

L-320 Fine&Yale
AustinEnter/Probation

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "LEASE") is made and entered into this 26th day of September, 2017, by and between AUSTIN ENTERPRISES, a limited partnership, 5108 E. Clinton Way, Suite 109, Fresno, CA 93727 (hereinafter "LESSOR"), and the COUNTY of FRESNO, a political subdivision of the State of California, 333 W. Pontiac Way, Clovis, CA 93612, (hereinafter "LESSEE"). LESSOR and LESSEE shall also be referred to herein singularly as a "Party" and collectively, as "Parties".

1. LEASED PREMISES - LESSOR hereby leases to LESSEE the office space at the location commonly known as 2171 N. Fine Ave., Fresno, CA 93727, which is approximately 20,160 square feet, together with common area parking (hereinafter "Premises").

2. TERM – The initial term of this LEASE shall be for five (5) years beginning December 1, 2017 through November 30, 2022 (hereinafter "Initial Term"). Thereafter, this LEASE shall be renewable for a maximum of three (3) consecutive one-year terms, each to take place automatically, unless one Party provides the other with written notice of non-renewal at least 180 days prior to the end of the then current term. In no event shall the term of this LEASE extend beyond November 30, 2025.

3. RENT - LESSEE agrees to pay to LESSOR rent in advance on or about the first of each month for the Premises beginning December 1, 2017 according to the following schedule:

Rent Year	Rent/ Month	Cost/SF
December 1, 2017	\$ 30,038.40	\$ 1.49
December 1, 2018	\$ 30,844.80	\$ 1.53
December 1, 2019	\$ 31,852.80	\$ 1.58
December 1, 2020	\$ 32,659.20	\$ 1.62
December 1, 2021	\$ 33,667.20	\$ 1.67
December 1, 2022	\$ 34,675.20	\$ 1.72
December 1, 2023	\$ 35,683.20	\$ 1.77
December 1, 2024	\$ 36,691.20	\$ 1.82

4. UTILITIES – LESSEE shall pay those metered costs associated with its use of natural gas and electricity, to include water, garbage and sewer fees, all of which are in

1 addition to the Rent. LESSEE shall also pay all costs associated with its use of telephone
2 service.

3 5. USE – LESSEE shall use the Premises as office space for the Probation
4 Department or any other County department or authorized agent of LESSEE. LESSEE agrees
5 to comply with all applicable laws, ordinances and regulations in connection with such use.

6 LESSOR covenants that: (i) the Premises are suitable for the intended use; (ii) the
7 Premises are in compliance with all applicable laws, ordinances and regulations, including but
8 not limited to safety regulations, health and building codes; and (iii) the Premises shall remain
9 in such compliance throughout the term of this LEASE.

10 6. MAINTENANCE – LESSOR shall be responsible for the structural condition of
11 the Premises and for all exterior maintenance, including but not limited to the air conditioning,
12 heating, plumbing systems, electrical systems, fire sprinkler systems, roof, painting,
13 landscaping and parking lot. LESSEE shall provide its own janitorial services, including all
14 janitorial supplies. LESSOR covenants that the Premises shall be maintained in substantially
15 the same condition as that existing at the commencement of this LEASE, normal wear and
16 tear excepted.

17 7. LESSOR IMPROVEMENTS TO PREMISES - LESSOR, at no cost to LESSEE,
18 shall paint and carpet the interior of the premises and replace the restroom flooring and that
19 the foregoing work will be completed on or before December 1, 2017.

20 8. COMPLIANCE WITH ALL LAWS – As to the Premises, LESSOR
21 acknowledges public funds are used for payments made by LESSEE under this LEASE and
22 for “public works” projects. Accordingly, LESSOR shall comply with, and shall ensure
23 compliance by all contractors and subcontractors with, all applicable laws and regulations,
24 including the payment of prevailing wages pursuant to Section 1770 et. seq. of the Labor
25 Code.

26 9. BREACH OF OBLIGATION TO MAINTAIN - In the event LESSOR breaches its
27 obligation to maintain the Premises as herein provided, LESSEE shall give written notice to
28 LESSOR within fifteen (15) days of the discovery of such breach. LESSOR shall then have

thirty (30) days from the date of notice to cure its breach; provided, however, that if such default continues for thirty (30) days after written notice thereof from LESSEE to LESSOR then LESSOR will not be in default hereunder if within such thirty (30) day period, LESSOR commences the curing of such default and diligently and in good faith prosecutes the same to completion. If the period for cure expires and if, in LESSEE'S reasonable determination, LESSOR has failed to cure, then LESSEE may, at its election:

- (A) terminate this LEASE as provided in Section 12. hereinbelow. In such case, LESSEE shall have the right to demand LESSOR refund any monies which, in the judgment of LESSEE, were paid to LESSOR pursuant to the LEASE but which were not earned by LESSOR by consequence of its breach. Upon receipt of such demand, LESSOR shall promptly refund all such monies; or
- (B) cure LESSOR'S breach in which case LESSEE may deduct the reasonable cost of such cure, together with reasonable administrative costs, from LESSEE'S future rent obligation (but LESSEE'S decision to cure LESSOR'S breach shall not constitute a waiver of any other rights or remedies that LESSEE may have arising from this LEASE or by operation of law).

10. DESTRUCTION OR DAMAGE FROM CASUALTY - If the Premises are damaged or destroyed as a result of fire, earthquake, act of God, or any other identifiable event of a sudden, unexpected, or unusual nature (hereinafter, a "Casualty"), then LESSOR shall either promptly and diligently repair the damage at its own cost, or terminate this LEASE as hereinafter provided.

- (A) LESSOR'S Election to Repair: If LESSOR elects to repair the Casualty damage to the Premises, then it shall within thirty (30) days after the date of Casualty provide written notice (hereinafter the "Notice of Repair") to LESSEE indicating the anticipated time required to repair. LESSOR shall bear the cost of all repairs to the Premises, including the cost to repair any alterations or fixtures installed or attached thereto by LESSEE. Such repairs shall restore the Premises to substantially the same condition as that existing immediately prior to the Casualty

1 damage and such repairs shall also be made in compliance with all applicable
2 state and local building codes. LESSOR shall not be liable to LESSEE for (i)
3 compensation for any loss of business, or any inconvenience or annoyance
4 arising from repair of the Premises as a result of the Casualty except for rent
5 reduction as hereinafter provided or (ii) any damage caused by the negligence or
6 willful misconduct of LESSEE or its officers, agents, invitees or employees.
7 LESSEE shall be responsible at its sole cost and expense for the replacement of
8 its personal property.

9 (B) LESSOR'S Election to Terminate Due to Casualty: LESSOR may only elect
10 to terminate the LEASE due to Casualty if: the Premises have been destroyed or
11 substantially destroyed by said Casualty and the estimated time to repair the
12 Premises exceeds one hundred twenty (120) days from the date of the Casualty.
13 LESSOR shall provide LESSEE with written notice of its election to terminate
14 within thirty (30) days after the date of Casualty, in accordance with the
15 provisions of Section 12. hereinbelow.

16 (C) Rent Reduction Due to Casualty: In the event of Casualty, LESSEE'S obligation
17 to pay rent shall be reduced beginning on the date of the Casualty in an amount
18 proportionate to the damage caused to the Premises by the Casualty as
19 reasonably determined by LESSEE. If LESSOR elects to repair the Premises
20 pursuant to the terms of this LEASE, then the rent reduction shall continue until
21 the date of substantial completion of the repairs.

22 (D) LESSEE'S Election to Terminate Due to Casualty: If LESSEE does not receive a
23 Notice of Repair from LESSOR within thirty (30) days after a Casualty, or if the
24 anticipated period of repair contained in the Notice of Repair exceeds one
25 hundred twenty (120) days, then LESSEE may elect to terminate this LEASE as
26 provided in Section 12. hereinbelow. In such case, LESSEE shall have the right
27 to demand that LESSOR refund any monies which, in the judgment of LESSEE,
28 were paid to LESSOR pursuant to the LEASE but which were not earned by

LESSOR by consequence of the Casualty. Upon receipt of such demand,
LESSOR shall promptly refund all such monies.

11. TERMINATION – If either LESSOR or LESSEE has an election under the terms hereof to terminate this LEASE and such Party so elects, then written notice of such termination shall be provided to the non-terminating Party, specifying a termination date not less than ninety (90) days from the date of said notice.

In case of any termination of this LEASE by LESSEE, either the County Administrative Officer, or the Director of Internal Services/Chief Information Officer, or the Chief Probation Officer, or a designee of one of them, is hereby authorized to provide such notice to terminate this LEASE.

12. NON FUNDING TERMINATION - This LEASE is contingent on the allocation of funds by a governmental agency. Should funds not be allocated, this LEASE may be terminated by the Board of Supervisors by giving at least thirty (30) days prior written notice to LESSOR. LESSEE shall pay to LESSOR, within forty-five (45) days after the LEASE termination date, any unpaid rent due LESSOR.

13. HOLD HARMLESS - LESSOR agrees to indemnify, save, hold harmless, and at LESSEE'S request, defend LESSEE, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to LESSEE in connection with the performance or failure to perform by LESSOR, its officers, agents or employees under this LEASE, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance or failure to perform by LESSOR, its officers, agents, or employees under the LEASE.

This LEASE is made upon the expressed condition that the LESSEE is to be free of all liability, damages or injury arising from structural failures of the Leased Premises, including, but not limited to external walls, doors, roof and floor. The parties acknowledge that as between LESSOR and LESSEE, each is responsible for the negligence of its own officers, agents, employees and invitees.

14. INSURANCE - Without limiting the LESSEE'S right to obtain indemnification from LESSOR or any third parties, LESSOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance throughout the term of this LEASE:

- a. Commercial General Liability - Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million (\$2,000,000). This policy shall be issued on a per occurrence basis. LESSEE may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability, or any other liability insurance deemed necessary because of the nature of this contract. 3
- b. Property Insurance – All-Risk property insurance.
- c. Automobile Liability - Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this LEASE.
- d. Worker's Compensation - A policy of Worker's Compensation insurance may be required by the California Labor Code.

LESSOR shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno (hereinafter "County"), its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this LEASE are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by, its officers, agents, and employees shall be excess only and not contributing with insurance provided under LESSOR'S policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days

1 advance written notice given to County.

2 Within (30) days from date LESSOR executes this LEASE, LESSOR shall provide
3 certificates of insurance and endorsement as stated above for all of the foregoing policies, as
4 required herein, to the County of Fresno, Attn: ISD Lease Services (L-320), 333 W. Pontiac
5 Way, Clovis, CA 93612, stating that such insurance coverages have been obtained and are in
6 full force; that the County, its officers, agents and employees will not be responsible for any
7 premiums on the policies; that such Commercial General Liability insurance names the
8 County, its officers, agents, and employees, individually and collectively, as additional insured,
9 but only insofar as the operations under this Lease are concerned; that such coverage for
10 additional insured shall apply as primary insurance an any other insurance, or self- insurance
11 shall not be cancelled or changed without a minimum of thirty (30) days advance, written
12 notice given to County.

13 In the event LESSOR fails to keep in effect at all times insurance coverage as herein
14 provided, the County may, in addition to other remedies it may have, suspend or terminate this
15 LEASE upon the occurrence of such event.

16 All policies shall be with admitted insurers licensed to do business in the State of
17 California. Insurance purchased shall be purchased from companies possessing a current A.M
18 Best Company rating of A FSC VII or better.

19 LESSEE shall maintain during the term of this LEASE the following policies of
20 insurance, which coverages may be provided in whole or in part through one or more
21 programs of self-insurance:

- 22 a. Commercial General liability insurance with limits of not less than One Million Dollars
23 (\$1,000,000.00) per occurrence and an annual aggregate of not less than Two Million
24 Dollars (\$2,000,000.00). This policy shall be issued on an occurrence basis.
25 b. Against all risk of loss to LESSEE property, at full replacement cost with no
26 coinsurance penalty provision, naming LESSEE as additional loss payee.

27 15. SURRENDER OF POSSESSION - Upon the expiration or termination of this
28 LEASE, LESSEE shall surrender the Premises to LESSOR in such condition as existing at the

1 commencement of this LEASE less reasonable wear and tear, less the effects of any
2 Casualty, and less the effects of any breach of LESSOR'S covenant to maintain. LESSEE will
3 not be responsible for any damage which LESSEE was not obligated hereunder to repair.

4 16. FIXTURES - LESSOR agrees that any equipment, fixtures or apparatus
5 installed in or on the Premises by LESSEE shall continue to be the property of LESSEE and
6 may be removed by LESSEE at any time; provided, however that LESSEE shall remove such
7 fixtures at its sole cost and shall repair any damage caused by the removal of fixtures. Any
8 fixtures not removed when LESSEE surrenders possession shall become the property of
9 LESSOR.

10 17. RIGHT OF ENTRY - LESSOR, or its representative(s), upon giving twenty-four
11 (24) hours written notice, shall have the right to enter the Premises at any time during
12 business hours, or at such other time as LESSEE deems appropriate, to make any alterations,
13 repairs or improvements to the Premises; however, the normal business of LESSEE or its
14 invitees shall not be unnecessarily inconvenienced.

15 18. AMENDMENT - This LEASE may be amended in writing by the mutual consent
16 of the Parties without in any way affecting the remainder.

17 19. ASSIGNMENT - Neither party shall assign, transfer or sub-let this LEASE, or the
18 rights or duties under this LEASE, without the prior written consent of the other party, which
19 consent shall not be unreasonably withheld or denied.

20 20. GOVERNING LAW - Venue for any action arising out of or relating to this
21 LEASE shall be in Fresno County, California. This LEASE shall be governed by the laws of
22 the State of California.

23 21. AUDITS AND INSPECTIONS – The LESSOR shall at any time during business
24 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for
25 examination all of its records and data with respect to the matters covered by this Agreement.
26 The LESSOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect
27 all of such records and data necessary to ensure LESSOR compliance with the terms of this
28 Agreement.

If this Agreement exceeds ten thousand dollars (\$10,000.00), LESSOR shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

22. NOTICES - All notices given under this LEASE by either Party to the other Party shall be in writing, and given by any one of the following methods:

(I) Personal delivery to the applicable address as set for below; or

(II) Sent by certified United States mail, first class postage prepaid, with return receipt requested, to the applicable addresses as set forth below, in which case such notice shall be deemed given three (3) business days if LESSOR is the recipient, or three (3) business days if LESSEE is the recipient, after such deposit and postmark with the United States Postal Service; or

(III) Sent by a reputable overnight commercial courier, in which case such notice shall be deemed given one (1) business day if LESSOR is the recipient, or one (1) business day if LESSEE is the recipient, after such deposit with that courier to the applicable addresses as set forth below.

(IV) The addresses and telephone numbers of the Parties for purposes of giving or receiving notices under this LEASE are as follows:

LESSEE:
County of Fresno (L-320)
Robert W. Bash, Director of
Internal Services
333 W. Pontiac Way
Clovis, CA 93612
(559) 600-6200

LESSOR:
Austin Enterprises, Inc.
Attn: Rick Austin
5108 E. Clinton Way, Suite 100
Fresno, CA 93727
(559) 456-3005

Provided however, such notices may be given to such person or at such other place as either of the Parties may from time to time designate by giving written notice to the other Party, and provided further however, in any event notices of changes of address or termination of this LEASE shall not be effective until actual delivery of such notice. Notices given hereunder shall not be amendments or modifications to this LEASE.

23. DISCLOSURE OF SELF DEALING TRANSACTIONS – This provision is only

1 applicable if the LESSOR is operating as a corporation (a for-profit or non-profit corporation) or if
2 during the term of this LEASE, the LESSOR changes its status to operate as a corporation.

3 Members of LESSOR'S Board of Directors shall disclose any self-dealing transactions
4 that they are a party to while LESSOR is providing goods or performing services under this
5 LEASE. A self-dealing transaction shall mean a transaction to which the LESSOR is a party and
6 in which one or more of its directors has a material financial interest. Members of the Board of
7 Directors shall disclose any self-dealing transactions that they are a party to by completing and
8 signing a Self-Dealing Transaction Disclosure Form Exhibit "A", attached hereto and by this
9 reference incorporated herein, and submitting it to the County of Fresno prior to commencing with
10 the self-dealing transaction or immediately thereafter.

11 24. AUTHORITY - Each individual executing this LEASE on behalf of LESSOR
12 represents and warrants that such individual is duly authorized to execute and deliver this LEASE
13 on behalf of AUSTIN ENTERPRISES, and that this LEASE is binding upon AUSTIN
14 ENTERPRISES in accordance with its terms.

15 25. INDEPENDENT CONTRACTOR - In performance of the work, duties and
16 obligations assumed by LESSOR under this LEASE, it is mutually understood and agreed that
17 LESSOR, including any and all of the LESSOR'S officers, agents, and employees will at all times
18 be acting and performing as an independent contractor, and shall act in an independent capacity
19 and not as an officer, agent, servant, employee, joint venture, partner, or associate of the
20 LESSEE. Furthermore, LESSEE shall have no right to control or supervise or direct the manner
21 or method by which LESSOR shall perform its work and function. However, LESSEE shall retain
22 the right to administer this LEASE so as to verify that LESSOR is performing its obligations in
23 accordance with the terms and conditions thereof.

24 LESSOR and LESSEE shall comply with all applicable provisions of law and the
25 rules and regulations, if any, of governmental authorities having jurisdiction over matters the
26 subject thereof.

27 Because of its status as an independent contractor, LESSOR shall have absolutely
28 no right to employment rights and benefits available to LESSEE'S employees. LESSOR shall be

solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, LESSOR shall be solely responsible and save LESSEE harmless from all matters relating to payment of LESSOR'S employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this LEASE, LESSOR may be providing services to others unrelated to the LESSEE or to this LEASE.

26. ENTIRE LEASE - This LEASE constitutes the entire LEASE between the LESSOR and LESSEE with respect to the subject matter hereof and supersedes all prior leases, negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly referenced in this LEASE. This LEASE shall be binding on and inure to the benefit of LESSOR'S heirs, successors and assigns.

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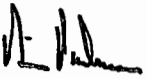
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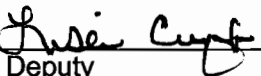
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LESSEE:
COUNTY OF FRESNO

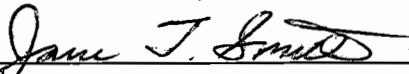
By 
Brian Pacheco, Chairman
Board of Supervisors

Date September 26, 2017

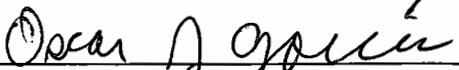
ATTEST: BERNICE E. SEIDEL, CLERK
BOARD OF SUPERVISORS

By 
Deputy

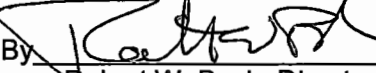
APPROVED AS TO LEGAL FORM:
DANIEL C. CEDERBORG, COUNTY COUNSEL

By 
Deputy

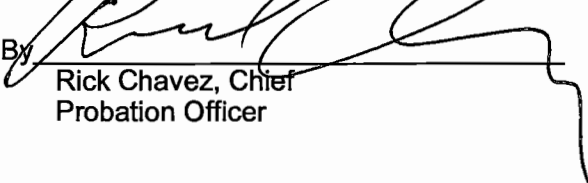
APPROVED AS TO ACCOUNTING FORM:
OSCAR J. GARCIA, CPA
AUDITOR-CONTROLLER/TREASURER-
TAX COLLECTOR

By 

RECOMMENDED FOR APPROVAL:

By 
Robert W. Bash, Director of Internal
Services/Chief Information Officer

RECOMMENDED FOR APPROVAL:

By 
Rick Chavez, Chief
Probation Officer

Fund 0001, Subclass 10000, Org No. 3430, Acct. No. 7340

Property/L-320/Austin/Probation

LESSOR:
AUSTIN ENTERPRISES, a limited
partnership

By 
Rick Roy Austin, General Partner

Date 9-12-2017

ATTACHMENT "A"

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Mail the completed form to:

County of Fresno
Attn: Lease Services (L-320)
Internal Services Department
333 W. Pontiac Way
Clovis, CA 93612

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(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	