



**ORIGINAL**

**Contract Number**

02-235 A-2

**SAP Number**

## San Bernardino County Flood Control District

|   |   |
|---|---|
| <b>Department Contract Representative</b> | Terry W. Thompson, Director<br>Real Estate Services Department    |
| <b>Telephone Number</b>                   | (909) 387-5000  |
| <b>Contractor</b>                         | City of Colton  |
| <b>Contractor Representative</b>          | Brian Dickinson, Director of Public<br>Works and Utility Services |
| <b>Telephone Number</b>                   | 909-514-4210  |
| <b>Contract Term</b>                      | 4/1/2002 – 6/30/2032  |
| <b>Original Contract Amount</b>           | \$14,250.   |
| <b>Amendment Amount</b>                   | \$25,565.26   |
| <b>Total Contract Amount</b>              | \$39,815.26   |
| <b>Cost Center</b>                        | 1920002522  |
| <b>GRC/PROJ/JOB No.</b>                   | 38002968  |
| <b>Internal Order No.</b>                 |   |

### IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County Flood Control District ("DISTRICT"), as licensor, and the City of Colton ("LICENSEE"), as licensee, have previously entered into a License Agreement, Contract No. 02-235 dated April 2, 2002, as amended by the First Amendment on February 28, 2012 (collectively, the "License"), wherein DISTRICT licenses certain real property to LICENSEE, as more specifically set forth in the License; which License expired on March 31, 2022, and has continued on a permitted month-to-month holdover; and;

WHEREAS, DISTRICT and LICENSEE now desire to amend the License to reflect a permitted month-to-month holdover of a total of three (3) months from April 1, 2022 through June 30, 2022, with DISTRICT's express consent, more clearly describe the Premises, extend the term of the License, due to the LICENSEE's exercise of the second of four ten-year extension options, for the period from July 1, 2022 through June 30, 2032, adjust the fee schedule, and amend certain other terms of the License as set forth in this amendment ("Second 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. Pursuant to **Paragraph 15, HOLDING OVER**, LICENSEE shall, with DISTRICT's express consent granted herein, use the Premises on a month-to-month holdover term for a total of three (3) months for the period of April 1, 2022 through June 30, 2022 at a monthly fee amount of \$86.42 per month.

2. To more clearly define the "Premises", DELETE in its entirety the existing fourth paragraph in the "WITNESSTH" section and SUBSTITUTE therefore the following as a new fourth paragraph in the "WITNESSTH" section and ADD a new Exhibit "4", which is attached to this Second Amendment:

In consideration of the covenants and agreements hereinafter contained being fully kept and performed, and in consideration of the benefits to be derived by each party, DISTRICT does hereby permit the LICENSEE's non-exclusive use of a total of approximately 15,500 square feet of land ("Premises") located south of Washington Street and west of Reche Canyon Road in the City of Colton, County of San Bernardino, State of California, comprising approximately 3,500 square feet of land for the construction, operation, and maintenance of LICENSEE's underground electrical lines and approximately 12,000 square feet of land for the construction, operation, and maintenance of LICENSEE's overhead electrical lines, as the Premises is shown on Exhibit "4" attached hereto and incorporated herein by reference.

3. Effective July 1, 2022, pursuant to LICENSEE's exercise of its second of four ten-year extension options pursuant to **Paragraph 3, OPTION TO EXTEND TERM**, EXTEND the term of the License as provided in **Paragraph 2, TERM**, for a period of ten (10) years from July 1, 2022 through June 30, 2032 (the "Second Extended Term"). The parties hereby acknowledge and agree that there are two (2) extension options of ten-years each remaining under the License, which may be exercised by LICENSEE in accordance with Paragraph 3 of the License.

4. Effective July 1, 2022, 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 commencing when the Second Extended Term commences, and continuing each July 1 thereafter during the Second Extended Term, which includes an approximate four percent (4%) annual increase, as more specifically included in the amounts set forth below:

- July 1, 2022 thru June 30, 2023 – annual fee payment of \$1,078.00
- July 1, 2023 thru June 30, 2024 – annual fee payment of \$1,121.00
- July 1, 2024 thru June 30, 2025 – annual fee payment of \$1,166.00
- July 1, 2025 thru June 30, 2026 – annual fee payment of \$1,213.00
- July 1, 2026 thru June 30, 2027 – annual fee payment of \$1,262.00
- July 1, 2027 thru June 30, 2028 – annual fee payment of \$1,312.00
- July 1, 2028 thru June 30, 2029 – annual fee payment of \$1,364.00
- July 1, 2029 thru June 30, 2030 – annual fee payment of \$1,419.00
- July 1, 2030 thru June 30, 2031 – annual fee payment of \$1,476.00
- July 1, 2031 thru June 30, 2032 – annual fee payment of \$1,535.00

B. In addition to the annual fees payable pursuant to **Paragraph 4.A**, LICENSEE shall pay to the DISTRICT an annual inspection fee ("Annual Inspection Fee") in the then current amount set forth in the DISTRICT's Schedule of Fee Ordinance No. FCD 20-01 for the annual inspection of the Premises by the DISTRICT for compliance with the terms of this License without waiving any DISTRICT rights hereunder. The annual inspection fee shall be payable in advance on July 1, 2022, and on each July 1 thereafter during the Second Extended Term, including extensions thereof, if any. The DISTRICT's current Annual Inspection Fee effective for July 1, 2022 is One Thousand Two Hundred Thirty Six Dollars and 00/100 (\$1,236.00), as shown on the District's Schedule of Fee Ordinance No. FCD 20-01. The Annual Inspection Fee paid by LICENSEE for the then current license year shall not be refunded in whole or in part to the LICENSEE in the event the License is terminated for any reason.

C. If any annual fee, any Annual Inspection Fee, or any other sums are not paid when due and payable, LICENSEE shall pay to DISTRICT an additional One Hundred and 00/100 Dollars (\$100.00) for each annual fee, Annual Inspection Fee, or other sums 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. Annual fees, Annual Inspection Fees, or any 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.

5. Effective July 1, 2022, DELETE in its entirety the existing **Paragraph 5, FEE ADJUSTMENTS**, and SUBSTITUTE therefore the following as a new **Paragraph 5, RESERVED**:

5. **RESERVED.**

6. Effective July 1, 2022, DELETE in its entirety the existing **Paragraph 17, INSURANCE REQUIREMENTS**, and SUBSTITUTE therefore the following as a new **Paragraph 17, INSURANCE REQUIREMENTS AND SPECIFICATIONS**:

17. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. 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.

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

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

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 LICENSEE providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

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

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

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

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

(6) Environmental Liability Insurance – This insurance shall have a combined single limit of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

(7) During the period of any construction, LICENSEE shall, in addition to the above insurances, provide or cause its contractor or subcontractor to furnish the following forms and amounts of insurance – (a) for projects over one million (\$1,000,000) and less than three million (\$3,000,000) require limits of not less than three million (\$3,000,000) in General Liability and Auto Liability coverage; for projects over three million (\$3,000,000) and less than five million (\$5,000,000) require limits of not less than five million (\$5,000,000) in General Liability and Auto Liability coverage, and for projects over five million (\$5,000,000) require limits of not less than ten million (\$10,000,000) in General Liability and Auto Liability; (b) Continuing Products/Completed Operations Liability Insurance with a limit of not less than five million (\$5,000,000) for each occurrence for at least three years following substantial completion of the work on projects over one million (\$1,000,000); and (c) the LICENSEE agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to LICENSEE’s obligations in this Lease to provide insurance covering the contracted operations with the same requirements in this Paragraph 17, (including, but not limited to, waiver of subrogation rights) and naming 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 hereto; and (d) 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.

B. Additional Insured – All policies, except for the Workers’ Compensation, shall contain endorsements naming the DISTRICT, San Bernardino County (COUNTY), and their respective officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of LICENSEE’s obligations under this License. The blanket additional insured endorsements shall not limit the scope of coverage for the DISTRICT or the COUNTY to vicarious liability but shall allow coverage for the DISTRICT and the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as the most recent ISO Form or its equivalent.

C. Waiver of Subrogation Rights – The LICENSEE shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT, the COUNTY, and their respective 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 the COUNTY.

D. 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.

E. 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.

F. Proof of Coverage – The LICENSEE shall furnish Certificates of Insurance to the DISTRICT's Real Estate Services Department (RESA) administering the License evidencing the insurance coverage at the time this contract is executed, including additional endorsements, as required, shall be provided prior to the commencement of the term 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 for the duration of the term of the License. Within fifteen (15) days after the execution of this contract, LICENSEE shall furnish a copy of the Declarations page for all applicable policies and will provide complete certified copies of the policies and endorsements immediate upon request of the DISTRICT.

G. Acceptability of Insurance Carrier – Unless otherwise approved by the DISTRICT Director of the 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".

H. 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 Director of the 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, if the DISTRICT's Director of the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, 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.

I. Failure to Procure Insurance. In the event that any policy of insurance required under this License does not comply with the requirements, is not procured, or is canceled and not replaced, the DISTRICT has the right but not the obligation or duty to cancel the License or obtain insurance if it deems necessary and any premiums paid by the DISTRICT will be promptly reimbursed by the LICENSEE or any DISTRICT payments to the LICENSEE will be reduced to pay for DISTRICT purchased insurance.

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

K. The LICENSEE agrees to require all parties or subcontractors, or others it hires or contracts with for any construction project related to the use of this License or Licensed Premises to provide insurance covering such use with the basic requirements and including the DISTRICT 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.

L. 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 the DISTRICT's Director of Risk Management

7. Effective July 1, 2022, DELETE in its entirety the existing **Paragraph 18, HOLD HARMLESS**, and SUBSTITUTE therefore the following as a new **Paragraph 18, INDEMNIFICATION**:

18. **INDEMNIFICATION**: The LICENSEE agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT, the COUNTY and its respective

authorized officers, employees, agents and volunteers (collectively "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the DISTRICT or 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 the Indemnitees. LICENSEE's indemnification obligation applies to DISTRICT's or COUNTY's "active" as well as "passive" negligence but does not apply to DISTRICT's or COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. The provision of the License shall survive the expiration or earlier termination of the License. Notwithstanding anything else in this License, the obligations in this Paragraph 18 are to indemnify, defend and hold harmless the Indemnitees.

8. Effective July 1, 2022, DELETE in its entirety the existing **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 a reputable overnight courier service, or sent by United States first-class mail, postage prepaid, 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. Notice shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery by a reputable overnight courier service or if notice is sent by United States mail, postage prepaid, certified or registered, return receipt requested. Any notices received after 5pm local time shall be deemed delivered on the next business day.

DISTRICT's address: San Bernardino County Flood Control District  
Attn: Assistant Director, Flood Control  
825 E. Third Street  
San Bernardino, CA 92415-0835

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

LICENSEE's address: City of Colton  
650 North La Cadena Drive  
Colton, CA 92324

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9. 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 Second Amendment, the terms of this Second Amendment shall control.

**END OF SECOND AMENDMENT.**

**SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT**

*Dawn M. Rowe*

~~Gurt Hagman, Chairman, Board of Supervisors~~  
Dawn M. Rowe, *Vice Chair*

Dated: **JUN 28 2022**  
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD



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

By \_\_\_\_\_

**CITY OF COLTON**

By *Brian Dickinson*

Name Brian Dickinson

Title Director of Public Works and Utility Services

Dated: *June 8, 2022*

Approved as to Legal Form

*Agnes Cheng*  
Agnes Cheng, Deputy County Counsel

Date 6/6/2022

Reviewed for Contract Compliance

▶ \_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

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

Date 6/15/22

