



Contract Number
91-623 A-3

SAP Number

San Bernardino County Flood Control District

Department Contract Representative Brendon Biggs, Interim Director of
Public Works Department
Telephone Number (909) 387-8040

Contractor City of Upland
Contractor Representative Steve Niz
Telephone Number (909) 291-2931
Contract Term 7/1/1991-6/30/2031
Original Contract Amount \$15,040.00
Amendment Amount \$ 7,966.00
Total Contract Amount \$23,006.00
Cost Center 1910002518
GRC/PROJ/JOB No. 38004053
Internal Order No.

IT IS HEREBY AGREED AS FOLLOWS:

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

WHEREAS, the San Bernardino County Flood Control District ("DISTRICT"), as licensor, and CITY OF UPLAND ("LICENSEE"), as licensee, have entered into a License Agreement, Contract No. 91-623, dated July 1, 1991, as amended by First Amendment dated July 24, 2001, and as amended by Second Amendment dated September 27, 2011 (collectively "the License") wherein the DISTRICT agreed to License certain real property to LICENSEE for a term which is scheduled to expire on June 30, 2021; and,

WHEREAS, DISTRICT and LICENSEE now desire to amend License to reflect the LICENSEE's exercise of the third of its four ten-year options extend the term of the License, extending the term of the License for ten (10) years for the period from July 1, 2021 to June 30, 2031 and amend certain other terms of the License as set forth in this amendment ("Third Amendment").

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties hereto agree that the License is amended as follows:

1. Effective August 25, 2020, EXTEND the term of the License as provided in **Paragraph 2, TERM**, for a period of ten (10) years from July 1, 2021 through June 30, 2031 (the "Third Extended Term").

2. Effective July 1, 2021, DELETE in its entirety the existing **Paragraph 4, FEES**, and SUBSTITUTE therefore the following as a new **Paragraph 4, FEES**:

4. **FEES**:

A. LICENSEE shall pay to DISTRICT the following annual fee payments in advance during the Third Extended Term, commencing on July 1, 2021, which fee shall increase on each July 1 thereafter by approximately four percent (4%) over the fee paid for the immediately preceding year, as more specifically reflected and included in the amounts set forth below:

July 1, 2021 through June 30, 2022 – annual payment of \$664.00
July 1, 2022 through June 30, 2023 – annual payment of \$690.00
July 1, 2023 through June 30, 2024 – annual payment of \$718.00
July 1, 2024 through June 30, 2025 – annual payment of \$746.00
July 1, 2025 through June 30, 2026 – annual payment of \$776.00
July 1, 2026 through June 30, 2027 – annual payment of \$807.00
July 1, 2027 through June 30, 2028 – annual payment of \$840.00
July 1, 2028 through June 30, 2029 – annual payment of \$873.00
July 1, 2029 through June 30, 2030 – annual payment of \$908.00
July 1, 2030 through June 30, 2031 – annual payment of \$944.00

B. In addition to the fee payable pursuant to **Paragraph 4.A.**, LICENSEE shall pay to DISTRICT an annual inspection fee in advance for the annual inspection of the Premises by the DISTRICT. The annual inspection fee to be payable at the commencement of the Third Extended Term, and on each July 1 thereafter during the Third Extended Term shall be equivalent to the Annual Inspection Fee shown on the DISTRICT's Schedule of Fees Ordinance then in effect.

C. If any fee or other sum due is not paid when due and payable, LICENSEE shall pay to DISTRICT an additional Twenty-five and 00/100 Dollars (\$25.00) for each fee or other sum due as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that DISTRICT will incur by reason of late payment by LICENSEE. Acceptance of any late charge shall not constitute a waiver of LICENSEE's default with respect to the overdue amount or prevent DISTRICT from exercising any of the other rights and remedies available to DISTRICT. Fees and other sums not paid when due shall bear simple interest from date due at the rate of one and one-half percent (1½%) per month.

3. Effective August 25, 2020, DELETE in its entirety the existing **Paragraph 5, FEE ADJUSTEMENTS** and SUBSTITUTE therefore the following as a new **Paragraph 5**:

5. **RESERVED.**

4. Effective August 25, 2020, DELETE in its entirety the existing **Paragraph 15, HOLDING OVER** and SUBSTITUTE therefore the following as a new **Paragraph 15, HOLDING OVER**:

15. **HOLDING OVER**: If the LICENSEE continues to use the Premises after the expiration of the term or after any earlier termination of this License, and if said use is with the express written consent of the DISTRICT, then LICENSEE shall be deemed to be holding the Premises on a month-to-month basis subject to all the provisions of this License, except that either party shall have the right to terminate the License during holdover upon providing not less than thirty (30) days' notice to the other party, and the annual fee payable during such period of holding over shall be 150% over and above the annual fee most recently payable prior to the date such holding over was commenced, pro-rated to a monthly amount and due in advance on a monthly basis.

5. Effective August 25, 2020, DELETE in its entirety **Paragraph 17, ATTORNEYS' FEES**, and SUBSTITUTE therefore the following as a new **Paragraph 17, ATTORNEYS' FEES AND COSTS**:

17. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the DISTRICT, including such costs and attorneys' fees payable under **Paragraph 19, INDEMNIFICATION.**

6. Effective August 25, 2020, DELETE in its entirety the existing **Paragraph 18, INSURANCE REQUIREMENTS**, and SUBSTITUTE therefore the following as a new **Paragraph 18, INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

18. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

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

B. The LICENSEE agrees to provide insurance set forth in accordance with the requirements herein. If the LICENSEE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the LICENSEE agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the License hereunder. Without in anyway affecting the indemnity herein provided and in addition thereto, the LICENSEE shall secure and maintain throughout the License term the following types of insurance with limits as shown:

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

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

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

(2) Commercial/General Liability Insurance – The LICENSEE shall carry General Liability Insurance covering all operations performed by or on behalf of the LICENSEE providing coverage for bodily injury and property damage with a combined single limit of not less than five million dollars (\$5,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, Collapse, and underground hazards
- (e) Personal injury
- (f) Contractual liability.
- (g) \$5,000,000 general aggregate limit.

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

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

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

(6) Environmental Liability Insurance – with a combined single limit of not less than Five Million and 00/100 Dollars (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required insurance shall be primary to any other insurance maintained by DISTRICT and the required additional insured endorsement shall protect the DISTRICT and the County of San Bernardino (“COUNTY”) without any restrictions. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

C. If LICENSEE performs any construction of the Premises on behalf of the DISTRICT, LICENSEE shall also procure and maintain coverages as follows:

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

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

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

(4) Subcontractor Insurance Requirements. The LICENSEE agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this License to provide insurance covering the contracted operation with the same requirements set forth in this Paragraph 18 (including waiver of subrogation rights) and naming the DISTRICT and COUNTY as an additional insured. The LICENSEE agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

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

D. Additional Insured – All policies, except for the Workers’ Compensation, shall contain endorsements naming the DISTRICT and COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this License hereunder. The additional insured endorsements shall not limit the scope of coverage for the DISTRICT and COUNTY to vicarious liability but shall allow coverage for the DISTRICT and 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.

E. Waiver of Subrogation Rights – The LICENSEE shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT and COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the LICENSEE and LICENSEE’s employees or agents from waiving the

right of subrogation prior to a loss or claim. The LICENSEE hereby waives all rights of subrogation against the DISTRICT and COUNTY.

F. 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 DISTRICT.

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

H. Proof of Coverage – The LICENSEE shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RESA) administering the License evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and LICENSEE shall maintain such insurance from the time LICENSEE commences use under the License hereunder until the end of the period of the License. Within fifteen (15) days of the commencement of this contract, the LICENSEE 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.

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

J. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by DISTRICT’s Director of Risk Management.

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

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

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

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

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

N. The LICENSEE agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of this License to provide insurance covering such use with the same requirements as set forth in this Paragraph 18 and naming the DISTRICT and COUNTY as additional insured. LICENSEE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

7. Effective August 25, 2020, DELETE in its entirety the existing **Paragraph 19, HOLD HARMLESS** and SUBSTITUTE therefore the following as a new **Paragraph 19, INDEMNIFICATION**:

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

8. Effective August 25, 2020, DELETE in its entirety the existing **Paragraph 30, LAW** and SUBSTITUTE therefore the following as a new **Paragraph 30, LAW & VENUE**:

30. **LAW & VENUE**: This License shall be construed and interpreted in accordance with the laws of the State of California. The parties acknowledge and agree that this License was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this License will be the Superior Court of California, County of San Bernardino, San Bernardino. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any action or claim concerning this License is brought by and third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino.

9. Effective August 25, 2020, DELETE in its entirety **Paragraph 33, NOTICES**, and SUBSTITUTE therefore the following as a new **Paragraph 33, NOTICES**:

33. **NOTICES**: Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally, delivered by reputable overnight courier, or sent by postage prepaid, first-class United States mail, certified or registered, return receipt requested. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt, if on a business day; otherwise on the immediately following business day, if personally delivered; or (ii) the date of delivery or refusal of the addressee to accept delivery, if on a business day; otherwise on the immediately following business day, if such notice is delivered by overnight courier or sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested.

LICENSEE address: CITY OF UPLAND
P. O. Box 460
Upland, CA 91785

DISTRICT'S Address: SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
825 East Third Street
San Bernardino, CA 92415-0835
Attention: Flood Control Engineer

with a copy to: SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
c/o Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

10. Effective August 25, 2020, ADD a new **Paragraph 35, TERMINATION**, which shall read as follows:

35. **TERMINATION:** DISTRICT may terminate this License at any time during the term of the License or any extensions thereof, if DISTRICT determines in its sole discretion, that it would be in the best interest of DISTRICT to terminate the License by giving the LICENSEE written notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. LICENSEE shall perform all necessary removals and restoration within said ninety (90) days. DISTRICT's Director of the Real Estate Services Department shall have the authority on behalf of DISTRICT to give LICENSEE notice of any termination pursuant to this this paragraph.

11. Effective August 25, 2020, ADD a new **Paragraph 36, MATERIAL MISREPRESENTATION**, which shall read as follows:

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

12. Effective August 25, 2020, ADD a new **Paragraph 37, INTERPRETATIONS**, which shall read as follows:

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

13. Effective August 25, 2020, ADD a new **Paragraph 38, FORMER COUNTY & DISTRICT OFFICIALS**, which shall read as follows, and ADD **EXHIBIT "4"**, which is attached to this Third Amendment and is incorporated herein:

38. **FORMER COUNTY & DISTRICT OFFICIALS:** LICENSEE agrees to provide or has already provided information on former COUNTY and/ or DISTRICT administrative officials (as defined below) who are employed by or represent LICENSEE. The information provided includes a list of former COUNTY and/or DISTRICT Administrative Officials who terminated COUNTY and/or DISTRICT employment within the last five years and who are now officers, principals, partners, associates or members of the LICENSEE. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of LICENSEE. For purposes of this provision, "COUNTY Administrative Official" and "DISTRICT Administrative Official" are each defined as a member of the Board of Supervisors or such officer's staff, COUNTY or DISTRICT Administrative Officer or member of such officer's staff, COUNTY and/or DISTRICT department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "4", List of Former COUNTY & DISTRICT Officials.)

14. Effective August 25, 2020, ADD a new **Paragraph 39, PUBLIC RECORDS DISCLOSURE**, which shall read as follows:

39. **PUBLIC RECORDS DISCLOSURE:** All information received by the DISTRICT from the LICENSEE or any source concerning this License, including the License itself, may be treated by the DISTRICT as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). LICENSEE understands that although all materials received by the DISTRICT in connection with this License are intended for the exclusive use of the DISTRICT,

they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which LICENSEE has reasonably requested DISTRICT to hold in confidence is made to the DISTRICT, the DISTRICT shall notify the LICENSEE of the request and shall thereafter disclose the requested information unless the LICENSEE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides DISTRICT a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the DISTRICT harmless in any/all actions brought to require disclosure. LICENSEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event DISTRICT fails to notify LICENSEE of any such disclosure request and/or releases any information concerning this License received from the LICENSEE or any other source

15. Effective August 25, 2020, ADD a new **Paragraph 40, COUNTERPARTS**, which shall read as follows:

40. **COUNTERPARTS**. This Third Amendment 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. For purposes of this Third Amendment only, the parties shall be entitled to sign and transmit an electronic signature of this Third Amendment (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 execute and deliver to the other party an original signed License upon request. This Paragraph 40 shall not apply to any further amendments to the License unless expressly otherwise set forth in said amendment.

16. Effective August 25, 2020, ADD a new **Paragraph 41, AUTHORIZED SIGNATORIES**, which shall read as follows:

41. **AUTHORIZED SIGNATORIES**: Both parties to this License represent that the signatories executing this document are fully authorized to enter into this agreement.

17. All other provisions and terms of the License shall remain the same and are hereby incorporated by reference. In the event of any conflict between the License and this Third Amendment, the terms of this Third Amendment shall control.

END OF THIRD AMENDMENT.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

CITY OF UPLAND

▶

Curt Hagman, Chairman, Board of Supervisors

By _____
(Authorized signature - sign in blue ink)

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

Name Debbie Stone

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

Title Mayor

By _____
Deputy

Dated: _____

Address P. O. Box 460
Upland, CA 91785

Approved as to Legal Form
▶
Agnes Cheng, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
▶

Date _____

Reviewed/Approved by Department
▶
Jim Miller, Real Property Manager, RESD
Date _____

EXHIBIT "4"

LIST OF FORMER COUNTY & DISTRICT OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY and/or DISTRICT Administrative Official, the title/description of the Official's last position with the COUNTY/DISTRICT, the date the Official terminated COUNTY and/or DISTRICT employment, the Official's current employment and/or representative capacity with the LICENSEE, the date the Official entered LICENSEE's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION