

LOCATION AGREEMENT

between

**County of San Bernardino,
a political subdivision of the State of California**

and

TEC Equipment, Inc.

LOCATION AGREEMENT

ARTICLE 1 PARTIES AND EFFECTIVE DATE

1.1 **Parties.** This Location Agreement (“**Location Agreement**” or “**Agreement**”) is entered into by and between (i) County of San Bernardino, a political subdivision of the State of California (“**County**”) and (ii), TEC Equipment, Inc., an Oregon Corporation (“**Company**”). Company which will have a principal location at the northeast corner of Cherry and Randall Avenues located in an unincorporated part of San Bernardino County, California (the “**TEC-SB Facility**” or the “**Facility**”). County’s offices are located at 385 North Arrowhead Avenue, San Bernardino, California 92415.

1.1.1 County and Company are sometimes individually referred to herein as “**Party**” and collectively as “**Parties**.”

1.1.2 This Location Agreement shall be binding upon and shall inure to the benefit of the County and Company (and its Affiliated Companies) and their respective successors, heirs, and assigns.

1.2 **Effective Date.** This Location Agreement will become effective on the date on which approved by the Board of Supervisors of the County (the “**Effective Date**”).

ARTICLE 2 RECITALS

2.1 Company intends to establish and operate a business engaged in retail sales and repair of trucks located at the TEC-SB Facility located in the unincorporated area of the County of San Bernardino. Company also intends to operate a Buying Company and/or self-accrue use tax, for purchase of fixed assets and consumables to be used at the Facility.

2.2 One or more Affiliated Companies may also utilize the TEC-SB Facility to engage in sales and related business activities for such Affiliated Companies, and may participate in this Agreement.

2.3. The County desires to incentivize the Company and Affiliated Companies to locate such business functions in the County. County has agreed to pay inducements to the Company, and if applicable, to Affiliated Companies, measured by a percentage of the County Sales Tax Revenues (as defined herein) to be generated for the County by such companies in the County, as more fully described herein.

2.4. The County, in consideration of the additional County Sales Tax Revenues to be paid by the Company and, if applicable, Affiliated Companies, which will benefit the County, which benefits the County would not otherwise realize, desires to provide County Payments (as defined herein) to Company as incentive for locating such business functions in the unincorporated part of the County.

2.5. County Payments for each Fiscal Year will be an amount paid from any legally available source of funds and shall be calculated as a percentage of the County Sales Tax Revenues (as defined herein) generated in the County by Company or Affiliated Companies and received by the County.

2.6. The location of the Company, and if applicable, Affiliated Companies, in the County will provide significant public benefits to the County, in that the additional County Sales Tax Revenues to be paid by Company and, if applicable, Affiliated Companies, represent a substantial and significant source of additional public revenue for the County, which may be used by the County for the funding of necessary public services and facilities, including, without limitation, public safety services and facilities.

2.7. The Company and County wish to enter into this Agreement for the purposes described above.

ARTICLE 3 DEFINITIONS

3.1 **Definitions.** Unless, otherwise defined herein or the context otherwise requires, the terms defined in this Article 3 shall for all purposes hereto, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein have the meanings defined herein. The following definitions are to be equally applicable to both the singular and plural forms of any of the terms defined herein.

3.1.1 **"Affiliated Company"** means a corporation, limited liability company, partnership, trust or other business entity controlling, controlled by or under common control with the Company, and may include a Buying Company. For purposes of the foregoing, "control" means the power, directly or indirectly, by voting rights, contract or otherwise, to direct or cause the direction of the management or policies of a person or entity. An Affiliated Company shall be deemed to have elected to become a Party hereto and this Agreement shall be deemed applicable to such Affiliated Company (an "applicable Affiliated Company") (in which event such Affiliated Company shall be entitled to the same benefits and shall be subject to the same duties and obligations granted to and imposed upon Company pursuant to this Agreement) upon delivery by Company to County, and the acknowledgement of receipt by the County Chief Executive Officer, of a written notice setting forth (i) the identity of such Affiliated Company, (ii) a description of the sales activities (or in the case of a Buying Company, the purchasing and sales activities) of such Affiliated Company which shall be deemed conducted by such Affiliated Company in the TEC-SB Facility and which shall be deemed covered by this Agreement, and (iii) the effective date upon which such Affiliated Company shall have been deemed to have become a Party hereto. After an Affiliated Company has become a Party to this Agreement as provided above, all references to "Company" in this Agreement shall be deemed to include such applicable Affiliated Company (unless and except to the extent the context requires otherwise).

3.1.2 **"Bradley-Burns Uniform Sales and Use Tax Law"** means Part 1.5 of Division 2 of the California Revenue and Taxation Code, commencing with Section 7200, and any successor law thereto, which provides for the County's share of the Sales Tax. The County share is currently 1.0%, less the 0.25% deducted by the State of California for the "triple-flip." The County share does not include the 0.25% which is allocated to local transportation funds. Based upon these exclusions, the County share is currently 0.75%, unless such portion is offset by other means as described in the last paragraph of Section 3.1.6.

3.1.3 **"Business Day"** means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State are closed or days on which County offices are closed.

3.1.4 **“Buying Company”** means a buying company as defined under section (h) of SBE Regulation 1699. **“Applicable Buying Company”** means any Buying Company which is an Affiliated Company and which has become a Party to this Agreement pursuant to Section 3.1.1.

3.1.5 **“County Payment”** means, subject to 4.2.1 (iii) hereof, for each Fiscal Quarter in which Company engages in Retail Sales in the unincorporated part of the County and is generating County Sales Tax Revenue, the following amount:

For all Fiscal Quarters commencing with the First Fiscal Quarter and throughout the Term of this Agreement, an amount equal to forty percent (40%) of each dollar of County Sales Tax Revenue paid by Company and any applicable Affiliated Company and any Buying Company actually received by the County.

3.1.6 **“County Sales Tax Revenues”** means the total tax revenues paid by Company and any applicable Affiliated Company upon taxable sales and uses attributable to the operations of the Company and/or any applicable Affiliated Company, and any Buying Company operations or the self-accrual of use tax at and from the TEC-SB Facility and/or elsewhere in the unincorporated areas of the County, and ultimately remitted by the SBE to the County, pursuant to the Bradley-Burns Uniform Sales and Use Tax Law. The County Sales Tax Revenues shall not include: (i) Penalty Assessments or late fees, (ii) that portion of any Sales Tax levied by, collected for, and allocated to the State of California, a district or any entity, including any allocations from a statewide or countywide pool, (iii) any administrative fee charged by the State Board of Equalization, (iv) that portion of any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal or state law, rule, or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Term, or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/ or pledged to a specific use. County Sales Tax Revenues do not include any sales or other tax revenues which are not included in the Bradley-Burns Uniform Sales and Use Tax Law, such as, but not limited to, Proposition 172 sales tax revenue.

Without limiting the generality of the foregoing, County and Company acknowledge that as of the Effective Date of this Agreement, the California Legislature has adopted certain legislation commonly known as the “triple-flip” which diverts to the State of California one-quarter (1/4) of the local sales and use tax revenue which would otherwise be payable to the County pursuant to the Bradley-Burns Uniform Sales and Use Tax Law as it existed prior to enactment of the above-referenced legislation. County and Company acknowledge that such legislation will cause a reduction of approximately twenty-five percent (25%) of the County Sales Tax Revenues actually received by the County and that such reduction will cause a corresponding effect, of reducing the amounts received by the County, and therefore payable to the Company as County Payments under this Agreement. Furthermore, County acknowledges that it is possible that the legislation described above, or some alternative legislation (whether or not similar to the “triple-flip”), may be enacted and become effective during one or more subsequent years during the Term and may materially and negatively impact the amount of County Sales Tax Revenues and, accordingly, County Payments. County does not make any representation, warranty or commitment concerning the future actions of the California Legislature with respect to the allocation of Sales Taxes or “triple flip payments” to the County. Company agrees that it is undertaking its obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of such legislation and its resultant adverse impact on County Payments. Conversely, County acknowledges that such

existing legislation may be subsequently amended or rescinded, and/or new legislation subsequently enacted, which could have the effect of increasing the amount of County Sales Tax Revenues under the Bradley-Burns Sales and Use Tax (only if adopted by County ordinance) and, accordingly, County Payments.

The foregoing paragraph notwithstanding, the County acknowledges that the California Legislature has provided the “triple-flip” payment and in the future, may provide for the payment to the County of other revenues for the purpose of offsetting any losses in County Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. The County agrees that the Legislature has already provided the “triple-flip” payment and in the future, should the California Legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any County Payments which may become due to Company hereunder, any such offsetting revenues which are: (i) intended to offset the loss of County Sales Tax Revenues to the County, (ii) actually received by the County, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California entities, will be deemed to be “County Sales Tax Revenues” within the meaning of this Agreement.

3.1.7 “**Effective Date**” shall have the meaning set forth in Section 1.2.

3.1.8 “**Enforced Delays**” shall have the meaning set forth in Section 4.22

3.1.9 “**First Fiscal Quarter**” means the first Fiscal Quarter (or if applicable, a partial Fiscal Quarter) commencing after the Effective Date of this Agreement and after Company or an applicable Affiliated Company or Buying Company has paid an aggregate amount of County Sales or Use Tax Revenue that equals or exceeds Five Hundred Thousand Dollars (\$500,000) since the Effective Date. As an example, if the Effective Date is February 1, but Company has paid an aggregate of \$600,000 of County Sales Tax or Use Revenues since the Effective Date and prior to the period ending on March 31, the First Fiscal Quarter shall be deemed to be the partial fiscal quarter commencing on February 1 and ending on March 31.

3.1.10 “**Fiscal Quarter**” means one calendar year quarter within the Term and commencing on January 1, April 1, July 1, or October 1, and ending on, as applicable, the immediately following March 31st, June 30th, September 30th, or December 31st; provided that the First Fiscal Quarter may be a partial Fiscal Quarter as defined in 3.1.9 hereof. As an example, the Fiscal Quarter commencing January 1st shall end on the immediately following March 31st, the Fiscal Quarter commencing on April 1st shall end on the immediately following June 30th, and so on.

3.1.11 “**Fiscal Year**” means July 1 through June 30.

3.1.12 “**Location Agreement**” shall have the meaning set forth in Section 1.1.

3.1.13 “**Penalty Assessments**” means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of sales or use tax and which are levied, assessed or otherwise collected from Company.

3.1.14 “**Retail Sales**” means all sales of the Buying Company and all sales of the Company of tangible personal property to any person or entity which is subject to the Sales and Use Tax Law and which generates County Sales Tax Revenues. It shall also mean all self-accrual of use tax on purchases of tangible personal property for use at the Facility.

3.1.15 “**SBE**” means the California State Board of Equalization, and any successor agency.

3.1.16 “**Sales and Use Tax Law**” means (i) Part 1 of Division 2 of the California Revenue and Taxation Code, commencing with Section 6001, and any successor law thereto, (ii) any legislation allowing the County or other public agency with jurisdiction in the County to levy any form of sales and use tax on the operations of Company, any applicable Affiliated Company and Buying Company and (iii) regulations of the SBE and other binding rulings and interpretations relating to (i) and (ii) hereof.

3.1.17 “**Sales and Use Tax**” means all sales and use taxes levied under the authority of the California Sales and Use Tax Law, excluding any Sales or Use Tax that is to be refunded to Company because of an overpayment of Sales or Use Tax.

3.1.18 “**Term**” shall mean that period commencing as of the First Fiscal Quarter and ending as of the last date of the fortieth (40th) consecutive Fiscal Quarter thereafter, unless earlier terminated or extended as provided by this Agreement.

ARTICLE 4 GENERAL TERMS

4.1 **Location and Operation of Company within County.** Company has agreed to locate its businesses as described in Section 2.1 hereof in the TEC-SB Facility, which is located in an unincorporated part of the County and agrees to continue to operate in such Facility until this Agreement is terminated by either Party as provided in Section 4.9 hereof, subject to Section 4.1.2 hereof.

4.1.1 Company will use commercially reasonable efforts to obtain and maintain a seller’s permit from the SBE for the retail operations and any Buying Company operations to take place at the Facility. Subject to Section 4.1.2, Company agrees to use commercially reasonable efforts to conduct its business so that the place of sale for all Retail Sales made by the Company and the Buying Company in [California] during the term of this Agreement will be deemed to have been made in the unincorporated part of the County, pursuant to the Sales and Use Tax Law. Subject to Section 4.1.2, in all sales reports filed by Company with the SBE, relating to Retail Sales conducted from the TEC-SB Facility, where such a designation is permitted or required under the Sales and Use Tax Law, Company shall specify the unincorporated part of the County as the place of sale for all such Retail Sales.

4.1.2 Notwithstanding anything to the contrary contained in this Agreement, nothing contained herein shall be deemed to (i) obligate Company to continuously operate a business which generates Retail Sales from the TEC-SB Facility or elsewhere in the County; or (ii) preclude or limit the right, power and authority of Company to make and implement decisions which it deems to be in the best interests of the Company, including without limitation, (a) the establishment of other sales offices (whether within or outside of the State of California) and/or (b) the shifting of sales activities from the TEC-SB Facility to any such other facilities, and in such event, to cause such other facilities to be designated as the place of sale for Retail Sales which are generated from such other facilities.

4.2 **Payment of the County Payment.** As consideration for Company’s continued location and operation at the TEC-SB Facility, as described in Section 4.1 above, County shall pay Company the County Payment. In addition, in the event it is determined that the TEC-SB

Facility is the point of sale for Retail Sales activities of any Affiliated Companies during the term of this Agreement, the term “**County Sales Tax Revenues**” will be deemed to include County Sales Tax Revenues derived from taxable sales and uses attributable to the operations of such Affiliated Companies and County shall pay the County Payment attributable thereto to Company, or such Affiliated Companies, as directed by Company. The County Payment shall be made in arrears, on an annual basis within sixty (60) days following the latest of: (i) the receipt by the County of the fourth quarter final sales tax revenue receipt report from the County’s sales tax consultant, (ii) receipt by County of any and all Data and Documentation (as defined herein) applicable to each Fiscal Quarter, and (iii) actual receipt by the County of the County Sales Tax Revenues. With respect to any portion of the County Sales Tax Revenues that is comprised of “triple-flip” funds or any funds substituted by the State of California for the Bradley-Burns Sales Tax Revenues, the County Payment will be made within sixty (60) days of receipt of such funds.

4.2.1 Conditions Precedent to County Payment. County’s obligations under Section 4.2 are contingent upon the satisfaction of the following conditions precedent in each Fiscal Year:

(i) Company having for such Fiscal Quarter or portion thereof, fulfilled its material obligations under Section 4.1 of this Agreement;

(ii) County’s receipt and approval of the Data and Documentation (defined herein) evidenced by Company providing Data and Documentation as defined in 4.2.3;

(iii) Company paying any and all taxes applicable to or arising out of Company’s ownership or any other interest in property (on which its operations are located within the County) and/or out of the operation, use and/or enjoyment of the Facility (including, without limitation, all taxes attributable to sales occurring on the Facility).

(iv) If County and Company (or any affiliate Company) execute a Disposition and Development Agreement governing the development of the TEC-SB Facility, no event of default shall have been declared under such agreement.

4.2.2 Remedies in the Event Conditions Precedent are not Satisfied. In the event conditions contained in Sections 4.2 and 4.2.1 are not satisfied, County is relieved of its obligations under this Agreement to make the County Payments for that period and County may terminate this Agreement upon written notice to Company; provided however, that (i) any County Payment shall be appropriately prorated, adjusted and paid with respect to any partial Fiscal Quarter for which such conditions have been satisfied; (ii) prior to terminating this Agreement, County shall provide Company with a thirty-day (30) period after receipt of County’s written notice to cure the condition causing the termination (or if such condition cannot reasonably be cured within thirty (30) days, then such additional period as may be reasonably necessary to effect such cure, provided that Company initiates the cure within the thirty-day (30) period and diligently prosecutes the same to completion), and upon such cure, County shall promptly make any such suspended County Payments to Company; and (iii) in all events, County shall not have the right to terminate this Agreement during any period that the Company’s performance is materially impaired by any Enforced Delays, and the period for performance and cure of the Company’s obligations hereunder shall be extended by the period of any such Enforced Delays.

4.2.3 Data and Documentation; Confidentiality.

(i) For the purposes of this Agreement, the term “**Data and Documentation**” means such sales and use tax returns, (including the schedules comprising a part of such returns) as are required to be filed by the Company with the SBE relating to or in connection with the collection, remittance and/or calculation of County Sales Tax Revenues from the operations of the Company at the TEC-SB Facility. “**Data and Documentation**” shall include a breakout of Sales Tax revenue for retail sales, the Buying Company and the self-accrual of use tax and a reconciliation to the total sales taxes and use taxes paid by the Company and its applicable Affiliated Companies. Copies of such returns shall be delivered by Company to the County on or before January 31, April 30, July 31 and October 31 of each County fiscal year (July 1- June 30) with respect to the prior Fiscal period.

(ii) Company understands and acknowledges that this Agreement requires approval by the Board of Supervisors and therefore is a public record; however, to the greatest extent permitted by law, County agrees to maintain in confidence and to not disclose in the public records, the Data and Documentation referred to above: Without limiting the foregoing, County agrees and acknowledges that the Data and Documentation pertaining to the Company and any such Affiliated Companies are protected from public disclosure pursuant to California Government Code Section 6254(i).

4.2.4 Adequate Consideration.

(i) Each County Payment due and payable shall constitute the total payment to Company for the Fiscal Year or portion thereof to which it relates, and shall be paid by County for and in consideration of the location and operation by Company in the County during such Fiscal Year. The Parties have determined and agreed that the County Payment due and payable for each Fiscal Year represents fair consideration to Company for its covenants and obligations hereunder.

(ii) Both County and Company expressly acknowledge and agree that Company will receive no compensation under this Agreement other than the County Payment. Company will not be entitled to any reimbursement or other compensation from the County for any costs incurred by Company in performing, preparing to perform or continuing its obligations under this Agreement for the term of the Agreement. The County Payment shall not be reduced or offset for any costs or expenses incurred by the County in performing or preparing to perform its duties under and pursuant to this Agreement.

4.2.5 County Licenses and Permits. Company acknowledges that it is solely responsible for obtaining any and all applicable County licenses and permits and for the payment of any fees related to the licenses and permits.. This Agreement does not obligate County to approve any licenses or permits or provide any approval for land use or environmental issues.

4.2.6 No Carry Forward or Back. County and Company acknowledges and agrees that the calculation and determination of all financial components of the Parties’ rights and obligations under this Agreement shall be computed on a Fiscal Year-to-Fiscal Year basis. Revenues generated in one Fiscal Year may not be carried forward or back to any future or prior Fiscal Year, it being the express agreement and understanding of the Parties that for each Fiscal Year, the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Fiscal Year.

4.2.7 Recapture of County Payments; Invalidity of Sales Tax Sharing Arrangements.

(i) Subject to any applicable statutes of limitations, administrative regulations, practices or procedures, and/or other limitations on actions or recoveries, if at any time during the Term of this Agreement, the SBE or any court of competent jurisdiction determines that all or any portion of the County Sales Tax Revenues received by the County during that time was improperly allocated and/or paid to the County (an **"improper allocation"**), and if SBE or any court of competent jurisdiction requires repayment of, offsets against future Sales Tax payments, or otherwise recaptures from the County those improperly allocated and/or paid County Sales Tax Revenues, then Company shall, within thirty (30) days after written demand from County (which written demand shall include legally sufficient supporting documentation from the State Board of Equalization or any court of competent jurisdiction that the County is legally obligated to refund such payment to the SBE), repay its proportionate share of such County Payments (or applicable portions thereof) paid to Company which are attributable to such repaid, offset or recaptured County Sales Tax Revenues (the **"Recapture Amount"**); provided however, if so requested by Company, County shall use its best efforts to negotiate a repayment plan with SBE so that the Recapture Amount may be repaid to SBE in approximately equal monthly installments over the longest possible period of time (rather than payment of such amount in a lump sum). For the avoidance of doubt, the Parties acknowledge that Company's proportionate share of any Recapture Amount shall be 50% of the amount that the County is actually required to repay or cause to be repaid to SBE (whether by refund, offset or other recapture), but in no event greater than the amount of County Payments actually received by the Company pursuant to this Agreement; provided however, that if an improper allocation resulted solely and exclusively from a misrepresentation by the Company in its sales tax returns or other wrongful conduct by the Company, then the Company shall also be required to pay any fines, penalties or interest assessed by the SBE in respect of such misrepresentation or other wrongful conduct. If Company fails to make such repayment as provided above, then such obligation shall accrue interest from the date of County's original written demand at the then maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, and all payments to Company shall be suspended, until County is paid by Company.

(ii) County and Company agree that, should the SBE or any court of competent jurisdiction question the correctness of the allocation or determine that there has been an improper allocation to the County, County shall defend such allocation in all SBE administrative proceedings or any judicial or court proceedings. For purposes of this paragraph, (a) administrative proceedings include all meetings and conferences with SBE staff and all SBE meetings, conferences, and appeals before SBE Board Members and (b) judicial or court proceedings includes any litigation process, mediation and/or mediation processes (collectively, "judicial proceedings"). Company will reasonably cooperate with the County and its attorneys and consultants, and shall have the right to be present at and participate in all SBE administrative proceedings. In the event of judicial proceedings, the County shall pay all costs related to the proceeding (other than the attorneys fees and costs of Company's separate legal counsel, if any, whose fees and costs shall be borne by Company); provided however, if the County determines that it will be necessary or advisable to engage outside counsel to defend or prosecute such judicial proceedings, the County shall not be obligated to so defend or pursue such judicial proceedings unless the Company shall have agreed to pay 50% of the legal fees and costs of such outside counsel (which fees and costs shall have been mutually approved by the Company and the County).

(iii) In addition, in the event that a court of competent jurisdiction determines that County Sales Tax Revenues were improperly received by County and orders County to pay such improperly received County Sales Tax Revenues as damages to a third party, and Company received County Payments as a Recapture Amount attributable to such improperly received County Sales Tax Revenues, Company shall repay such County Payments to County within thirty (30) days after written demand by County. Company shall also be obligated to pay 50% of any fines, penalties, interest or other costs imposed by a court of competent jurisdiction.

(iv) The obligations in this Section 4.2.7 shall survive the termination of this Agreement.

(v) If, at any time during the Term of this Agreement, the Legislature enacts legislation or the SBE adopts regulations which invalidate or prohibit the sharing of sales tax as contemplated by this Agreement, the Parties may negotiate in good faith to amend this Agreement to comply with such law or regulations or may terminate this Agreement, in which event the County Payments due hereunder shall be prorated, adjusted and paid as of the effective date of termination, and thereafter, neither Party shall have any further liability or obligation to the other hereunder.

4.3 Audit of Books and Records. Either Party shall, upon no less than fourteen (14) days prior written request from the other Party, subject to applicable confidentiality laws and regulations, make the entirety of its books and records relating to the calculation and determination of that Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law or as otherwise ordered by any court of competent jurisdiction. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records hereof, or as otherwise ordered by the court, may be recovered as an item of litigation expense pursuant to Section 4.33.

4.3.1 Review of Company's Operations. Any time during the Term of this Agreement, County may conduct reviews, upon reasonable notice, of Company's operations in County to verify that Company is conducting its Electronic Commerce operations in a way that requires the County Sales Tax Revenue to be allocated to County.

4.4 Event of Default. Each of the following shall constitute an "Event of Default":

4.4.1 Failure by a Party to comply with and observe any of the material conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within thirty (30) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a default that cannot be reasonably be cured within thirty (30) days, if the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period, notice requirement, or remedy is specified under any other section of this Agreement, then the specific provision shall control. A failure by Company to comply with its obligations under Section 4.1.1 may be cured by Company paying to County, without interest, the amount of County Sales Tax Revenues, net of

corresponding County Payments attributable thereto, that County would have received from retail sales made by Company as if there had been no breach of Section 4.1.

4.4.2 Any representation or warranty contained in this Agreement or in any application, financial statement invoice, certificate, or report submitted pursuant to this Agreement proves to have been incorrect in any material respect when made.

4.4.3 The existence of an event of default under a Disposition and Development Agreement executed by the County and Company (or any affiliate Company) for the development of the TEC-SB Facility.

4.5 Rights and Remedies. Unless prohibited by law or otherwise expressly provided by a specific provision of this Agreement, the rights and remedies of Company and County are nonexclusive and all remedies hereunder may be exercised individually or cumulatively. Upon the other Party's Event of Default, in addition to those remedies expressly granted herein, the Parties shall also have the right to seek all other available legal and equitable remedies. Notwithstanding the foregoing or any other provision to the contrary contained in this Agreement, except for Termination Payments pursuant to Sections 4.8 or 4.9.3 and Company's potential liability under Section 4.2.7 above (which shall not be limited hereby), in no event shall Company's liability under or with respect to this Agreement, exceed the direct, out-of-pocket loss suffered by County by reason of such uncured Event of Default by Company. For purposes of the preceding sentence, "direct, out-of-pocket loss" shall not include (and the County shall not have the right to seek or recover) any anticipated future revenues to the County that might be or might have been generated pursuant to this Agreement after the occurrence of such Event of Default. To the fullest extent permitted by law, each Party expressly waives any right to pursue or seek consequential or punitive damages against the other Party by reason of, or relating to or arising out of any breach or default by the other Party under this Agreement.

4.6 Rights not Granted under Agreement. This Agreement is not, and shall not be construed to be, a statutory development agreement under California Government Code Section 65864 et seq. or a disposition and development agreement under California Health and Safety Code Section 33000 et seq. This Agreement is not, and shall not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by the County concerning any project, development, or construction by Company in the County. This Agreement does not, and shall not be construed to exempt Company in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development of construction of Company within the County. This Agreement does not, and shall not be construed to, exempt Company from the application and/or exercise of the County's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

4.7 Assignment. Company acknowledges and agrees that the rights, benefits, duties and obligations of Company as provided in this Agreement are personal to Company and any Affiliated Companies that have elected to become Parties to this Agreement as provided in Section 3.1.1 above. Neither this Agreement nor any rights, benefits, duties or obligations of Company may be assigned or delegated to any other person or entity except as follows:

4.7.1 Subject to compliance with the requirements of Section 4.7.2 below, without the prior consent of County, Company may assign all, but not a portion, of Company's rights, benefits, duties and obligations under this Agreement to any affiliated person or entity,

any successor by merger or acquisition or other entity resulting from a corporate reorganization and/or any other entity controlling, controlled by or under common control with Company (“**Affiliated**” transferee). Company shall obtain County’s written consent (which shall not be unreasonably withheld, conditioned or delayed) to assign all, but not a portion, of Company’s rights, benefits, duties and obligations under this Agreement to any unaffiliated person or entity which will use and operate the Facility for purposes similar to the purposes contemplated in Section 2.1 above, which are reasonably anticipated to produce Sales Tax Revenues from the Facility at least comparable to that produced by Company from the Facility (“**Unaffiliated**” transferee).

4.7.2 Each Affiliated transferee or Unaffiliated transferee (collectively, “transferee”) shall (i) acquire Company’s entire interest in the Facility, (ii) continue to use, operate and maintain the Facility as provided in this Agreement, and (iii) execute, acknowledge and deliver to County a written assumption agreement in form and substance reasonably acceptable to County.

4.7.3 Except as provided above, any purported assignment or delegation by Company without such consent, at County’s option, shall be void and of no force or effect. County expressly reserves the right to assign and delegate its obligations under this Agreement.

4.8 No Financial Assistance. Company covenants and agrees for the period beginning on the Effective Date and continuing until and including the fifth anniversary of this Agreement, Company will not accept any Financial Assistance (as defined herein) from any other public entity, to the extent such Financial Assistance is given for the purpose of causing Company’s relocation of all or substantially all of its business activities from the unincorporated area of the County to another facility located outside of the unincorporated area of the County. In the event of Company’s relocation of all or substantially all of its business activities during that time period and the receipt by Company of Financial Assistance from such other political entity as an inducement for such relocation, Company shall pay to County, as County’s sole and exclusive remedy for Company’s breach of such covenant, an amount equal to the payment made to Company and its applicable Affiliated Companies for the prior Fiscal Year (“Termination Payment”). In the event Company accepts any such Financial Assistance to so relocate from the unincorporated area of the County after the fifth anniversary but prior to the eighth anniversary of the Agreement, Company shall pay to County a Termination Payment equal to one-half of the payment made to Company and its applicable Affiliated Companies in the prior Fiscal Year. Any acceptance of Financial Assistance by Company after the eighth anniversary of this Agreement shall require no Termination Payment. The payment of the Termination Payment shall survive the termination of this Agreement. For purposes of this Agreement, “Financial Assistance” shall mean the payment to the Company by the public entity in whose jurisdiction the Company’s business has been relocated, amounts measured by the amount of sales tax revenues received by such public entity in respect of the sales generated by the Company in such new facility.

4.9 Termination.

4.9.1 Upon an Event of Default as described in Section 4.4, above, the non-defaulting Party may terminate this Agreement.

4.9.2 Except as otherwise expressly provided in this Agreement (including any repayment obligations pursuant to Section 4.2.7), upon a termination of this Agreement, and, if applicable, payment of any amounts which are expressly required to be paid by one Party to

the other in connection with such termination, all rights, duties and obligations of the Parties under this Agreement shall cease and terminate and neither Party shall have any further liability or obligation to the other with respect to this Agreement or the subject matter hereof.

4.9.3 Notwithstanding anything to the contrary contained in this Agreement, Company and/or any Affiliated Company that has elected to become a Party to this Agreement shall have the on-going right to terminate this Agreement as to Company or such applicable Affiliated Company, as the case may be, for any reason, or for no reason, in its sole and absolute discretion, upon not less than 60 days prior written notice. Company shall be subject to the Termination Payments described in Section 4.8 if termination occurs prior to the eighth anniversary of this Agreement, and such termination by Company is made solely for the purpose of relocating all or substantially all of its business to a location outside of the unincorporated area of the County in consideration of the grant of Financial Assistance by the political entity in whose jurisdiction such new facility is located.

4.9.4 If County and Company (or Company's Affiliate) fail to complete the sale of the real property upon which the TEC-SB Facility will be located by June 30, 2017, this Agreement shall terminate.

4.10 County and Company Representations and Warranties. All of the following representations and warranties are made according to County's and Company's actual current knowledge as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

4.10.1 County Representations and Warranties.

(i) County is a political subdivision of the State of California and has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and, thereby, and by proper action, County has duly authorized the execution and delivery of this Agreement.

(ii) The representatives of County executing this Agreement are fully authorized to execute the same pursuant to official action taken by County.

(iii) This Agreement has been duly authorized, executed and delivered by County and, assuming due execution and delivery by Company, constitutes the legal, valid and binding agreement of County, enforceable against County in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws in effect from time to time relating to or affecting the enforcement of creditor's rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(iv) The execution and delivery of this Agreement, the consummation of the transactions on the part of County contemplated and the fulfillment of or compliance by County with the terms and conditions hereof, do not and will not materially conflict with or constitute a material violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which County is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge

or encumbrance of any nature whatsoever upon any of the property or assets of County, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions on the part of County contemplated by this Agreement or the financial condition, assets, properties or operations of County.

(v) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the best of the County's knowledge, threatened against or affecting County or the assets, properties or operations of which, if determined adversely to County or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties operations of County, and County is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial conditions, assets, properties or operations of County.

4.10.2 Company's Representations and Warranties.

(i) TEC Equipment, Inc. is an Oregon corporation qualified to do business in California, and which has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and, thereby, and by proper action Company has duly authorized the execution and delivery of this Agreement.

(ii) The execution and delivery of this Agreement, the consummation of the transactions on the part of Company contemplated and the fulfillment or compliance by Company with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulations, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which Company is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Company, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions on the part of Company contemplated by this Agreement or the financial condition, assets, properties or operations of Company.

(iii) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of Company, threatened against or affecting Company or its interests, which, if determined adversely to Company or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties or operations of Company, and Company is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial conditions, assets, properties or operations of Company.

(iv) This Agreement has been duly authorized executed and delivered by Company and, assuming due execution and delivery by County, constitutes the legal, valid and binding agreement of Company, enforceable against Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws in effect from time to time relating to or affecting the enforcement of creditor's rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(v) The representatives of Company executing this Agreement are fully authorized to execute the same pursuant to official action taken by Company.

4.10.3 Non-Discrimination. Company agrees that it will not unlawfully discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, sexual orientation, gender identification, physical condition, pregnancy-related condition, political affiliation or opinion, age or medical condition in the operation of the TEC-SB Facility.

4.11 Indemnification and Insurance.

4.11.1 Indemnification. Company shall indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees and agents and volunteers ("Indemnitees") from the amount of any and all claims, actions, losses, damages, and/or liability asserted by third parties against such Indemnitees arising out of Company's gross negligence or willful misconduct except where such indemnification is prohibited by law. This provision shall survive the termination of this Agreement.

4.11.2 Insurance. Company agrees to provide insurance set forth in accordance with the requirements herein. If the Company uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Company agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting the indemnity herein provided in Section 4.11.1 and in addition thereto, Company shall secure and maintain throughout the Term of this Agreement, the following types of insurance with limits shown:

(i) 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 California Labor Code, including Employers' Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Company and all risks to such persons under this Agreement. If Company 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 California Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. If Company is a nonprofit corporation organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(ii) Commercial/General Liability Insurance. Company shall carry General Liability Insurance covering all operations performed by or on behalf of Company 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 shall include:

- (A) Premises operations and mobile equipment.
- (B) Products and completed operations.
- (C) Broad form property damage (including completed operations).
- (D) Personal injury.
- (E) Contractual liability.
- (F) \$2,000,000 general aggregate limit.

(iii) 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 (\$1,000,000) for bodily injury and property damage, per occurrence. If Company is transporting one or more non-employee passengers in performance of Agreement services, 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 Company owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(iv) 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.

(v) General Provisions Applying to Coverage.

(A) Additional Insured. All policies, except for the Workers' Compensation, policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers, as additional insureds with respect to liabilities arising out of the performance of services under this Agreement. 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. Company shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All General or Auto liability insurance coverage provided shall not prohibit Company or Company's employees or agents from waiving the right of subrogation prior to a loss or claim. Company 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. Company 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 Company and the County or between County and any other insured or additional insured under the policy.

(E) Proof of Coverage. Company shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed; additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire within thirty (30) days written notice to the County, and Company shall maintain such insurance from the time Company commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Company 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 County 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) Deductibles and Self-Insurance Retention. Any and all deductibles or self-insured retention in excess of \$10,000 shall be provided to Risk Management along with financial documents that are normally prepared in the ordinary course of Company's business that reasonably demonstrate the ability of Company to pay the deductibles and self-insurance retention.

(H) Failure to Procure Coverage. In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is cancelled and not replaced, County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by County will be promptly reimbursed by Company or County payments to Company will be reduced to pay for County-purchased insurance.

4.12 Amendment of Agreement. At any time County and Company may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce Company to maintain its operations in the County when this Agreement could otherwise be terminated. Any such amendment to this Agreement shall only be by written agreement between County and Company. County and Company agree to consider reasonable requests for amendments to this Agreement which such requests may be made by any of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both County and Company. The County Chief Executive Officer and the Company may agree upon minor, non-substantive changes to this Agreement without further Board authorization. **California Law.** This Agreement shall be construed and governed in accordance with the laws of the State of California.

4.14 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

4.15 **Business Days.** Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date, which constitutes a Business Day.

4.16 **Tax Consequences.** Company shall be responsible for federal, state and/or local income taxes resulting from its receipt of the County Payments.

4.17 **Consent.** Whenever consent or approval of any Party is required under this Agreement, that Party shall not unreasonably withhold, delay or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

4.18 **Notices and Demands.** All notices or other communications required or permitted between County and Company under this Agreement shall be in writing, and may be (i) personally delivered; (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested; (iii) sent by nationally recognized overnight courier service (e.g., Federal Express); or (iv) sent by telecopy ("fax") or electronic mail ("email"), provided that if given by fax or email, a duplicate copy of such notice shall also be sent by mail (per (ii) above or by courier (per (iii) above; in each case addressed to the Parties at the addresses provided below subject to the right of either Party to designate a different address for itself by notice similarly given. Any notice so given by fax or email shall be deemed given on the date of transmission if transmitted prior to 3pm (in the time zone where the addressee is located) on a Business Day, or if not, then on the next Business Day. Any notice given per (ii) or (iii) above shall be deemed given on the date of actual receipt, as evidenced by the carrier's or courier's delivery receipt.

Notices shall be provided to the following:

County:	Chief Executive Officer County of San Bernardino 385 N. Arrowhead Avenue, 5 th Floor San Bernardino, CA 92415
With a copy to:	Economic Development Agency Administration County of San Bernardino 385 N. Arrowhead Avenue, 3 rd Floor San Bernardino, CA 92415
And a copy to:	Michelle D. Blakemore, Chief Assistant County Counsel Office of County Counsel 385 N. Arrowhead Avenue, 4 th Floor San Bernardino, CA 92415
Company:	TEC Equipment, Inc. Attn: President/CEO 750 N.E. Columbia Boulevard Portland, Oregon 97211
With a copy to:	TEC Equipment, Inc. Attn: Chief Legal Officer

750 N.E. Columbia Boulevard
Portland, Oregon 97211

4.19 Non-liability of Officials and Employees. No board member, official, contractor, consultant, attorney or employee of County shall be personally liable to Company, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in Company's property, in the event of any default or breach by County, or for any amount which may become due to Company or to its successors or assignees, or on any obligations arising under this Agreement.

4.20 Non-liability of Company Officials and Employees. No board member, officer, partner, member, official, contractor, consultant, attorney or employee of Company shall be personally liable to County, any voluntary or involuntary successors or assignees in the event of any default or breach by Company, or for any amount that may become due to County or to its successors or assignees, or on any obligations arising under this Agreement.

4.21 Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement.

4.22 Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the obligations of County and Company under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder shall be extended where delays in performance are due to war, insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation relating to this Agreement; acts of a public enemy; acts of governmental authorities; epidemics; quarantine restrictions; and freight embargoes (collectively, "**Enforced Delays**") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of Company to obtain or maintain financing for its operations or due to County's inability to make County Payments due and payable to Company. In no event shall either Party be deemed in default of this Agreement because of an Enforced Delay event.

The Parties hereto expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Agreement, and which occur at any time after the execution of this Agreement, are not Enforced Delays and do not provide any Party with grounds for asserting the existence of a delay or excuse in the performance of any covenant or undertaking which may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions, or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not an Enforced Delay and does not excuse the performance by such Party of its obligations under this Agreement.

4.23 Jurisdiction and Venue. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate California state court in San Bernardino County, California. Both Parties hereto irrevocably consent to the personal jurisdiction of that court. County and Company each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction.

4.24 Interpretation. County and Company acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

4.25 No Waiver. Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver by any Party of such term, covenant or condition. Except as otherwise specifically provided in this Agreement, no waiver or relinquishment of any rights or powers hereunder at any one time or more times shall be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

4.26 Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns, subject to the provisions of 4.31.

4.27 No Third Party Beneficiaries. The performance of the respective obligations of County and Company under this Agreement are not intended to benefit any party other than County or Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or nonperformance under this Agreement, except as expressly provided otherwise herein.

4.28 Warranty Against Payment of Consideration for Agreement. Company warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 4.28, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Company.

4.29 Severability. County and Company declares that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

4.30 Further Acts. County and Company each agree to take such additional acts and execute such other documents, consistent with this Agreement, as may be reasonable and necessary in the performance of their obligations hereunder.

4.31 No Pledge or Hypothecation of This Agreement. Company may not assign, transfer, encumber, or hypothecate its rights and/or obligations under this Agreement without the express written consent of County, which shall not be unreasonably withheld. Any unpermitted assignment, transfer, pledge, encumbrance, or hypothecation, or any attempt thereat, (individually or collectively, an “**unpermitted hypothecation**”) shall not confer any rights upon the purported assignee/transferee. If the Company fails to cause such unpermitted hypothecation to be rescinded or otherwise terminated within thirty (30) days after receipt by Company of written notice and demand from County, County may exercise those remedies available to County pursuant to Section 4.5. Notwithstanding the foregoing, Company may undertake any of the following without the consent of County: (i) issue or transfer stock or other voting or ownership interests in Company, and/or issue or transfer bonds or other evidence of indebtedness of the Company (and/or assign this Agreement in connection with any such issuance or transfer), (ii) merge or consolidate with any other entity, and/or sell or transfer all or substantially all of the assets of Company (and/or assign this Agreement in connection with any such merger, consolidation or sale), or (iii) assign its interest in this Agreement to any Affiliated Company.

4.32 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

4.33 Costs of Suit; Attorneys Fees. If any legal action is instituted to enforce any Party’s rights hereunder, each Party shall bear its own costs and attorney fees, regardless of which is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under Section 4.11.

[Signatures on following page]

**SIGNATURE PAGE
TO
LOCATION AGREEMENT**

COUNTY OF SAN BERNARDINO

TEC Equipment, Inc.

► _____
James Ramos, Chairman, Board of Supervisors

Dated: _____

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

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

APPROVED AS TO LEGAL FORM:

JEAN-RENE BASLE
County Counsel

By: _____
MICHELLE D. BLAKEMORE
Chief Assistant County Counsel

Date: _____