



ORIGINAL

Contract Number
24-380

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5000
Contractor	Orange County Flood Control District
Contractor Representative	Thomas A. Miller
Telephone Number	(714) 834-5663
Contract Term	2 years from commencement date
Original Contract Amount	\$1 Option price, \$15,000 Administrative fee, plus permit fees
Amendment Amount	\$0
Total Contract Amount	\$1 Option price, \$15,000 Administrative fee, plus permit fees
Cost Center	6522011000
GRC/PROJ/JOB No.	
Internal Order No.	

Briefly describe the general nature of the contract: This is a two-year option to lease agreement, with one (1) six-month extension, for a 10-year ground lease agreement with two (2) 10-year options to extend the term of the lease, with Orange County Flood Control District which, following the County's fulfillment of the conditions precedent and exercise of the option to lease, commences upon San Bernardino County's substantial completion of improvements, the acceptance of improvements by Orange County Flood Control District, and receipt of a final certificate of occupancy, for the use of approximately 65.64 acres of unimproved land (Portion of APN#'s: 105645105, 105639103, and 105639104) located at Southwest corner of Euclid and Pine Avenue at the County's Prado Regional Park in Chino for a minimum cost for the option to lease agreement of a \$1 option price, \$15,000 administrative fee, plus permit fees, and a minimum cost for the ground lease of \$361,195 in rents and 20% in gross revenues generated from the on-site use of the Premises.

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE SIGNATURE PAGE
John Tubbs II, Deputy County Counsel

Date

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *Lyle Ballard*
Lyle Ballard, Real Property Manager, RESD

Date 4/23/24



OPTION AGREEMENT

THIS OPTION AGREEMENT ("Option Agreement") is made May 28, 2024, or the date both Parties execute this Agreement, whichever is later ("Effective Date") by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter called "**District**") and SAN BERNARDINO COUNTY, a political subdivision of the State of California (hereinafter called "**Optionee**"). District and Optionee may sometimes hereinafter individually be referred to as "**Party**" or jointly as "**Parties**."

Recitals

- A. Optionee desires to obtain an option to lease certain real property described as the "**Premises**" in Exhibit A to that certain ground lease, attached hereto as Attachment A and made a part hereof ("**Lease**"), for the purposes and uses provided in the Lease.
- B. District is the fee owner of the Premises and is willing to enter into an option to lease said Premises for such purposes and uses as set forth herein and in the Lease.

NOW, THEREFORE the Parties agree as follows:

1. DEFINITIONS

- a. "**Board of Supervisors**" means the Board of Supervisors of the County of Orange, a political subdivision of the State of California, the governing body of the District.
- b. "**Chief Real Estate Officer**" means the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Optionee, such other person as may be designated by the Board of Supervisors.
- c. "**City**" means the City of Chino, State of California, within which the Premises is located.
- d. "**County**" means the County of Orange, a political subdivision of the State of California, and shall include its Board of Supervisors, its elected and appointed officials, officers, agents, employees, and contractors.
- e. "**District**" means the Orange County Flood Control District, a body corporate and politic. Any reference to the District herein, unless expressly stated to the contrary, shall refer to the District solely in its capacity as owner of the Premises and not the District in its capacity as a land use or other governmental approval authority.
- f. "**Lease**" means that certain Ground Lease attached hereto as Attachment A, including any and all addenda, amendments and exhibits hereto.
- g. "**Premises**" means that certain real property containing approximately sixty-five acres with Assessor Parcel Nos: 1056-451-05-0000, 1056-391-03-0000, and 1056-391-04-0000 in the

City, together with all easements, rights and privileges appurtenant thereto, to be leased to Optionee pursuant to the Lease for the uses and purposes as set forth therein. The legal description of the Premises is attached to the Lease as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is also attached to the Lease as **Exhibit A-1**.

2. OPTION

District hereby grants Optionee a two (2) year options ("**Option**") to lease said Premises during which time Optionee shall complete planning and entitlement of its development. Optionee shall be granted one (1) – six (6) month extension if needed to complete the entitlement and requirements set below as long as Optionee is diligently pursuing entitlements for its proposed development. The Option may be exercised once the conditions precedent in this Option Agreement are fulfilled. These conditions precedent include, but are not limited to, as more fully and specifically set forth in the Option, Section 7: (i) the preparation of preliminary plans, as approved by the District; (ii) completion of entitlements and environmental compliance, including approval by the United States Army Corps of Engineers ("**USACE**") and the City; (iii) preparation of construction contract documents; (iii) receipt of applicable permits for development, and (iv) completion of the master lease form, which will be attached to the Option.

3. TERM

Subject to Section 6 below, the term of this Option Agreement shall be two (2) years ("**Option Term**") and shall commence on the Effective Date shown above. This Term is conditioned upon the District's termination rights set forth in Section 18.

4. OPTION PRICE

The price of the Option granted herein is **\$1.00** ("**Option Price**") payable to the District upon full execution of this Option Agreement.

5. ADMINISTRATIVE COSTS

In addition to the Option Price, upon full execution of this Option Agreement, Optionee shall pay the District a non-refundable administrative fee of **\$15,000** ("**Administrative Fee**") in consideration of the staff time and associated costs to the District associated with this Option and the Lease Agreement.

6. OPTION TERM EXTENSION

Optionee may extend the Option Term for up to six (6) months ("**Extended Option Period**") if Optionee is delayed in fulfilling the requirements of this Option and at least one hundred twenty (120) days prior to expiration of the Option Term, Optionee has submitted written notice to the Chief Real Estate Officer requesting that the Option Term be extended and clearly declaring the length of such proposed extension.

Extensions beyond the Extended Option Period and any related fee shall be subject to approval by the Board of Supervisors.

7. CONDITIONS

The Option may not be exercised until the following terms and conditions shall have been met:

A. Preliminary Plans

Optionee shall submit preliminary plans for the development and use of the Premises ("**Preliminary Plans**"), as allowed under the terms of the Lease, for the District and Chief Real Estate Officer's approval. The preliminary plans shall be prepared by an architect licensed in the State of California and shall include:

- 1) A detailed site plan of the Premises showing:
 - a. all improvements planned for the Premises
 - b. any existing and/or proposed easements affecting the Premises
 - c. ingress and egress to and from the Premises
 - d. parking
 - e. location of all utilities
 - f. drainage plan
 - g. grade elevations of all structures;
- 2) Finalized landscape development plans including irrigation plans;
- 3) Structural, mechanical, and lighting systems;
- 4) Colored rendering or model of the planned development;
- 5) An Urban Runoff Management Plan;
- 6) A detailed cost estimate of all improvements; and
- 7) A detailed estimate of the construction schedule.

As a further contractual requirement the procedure for obtaining the District and Chief Real Estate Officer's approval of Preliminary Plans shall be the County Property Permit ("CPP") process, through the County's OC Public Works Department, with payment of normal processing fees and review reimbursement therefor. Within fifteen (15) days of receipt of the Preliminary Plans, the Chief Real Estate Officer will approve, rule on, reject or comment on the Preliminary Plans. The Chief Real Estate Officer's review shall be limited only to reviewing plans for conformity with this Option Agreement and the CPP process and shall not provide any representations or warranties regarding the sufficiency of the plans for the required land use approvals or for construction. The CPP process shall not be a substitute for, or act in the place of the Permitting Authority's permitting process and jurisdiction. For purposes of this agreement Permitting Authority, as defined below, does not include District or County.

Within ten (10) days following the Chief Real Estate Officer's approval of the Preliminary Plans, Optionee shall submit the plans to the City or other applicable permitting authority as deemed acceptable to the District (together hereinafter "**Permitting Authority**") and apply for approval of the planned development through the Permitting Authority's normal permit process.

B. Environmental Requirements

Concurrently with or prior to the submission of the Preliminary Plans to the City, or other applicable permitting authority, Optionee shall submit to the Permitting Authority, a draft Initial Study, prepared at Optionee's expense, in order for the Permitting Authority to determine whether a Negative Declaration or an Environmental Impact Report will be necessary for the proposed development. Such determination will be made in accordance with the Permitting Authority's normal procedures.

If the Permitting Authority determines that a Negative Declaration is appropriate, Optionee shall submit all necessary documentation and cooperate with the Permitting Authority in order to provide the Chief Real Estate Officer with written proof of environmental clearance on this project from the appropriate governmental authority.

If an Environmental Impact Report is mandated by the Permitting Authority, Optionee shall obtain a screen check Environmental Impact Report and draft Environmental Impact Report at its own expense and shall process same in accordance with the Permitting Authority's procedure. Optionee shall, prior to commencement of any construction on the Premises, provide supporting documentation to the Chief Real Estate Officer, evidencing that Optionee has received environmental clearance on this project from the appropriate authority governing this matter.

C. Construction Contract Documents

Optionee shall submit to the Chief Real Estate Officer construction contract documents ("**Construction Contract Documents**") and cost estimates for development of the Premises. Such Construction Contract Documents shall consist of the following:

- 1) Complete architectural, landscape, and engineering working drawings;
- 2) Complete specifications;
- 3) Construction contract form; and
- 4) Construction schedule.

The Chief Real Estate Officer will approve, rule on, reject, or comment on the Construction Contract Documents within ninety (90) days following the Chief Real Estate Officer's receipt of the Construction Contract Documents.

Within thirty (30) days following the Chief Real Estate Officer's review of the Construction Contract Documents as provided above, Optionee shall complete all corrections and adjustments to the Construction Contract Documents as required by the Chief Real Estate Officer and resubmit the documents to the Chief Real Estate Officer for approval. Within five (5) days following the Chief Real Estate Officer's approval of the corrected Construction Contract Documents, Optionee shall submit the approved Construction Contract Documents to the Permitting Authority for plan check.

D. City and County Permits

Chief Real Estate Officer shall not unreasonably withhold consent to any application by Optionee with respect to any permits or approvals related to activities or development plans approved by

County in accordance with this Option Agreement which may be required by any governmental or regulatory agency.

Optionee shall provide the Chief Real Estate Officer with satisfactory evidence that Optionee has met all Permitting Authority and USACE requirements and has obtained all necessary clearances and permits from the Permitting Authority and the USACE to commence construction of the planned development as preliminarily approved by the Chief Real Estate Officer.

Optionee acknowledges and agrees that no grading, or other construction activities shall be permitted on the Premises until all applicable permits and clearances have been obtained from the Permitting Authority, the USACE, and County.

E. Lease Requirements

Optionee shall submit to the Chief Real Estate Officer:

- 1) Satisfactory evidence of Optionee's ability to finance or fund the cost of the development planned for said Premises in accordance with the requirements of the Lease. If Optionee plans to hypothecate the leasehold as security for a loan, Optionee shall submit all documents proposed in the loan transaction, if any, along with a request and processing fees, if any, for County's consent to the proposed hypothecation in accordance with the terms of the Lease.
- 2) A cashier's or certified check made payable to the "*County of Orange*" in an amount equal to one month's rent, which will be applied against the first month's rent due under the Lease.
- 3) Evidence of insurance coverage which fully complies with Section 8.1 (Insurance) of the Lease.

8. IMPROVEMENTS

Improvement specifications or modifications shall be subject to mutual approval of both the District and Optionee of both the location and specification of the desired Tenant Improvements, consistent with the plans and entitlements approved during the Option term. Optionee shall be responsible for all costs, including any required demolition costs upon lease termination. Improvements must be approved and permitted by the District, and all local governing authorities including the USACE, including but not limited to a Section 408 Permit.

Optionee will be responsible for complying with all appropriate building standards, including addressing ADA requirements, as required. No structures will be constructed or installed at the Premises.

Improvements shall include, without limitation, that portion of the stormwater drainage system to be located on the Premises to address the stormwater originating on the Premises, which shall be designed so that all stormwater shall exit the Premises at the point designated on the approved stormwater quality management plan. Off-site improvements may also include any stormwater drainage pipes, ditches, berms, or other

improvements that are designed to divert stormwater that originates on the Premises per the approved stormwater quality management plan.

9. REVIEW BY DISTRICT

Optionee hereby acknowledges that one of the purposes of this Option Agreement is to afford Optionee and District the opportunity to determine whether Optionee is able to meet the various conditions of this Option Agreement and is able to obtain the required approvals as set forth in this Option Agreement. Several of those conditions involve obtaining reviews and approvals from officers, employees or agents of the District, and/or the Permitting Authority. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review.

Nothing contained in this Option Agreement shall be deemed to imply that required approvals will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of the District, and/or the Permitting Authority shall not be deemed in any manner a breach of this Option Agreement, nor shall any such denial give rise to any claim, liability, obligation, or cause of action with respect to this Option Agreement or the attached Lease.

No permit, approval, or consent given by the District, and/or the Permitting Authority, or their officers, employees, or agents, acting in its/their governmental capacity, shall affect or limit Optionee's obligations under this Option Agreement or under the Lease, nor shall any approvals or consents given under this Option Agreement by District, as a Party hereto, or by the Chief Real Estate Officer be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, and/or regulations.

10. DISCLAIMER OF REPRESENTATIONS OF WARRANTIES

Optionee agrees that District has made no representations, warranties, or agreements as to any matters concerning the Premises, including, but without being limited to, the land, marketability of title, topography, climate, air, water, water rights, utilities, present or future zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the Premises is suited, drainage, access to public roads, proposed routes of roads or extensions thereof or the availability of governmental permits or approvals of any kind. Optionee represents and warrants to District that it and its representatives and employees have made or will make their own independent inspection and investigation of such matters concerning the Premises.

11. OPTIONEE'S RIGHT TO ENTER PREMISES, INDEMNIFICATION

Optionee shall have early access to the Premises at no cost during the Option term and at any time prior to the exercise of the Option for the purpose of Optionee or its representatives to conduct such due diligence investigations and inspections of the Premises for construction of the Improvements.

Optionee hereby agrees to indemnify District and hold District, its officers, and employees harmless from any loss, claims, liability, or costs arising out of or incurred by reason of such investigation. Whether or not this option terminates or expires, Optionee agrees to repair any and all damages caused to the Premises by reason of any such investigation or investigations.

12. HOLD HARMLESS

Optionee and District hereby release and waive all claims and recourse against the other, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to each's performance of its respective obligations under this Option Agreement except claims arising from the concurrent active or sole negligence of the other Party, and its respective officers, agents, employees and contractors, and except for District's liability for any pre-existing Hazardous Substances within the Premises not directly and solely caused by Optionee.

Optionee acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Optionee, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

District acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

District, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

Optionee hereby agrees to indemnify, defend (with counsel approved in writing by District), and hold harmless, District, the County and its elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the Optionee's exercise of the rights under this Option Agreement, except for liability arising out of the concurrent active or sole negligence of District, the County and its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom, and also except for liability arising out of the existence of Hazardous Substances located in, on, under, or about the Premises, occurring: (i) prior to the Effective Date and (ii) during the Lease Term to the extent not directly and solely caused by Optionee. If District is named as co-defendant in a lawsuit, Optionee shall notify District of such fact and shall represent District in such legal action unless District undertakes to represent itself as co-defendant in such legal action, in which event, Optionee shall pay to District its litigation costs, expenses, and attorneys' fees for indemnification obligations arising out of Optionee's exercise of the rights under this Option Agreement. If judgment is entered against District and Optionee by a court of competent jurisdiction because of the concurrent active negligence of District and

Optionee, District and Optionee agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

District shall indemnify, defend (with counsel reasonably approved by Optionee), protect, and hold harmless Optionee and its officers, employees, agents, and volunteers and the Premises, from any and all claims, actions, losses, damages, judgments, costs, expenses, penalties, and/or liability, including, but not limited to, attorneys' and consultant's fees, arising out of or related to the existence of any Hazardous Substances located in, on, under, or about the Premises occurring: (i) prior to the Effective Date and (ii) during the Lease Term to the extent not directly and solely caused by Optionee. For the purposes of this paragraph, "**Hazardous Substance(s)**" shall mean any product, substance, material, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (a) potentially injurious to the public health, safety or welfare, the environment or the Premises; (b) regulated or monitored by any governmental authority; or (c) a basis for potential liability of District or Optionee under any applicable statute or common law theory.

13. INSURANCE

A. General Requirements

Optionee agrees to purchase all required insurance at Optionee's expense and to deposit with District certificates of insurance, including all endorsements required herein, necessary to satisfy District that the insurance provisions of this Option Agreement have been complied with and to keep such insurance coverage and the certificates and endorsements therefor on deposit with District during the entire term of this Option Agreement and any extension thereof.

District and Optionee are authorized self-insured public entities, including for purposes of professional liability, general liability, automobile liability and workers' compensation insurance requirements, and may use their respective programs of self-insurance to satisfy all the insurance requirements of this Option Agreement and Lease. District and Optionee warrant that through their respective programs of self-insurance that they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of the Option Agreement and Lease.

Optionee agrees that Optionee shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Chief Real Estate Officer. In no cases shall assurances by Optionee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Optionee also agrees that upon cancellation, termination, or expiration of Optionee's insurance, District may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Chief Real Estate Officer reinstates the Option.

All contractors performing work on behalf of Optionee pursuant to this Option Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Optionee. Optionee shall not allow contractors or subcontractors to work if contractors have less than the level of

coverage required by District from the Optionee under this Option Agreement. It is the obligation of the Optionee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by Optionee through the entirety of this Option Agreement and be available for inspection by a District representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by the County's Risk Manager, or designee. If Optionee is self-insured, Optionee will indemnify and defend District and County for any and all claims resulting or arising from Optionee's use of the premises, services, or other performance in accordance with the indemnity provision stated in this Lease.

B. Minimum Limits

The policy or policies of insurance maintained by the Optionee shall provide the minimum limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease

C. Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

D. Required Endorsements

- 1) The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:
 - a. an Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the District, County of Orange its elected and appointed officials, officers, employees, agents as Additional Insureds;

- b. a primary non-contributing endorsement using ISO form CG 20 01 04 13 or a form at least as broad evidencing that the Optionee's insurance is primary and any insurance or self-insurance maintained by District shall be excess and non-contributing; and
- 2) All insurance policies required by this contract shall waive all rights of subrogation against the District, County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.
- 3) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the District, County of Orange, the Board of Supervisors, its elected and appointed officials, officers, agents and employees. Blanket coverage may also be provided which will state- As Required by Written Contract.
- 4) All insurance policies required by this contract shall give DISTRICT thirty (30) days' notice in the event of cancellation and ten (10) days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

E. Severability of Interest Clause - Commercial General Liability

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

F. Delivery

Insurance certificates should be forwarded to District address provided in Section 17 (Notices) below or to an address provided by the Chief Real Estate Officer. Optionee has ten (10) business days to provide adequate evidence of insurance or this Option Agreement may be cancelled.

G. Insurance Requirement Changes

District expressly retains the right to require Optionee to increase or decrease insurance of any of the above insurance types throughout the term of this Option Agreement. Any increase or decrease in insurance will be as deemed by the Risk Manager as appropriate to adequately protect District.

Chief Real Estate Officer shall notify Optionee in writing of changes in the insurance requirements. If Optionee does not deposit copies of acceptable certificates of insurance and endorsements with District incorporating such changes within thirty (30) days of receipt of such notice, this Option Agreement may be in breach without further notice to Optionee, and District shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Optionee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Option Agreement, nor in any way to reduce the policy coverage and limits available from the insurer.

14. ASSIGNMENT

This Option shall not be sold, assigned, or otherwise transferred without the prior written consent of District, which consent may be withheld in the District's sole and absolute discretion. Failure to obtain District's required written consent shall render said sale, assignment, or transfer void.

15. EXERCISE OF OPTION TO LEASE

At any time during the Option Term that Optionee shall have performed all conditions as set forth in Section 7 (Conditions) of this Option Agreement to the satisfaction of Chief Real Estate Officer, Optionee may exercise the Option by giving Chief Real Estate Officer written notice of election to do so, accompanied by properly executed copies of the Lease in triplicate.

16. EXECUTION OF LEASE

Acting as District's representative, Chief Real Estate Officer shall execute the Lease within fifteen (15) days of receipt of Optionee's notice of election to exercise the Option and the Lease executed by Optionee.

17. LEASE DATE

It is understood and agreed by the Parties hereto that the effective date of the Lease shall be the date of execution of the Lease by both Parties.

18. TERMINATION

Failure of Optionee to fully and satisfactorily meet the terms and conditions of this Option Agreement within the time limits stated shall absolutely and conclusively terminate Optionee's rights hereunder, unless waived or extended in writing by District, notwithstanding the fact that District may choose to negotiate a lease with Optionee within a reasonable time after the expiration of this Option Agreement. The District shall also have the right to terminate this Option Agreement as to any parcels of land not then optioned to ground lease by the Optionee in the event the District and/or Permitting Authority disapproves the permits being sought by San Bernardino County as part of the project.

19. NOTICES

All notices, documents, correspondence and communications concerning this Option Agreement shall be addressed as set forth in this Section 19, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, return receipt requested or with other proof of delivery, with postage prepaid, by personal delivery, Federal Express or similar courier service, or by facsimile. Notices so given shall be deemed to have been given upon receipt with the exception of transmittals via facsimile which shall be deemed delivered on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To DISTRICT:

Orange County Flood Control District
c/o CEO Real Estate

To OPTIONEE:

San Bernardino County
385 North Arrowhead Avenue, Third Floor

Attn: Chief Real Estate Officer
400 W. Civic Center Drive, 5th Floor
Santa Ana, CA 92701
Facsimile: (714) 834-3046

San Bernardino, CA 92415-0180
Attn: Director, Real Estate Services
Department

With a copy to:

Orange County Flood Control District
c/o OC Public Works
Attn: Director
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

20. VENUE

The Parties hereto agree that this Option Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Option Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of San Bernardino California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

21. SEVERABILITY

If any term, covenant, condition, or provision of this Option Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

22. ATTORNEYS' FEES

In any action or proceeding brought to enforce or interpret any provision of this Option Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

23. SUCCESSORS AND ASSIGNS

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.

24. AUTHORITY

The Parties to this Option Agreement represent and warrant that it has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

25. ENTIRE AGREEMENT

This instrument contains the entire agreement between the Parties relating to the Option granted herein and all negotiations and agreements between the Parties hereto or their agents with respect to this transaction are merged herein. Any oral representations, modifications, or waivers concerning this instrument shall be of no force and effect, except in a subsequent instrument made in writing and signed by both Parties. Time is of the essence in the performance of the Parties' respective obligations herein contained. Subject to the restrictions against sale, assignment, or other transfer above, this Option Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors, and assigns.


26. COUNTERPARTS

The Option Agreement and Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of the Option Agreement and Lease (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Option Agreement and Lease upon request.

IN WITNESS WHEREOF, the Parties have executed this Option Agreement the day and year first above written.

[Signatures Commence on Next Page]

OPTIONEE:
SAN BERNARDINO COUNTY

By: 
Dawn Rowe, Chair
Board of Supervisors

Date: MAY 07 2024


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

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

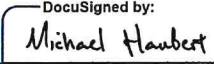
By: 
Deputy
Date: MAY 07 2024

Approved as to Legal Form:

TOM BUNTON, County Counsel
San Bernardino County, California

By: 
John Tubbs II, Deputy County Counsel
Date: 4-9-24


APPROVED AS TO FORM:
COUNTY COUNSEL

By: 
Deputy DocuSigned by:
7B6E2C12961F4B3...

Date 5/28/2024

DISTRICT

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic


Thomas A. Miller, Chief Real Estate Officer
Orange County, California

ATTACHMENT A

GROUND LEASE

[to be attached]