unless specifically agreed to by COUNTY in writing.

c. For the purposes of this paragraph, the following definitions shall apply:

(1) "Hazardous Substance," as used in this Lease, shall mean any product, substance or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of LANDLORD or COUNTY under any applicable statute or common law theory.

(2) "Reportable use" shall mean (i) the installation or use of any above- or below-ground storage tank; (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties.

(3) The term "applicable requirements" shall be deemed to refer to all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances.

13. ADD Paragraph 50, PUBLIC RECORDS DISCLOSURE, which shall read as follows:

50. **PUBLIC RECORDS DISCLOSURE:** All information received by the COUNTY from the LANDLORD or any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). LANDLORD understands that although all materials received by the COUNTY in connection with this Lease are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a LANDLORD has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the LANDLORD of the request and shall thereafter disclose the requested information unless the LANDLORD, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the COUNTY harmless in any/all actions brought to require disclosure. LANDLORD waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify LANDLORD of any such disclosure request and/or releases any information concerning this Lease received from the LANDLORD or any other source.

14. ADD Paragraph 51, CONDEMNATION, which shall read as follows:

51. **CONDEMNATION:** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called “condemnation”), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the portion of the Common Areas or that portion of the Premises designated for COUNTY’s parking, is taken by condemnation, COUNTY may, at COUNTY’s option, to be exercised in writing within thirty (30) days after LANDLORD shall have given COUNTY written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If COUNTY does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of rent shall occur if the condemnation does not apply to any portion of the Premises. COUNTY shall be entitled to receive the following amounts of any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power: (a) one hundred percent (100%) of any amount attributable to any excess of the market value of the Premises for the remainder of the Lease Term over the present value as of the Termination Date of the Rent payable for the remainder of the Lease Term (commonly referred to as the “bonus value” of the Lease); and (b) COUNTY shall have the right to make a separate claim in the Condemnation proceeding for: (i) The taking of the amortized or undepreciated value of any trade fixtures or leasehold improvements owned by COUNTY that COUNTY has the right to remove at the end of the Lease term and that COUNTY elects not to remove; (ii) Reasonable removal and relocation costs for any trade fixtures or leasehold improvements that COUNTY has the right to remove and elects to remove (if Condemnor approves of the removal); (iii) Loss of goodwill; (iv) Relocation costs under Government Code section 7262, the claim for which COUNTY may pursue by separate action independent of this Lease; and (v) Any other amount in addition to the foregoing that the COUNTY is allowed under condemnation law. COUNTY shall have the right to negotiate directly with Condemnor for the recovery of the portion of the Award that COUNTY is entitled to under **subparagraph (b)** of this paragraph. In the event that this Lease is not terminated by reason of such condemnation, LANDLORD shall repair any damage to the Premises caused by such condemnation authority pursuant to **Paragraph 13, MAINTENANCE**, and **Paragraph 21, DESTRUCTION OF PREMISES**.

15. ADD Paragraph 52, MATERIAL MISREPRESENTATION, which shall read as follows:

52. **MATERIAL MISREPRESENTATION:** If during the course of the administration of this lease, the COUNTY determines that the LANDLORD has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Lease may be immediately terminated. If this lease is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

16. ADD Paragraph 53, INTERPRETATIONS, which shall read as follows:

53. **INTERPRETATIONS:** As the Lease was jointly prepared by both parties, the language in all parts of this Lease shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.”

17. All other provision and terms of the Lease Agreement, Contract No. 00-824, as previously amended, shall remain the same and are hereby incorporated by referenced.

**END OF SECOND AMENDMENT.**

COUNTY OF SAN BERNARDINO

Sun Valley Partners, Inc.

*(Print or type name of corporation, company, contractor, etc.)*

▶ \_\_\_\_\_  
Gary C. Ovitt, Chairman, Board of Supervisors

By ▶ \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Dated: \_\_\_\_\_

Name Ken Morrison

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Title Partner

Dena M. Smith  
Clerk of the Board of Supervisors  
of the County of San Bernardino

Dated: \_\_\_\_\_

By \_\_\_\_\_  
*Deputy*

By \_\_\_\_\_

Name Frank Heard

Title Partner

Dated: \_\_\_\_\_

Approved as to Legal Form

Reviewed by Contract Compliance

Presented to BOS for Signature

▶ \_\_\_\_\_  
Alan Green, Deputy County Counsel

▶ \_\_\_\_\_

▶ \_\_\_\_\_  
Department Head

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_