



Contract Number
09-89 A-3

SAP Number

Real Estate Services Department

Department Contract Representative	<u>Terry W. Thompson, Director</u>
Telephone Number	<u>(909) 387-5252</u>
Contractor	<u>San Bernardino Community College District</u>
Contractor Representative	<u></u>
Telephone Number	<u></u>
Contract Term	<u>7/1/09 – 7/31/22</u>
Original Contract Amount	<u>\$4,106,280.00</u>
Amendment Amount	<u>\$1,385,451.00</u>
Total Contract Amount	<u>\$5,491,731.00</u>
Cost Center	<u>7810001000</u>
GRC/PROJ/JOB No.	<u>61002577</u>
Internal Order No.	<u></u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, Tri City North Owner, LLC, and the County of San Bernardino ("COUNTY") are parties to Lease Agreement, Contract No. 09-89 dated February 10, 2009, as amended by the First Amendment dated May 6, 2014 and the Second Amendment dated September 15, 2015 (collectively, the "Lease"), wherein the Tri City North Owner, LLC leases certain premises, comprising approximately 16,642 square feet, with an address of 658 E. Brier Street, Suite 100, San Bernardino, California, as the premises is more specifically set forth in the Lease, to the COUNTY for a term that is expired on June 30, 2019 and has continued on a month-to-month holdover; and,

WHEREAS, the San Bernardino Community College District represents and warrants to the COUNTY that it has acquired all right, title, and interest to the Premises from Tri City North Owner LLC, and as such, San Bernardino Community College District, as the successor-in-interest to Tri City North Owner, LLC, shall hereinafter be referred to as "LANDLORD";

WHEREAS, the LANDLORD and COUNTY desire to amend the Lease to: reflect the change of ownership of the Premises, reflect a thirteen month hold-over for the period of July 1, 2019 through July 31, 2020, with LANDLORD's consent, extend the term of the Lease for a negotiated term of two years for the period of August 1, 2020 through July 31, 2022, and to amend certain other provisions of the Lease as more specifically set forth in this amendment ("Third Amendment"); and,

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference and made a part hereof, and mutual covenants and conditions contained herein, the parties hereto agree that the Lease is amended as follows:

1. Notwithstanding anything to the contrary in Paragraph 8., HOLDING OVER, the parties hereby agree that COUNTY shall, with LANDLORD's express consent granted herein, occupy the Premises on a month-to-month tenancy for the period of July 1, 2019 through July 31, 2020 at a rental amount of \$37,045.05 per month.

2. Effective as of August 1, 2020, DELETE in its entirety the existing Paragraph 1., PARTIES, and SUBSTITUTE therefore the following as a new Paragraph 1., PARTIES, which shall read as follows:

"1. **PARTIES:** The Lease is made between San Bernardino Community College District ("LANDLORD"), as landlord, and the County of San Bernardino ("COUNTY"), as tenant, who agree on the terms and conditions of the Lease. LANDLORD hereby represents and warrants to COUNTY that LANDLORD is the owner with sole legal title to the Premises and has the right to enter into this Lease without consent or approval from any other parties. In the event of a breach of the foregoing representation and warranty, COUNTY shall have the right to terminate this Lease with immediate effect and LANDLORD shall indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its employees, contractors, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of said breach."

3. Effective August 1, 2020, DELETE in its entirety Paragraph 3.a., TERM, and SUBSTITUTE therefore a new Paragraph 3., TERM, which shall read as follows:

"3.a. **TERM:** The term of the Lease shall be extended for two (2) years, commencing on August 1, 2020 and expiring on July 31, 2022 (the "Second Extended Term")

4. Effective as of August 1, 2020 DELETE in its entirety Paragraph 4.a., RENT, and SUBSTITUTE therefore the following as a new Paragraph 4.a., RENT, which shall read as follows:

"4. **RENT:**

a. COUNTY shall pay to LANDLORD the following monthly rental payments in arrears on the last day of each month, commencing on the last day of the month when the Second Extended Term commences, and continuing during the Second Extended Term as follows:

August 1, 2020 through July 31, 2021 – monthly payments of \$37,045.05

August 1, 2021 through July 31, 2022 – monthly payments of \$38,277.00

Rent for any partial month shall be prorated based on the actual number of days of the month. LANDLORD shall accept all rent and other payments from COUNTY under this Lease via electronic funds transfer (EFT) directly deposited into the LANDLORD's designated checking or other bank account. LANDLORD shall promptly comply with reasonable directions and accurately complete forms provided by COUNTY required to process EFT payments."

5. Effective as of the August 1, 2020, DELETE in its entirety Paragraph 8., HOLDING OVER, and SUBSTITUTE therefore the following as a new Paragraph 8., HOLDING OVER, which shall read as follows:

"8 **HOLDING OVER:** In the event the COUNTY shall hold over and continue to occupy the Premises with the consent of the LANDLORD, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent, as existed and prevailed at the time of the expiration of the then current term of this Lease. Notwithstanding anything to the contrary in the Lease, either party shall have the right to terminate

the Lease during the holdover period by providing not less than ninety (90) days prior written notice to the other party. The Director of the Real Estate Services Department (RESA) shall have the right, on behalf of the COUNTY, to give notice of any termination pursuant to this paragraph.”

6. Effective as of the August 1, 2020, DELETE in its entirety Paragraph 17., HOLD HARMLESS, and SUBSTITUTE therefore the following as a new Paragraph 17., INDEMNIFICATION, which shall read as follows:

“17. **INDEMNIFICATION:** LANDLORD agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of the Lease from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by 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. LANDLORD’s indemnification obligation applies to COUNTY’s “active” as well as “passive” negligence but does not apply to COUNTY’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782. The provision of the Lease shall survive the expiration or earlier termination of the Lease.”

7. Effective as of August 1, 2020, DELETE in its entirety Paragraph 23., LANDLORD’S REMEDIES ON COUNTY’S DEFAULT, and SUBSTITUTE therefore the following as a new Paragraph 23., LANDLORD’S REMEDIES ON COUNTY’S DEFAULT, which shall read as follows:

“23. **LANDLORD’S REMEDIES ON COUNTY’S DEFAULT:** LANDLORD may, at any time after COUNTY is in default beyond any applicable notice and cure period, exercise any and all remedies available pursuant to law or granted pursuant to the Lease; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Monthly Rent or other sums due or otherwise declare any Monthly Rent or other sums due to be immediately payable. Each and every covenant hereof to be kept and performed by COUNTY is expressly made a condition and upon the default thereof LANDLORD may, at its option, terminate the Lease, provided that LANDLORD shall use reasonable efforts to mitigate its damages. In the event of such default beyond any applicable notice and cure period, COUNTY shall continue to remain liable for the payment of the Monthly Rent, other sums due, and/or damages for default of the Lease; in which case, such Monthly Rent, other sums, and/or damages shall be payable to LANDLORD only at the same time and in the same manner as provided for the payment of Monthly Rent.”

8. Effective as of the August 1, 2020, DELETE in its entirety Paragraph 25., NOTICES and SUBSTITUTE therefore the following as a new Paragraph 25., NOTICES, which shall read as follows:

“25. **NOTICES:**

a. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, including but not limited to notices required under the California unlawful detainer statutes, or any other person shall be in writing and either served personally, delivered by a reputable overnight courier service, or sent by United States, postage prepaid, first-class 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. Notice shall be deemed delivered and effective upon the earlier of: (i) the date of actual receipt if such notice is served personally, provided if such date is not a business day, said notice shall be effective as of the immediately following business day; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is delivered by reputable overnight courier service or sent by postage pre-paid, United States first-class mail, certified or registered, return receipt requested

provided that in all of the foregoing instances, any notices received after 5 pm local time on a business day shall be deemed delivered on the immediately following business day.

LANDLORD's address: San Bernardino Community College District
114 South Del Rosa Drive
San Bernardino, CA 92408
Attn: Jose F. Torres, MPA, Interim Chancellor

With a Copy to: Hines (Attn: Legal Department)
685 E. Carnegie Drive, Suite 120
San Bernardino, CA 92408

COUNTY: County of San Bernardino
Real Estate Services Department
385 N. Arrowhead Avenue
San Bernardino, CA 92415-0180

b. If LANDLORD intends to transfer its ownership interest (whether controlling or non-controlling) in the Premises to a third party, LANDLORD shall notify COUNTY of such transfer at least fifteen (15) COUNTY working days prior to completion of such transfer. In the event of a transfer of controlling interest in the Premises, LANDLORD and the new owner of the Premises, as the successor landlord under this Lease, shall provide COUNTY with documentation evidencing the of completion of said transfer; in which case, the successor landlord and COUNTY shall enter into a written amendment to reflect the name of the successor landlord as the LANDLORD under this Lease. In addition, the successor landlord shall, within five (5) days of acquiring the Premises, provide COUNTY with documentation evidencing that it has obtained insurance in compliance with Paragraph 17, INDEMNIFICATION and Paragraph 18, INSURANCE REQUIREMENTS AND SPECIFICATIONS. The COUNTY's RESD Director shall have the authority on behalf of COUNTY to execute a COUNTY standard amendment to this Lease with any successor landlord solely for the purposes of reflecting the name of the successor landlord as the LANDLORD and its notice address under this Lease. The successor landlord acknowledges and agrees its execution of such COUNTY standard amendment is a pre-requisite for Rents under this Lease to be paid to the successor landlord."

9. Effective as of August 1, 2020, DELETE in its entirety Paragraph 37., VENUE and SUBSTITUTE therefore the following as a new Paragraph 37., VENUE, which shall read as follows:

"37. **VENUE:** The parties acknowledge and agree that the Lease was entered into and intended to be performed in the County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to the Lease will be the Superior Court of California, County of 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 third party brings an action or claim concerning the Lease, 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."

10. Effective as of August 1, 2020, DELETE in its entirety the existing Paragraph 40., COUNTY'S RIGHT TO TERMINATE LEASE, and SUBSTITUTE therefore the following as a new Paragraph 40., COUNTY'S RIGHT TO TERMINATE LEASE, which shall read as follows:

"40. **COUNTY'S RIGHT TO TERMINATE LEASE:** The COUNTY shall have the right to terminate this Lease at any time during the Second Extended Term or any further extended term, whenever COUNTY, in its sole discretion, determines it would be in COUNTY'S best interests to terminate this Lease. COUNTY shall give LANDLORD notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. If COUNTY opts to exercise its right to terminate the Lease pursuant to this Paragraph 40, the Director of the Real Estate

Services Department is hereby authorized by COUNTY to deliver to LANDLORD on behalf of COUNTY a notice of termination. In the event COUNTY terminates this Lease pursuant to this paragraph, the LANDLORD shall be entitled to the rent which will have been earned at the date of termination of this Lease."

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

END OF THIRD AMENDMENT

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COUNTY OF SAN BERNARDINO


Curt Hagman, Chairman, Board of Supervisors

Dated: _____
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
of the County of San Bernardino

By _____
Deputy

**LANDLORD: SAN BERNARDINO COMMUNITY
COLLEGE DISTRICT**

By  _____
(Authorized signature - sign in blue ink)

Name Jose F. Torres
(Print or type name of person signing contract)


Title Interim Chancellor
(Print or Type)

Dated: _____

Address 114 South Del Rosa Drive

San Bernardino, CA 92408

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 _____