



Contract Number
06-292 A3

SAP Number
1920002522

San Bernardino County Flood Control District

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	San Bernardino County Flood Control District
Contractor Representative	Kevin Blakeslee
Telephone Number	(909) 387-7906
Contract Term	01/01/2005 through 12/31/2024
Original Contract Amount	\$52,728
Amendment Amount	\$25,428
Total Contract Amount	\$78,156
Cost Center	Flood Control Zone 2
GRC/PROJ/JOB No.	38002704
Internal Order No.	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County Flood Control District ("DISTRICT") and Judy Ying Ng, Trustee of the George Ng and Judy Ying Ng Trust, dated September 11, 1991 ("TENANT"), previously entered into a Lease Agreement, Contract No. 06-292 dated April 18, 2006, as amended by the First Amendment dated January 12, 2010 and the Second Amendment dated December 16, 2014 (collectively the "Lease"), wherein DISTRICT agreed to lease certain premises comprising approximately 0.086 acres in the DISTRICT's Zone 2, parallel to Lytle Creek Channel and South "E" Street, south of Central Avenue in San Bernardino, CA, as more specifically set forth in the Lease to TENANT for a term that is current scheduled to expire on December 31, 2019; and,

WHEREAS, the DISTRICT and TENANT, now desire to amend the Lease to exercise the third and final five-year option to extend the term from January 1, 2020 through December 31, 2024 as provided in Paragraph 6, OPTION TO EXTEND TERM, adjust the rent, as provided in Paragraph 5, RENT, and amend certain other terms and conditions as more specifically set forth in this amendment ("Third Amendment"); and,

NOW, THEREFORE, in consideration of the mutual covenants and conditions, the parties hereto agree the Lease is amended as follows:

1. EFFECTIVE January 1, 2020, pursuant to Paragraph 6, OPTION TO EXTEND TERM, DELETE, in its entirety, **Paragraph 4, TERM**, and SUBSTITUTE the following as a new **Paragraph 4, TERM**:

4. **TERM:**

This lease shall commence on January 1, 2020, and expire on December 31, 2024.

2. EFFECTIVE January 1, 2020, DELETE, in its entirety, **Paragraph 5, RENT**, and SUBSTITUTE, the following as a new **Paragraph 5, RENT**:

5. **RENT:**

A. TENANT shall pay to DISTRICT the following monthly rental payments in advance on the first day of each month, commencing January 1, 2020, continuing during the term, subject to approximately four (4%) annual increases, as more specifically set forth below:

January 1, 2020 through December 31, 2020 – monthly payments of \$391.00
January 1, 2021 through December 31, 2021 – monthly payments of \$407.00
January 1, 2022 through December 31, 2022 – monthly payments of \$423.00
January 1, 2023 through December 31, 2023 – monthly payments of \$440.00
January 1, 2024 through December 31, 2024 – monthly payments of \$458.00

B. If any rent or other sums due are not paid when due and payable, TENANT shall pay to DISTRICT an additional TWENTY-FIVE and 00/100 DOLLARS (\$25.00) for each rent or other sums due as an administrative processing charge. The parties agree this late charge represents a fair and reasonable estimate of the costs DISTRICT will incur by reason of late payment by TENANT. Acceptance of any late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount or prevent DISTRICT from exercising any of the other rights and remedies available to DISTRICT. In addition to the late charge, rents and other sums not paid when due shall bear simple interest from date due at the rate of one and one-half percent (1.5%) per month.

3. EFFECTIVE January 1, 2020, DELETE, in its entirety, **Paragraph 14, HOLD HARMLESS**, and SUBSTITUTE, the following as **Paragraph 14: INDEMNIFICATION**:

14. **INDEMNIFICATION:** The TENANT agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT and the County of San Bernardino ("COUNTY"), and its respective authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Lease 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 indemnitees. The TENANT's indemnification obligation applies to the DISTRICT's or the COUNTY's "active" as well as "passive" negligence but does not apply to the DISTRICT or the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

4. EFFECTIVE January 1, 2020, DELETE, in its entirety, **Paragraph 15, INSURANCE REQUIREMENTS**, and SUBSTITUTE, the following as **Paragraph 15, INSURANCE REQUIREMENTS AND SPECIFICATIONS**:

15. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. TENANT agrees to provide insurance set forth in accordance with the requirements herein. If TENANT uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, TENANT 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 Lease.

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

i. 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 Two Hundred Fifty Thousand Dollars (\$250,000) limits covering all persons including volunteers providing services on behalf of TENANT and all risks to such persons under the Lease.

If TENANT has no employees, it may certify or warrant to 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 DISTRICT's Director of Risk Management.

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

ii. Commercial/General Liability Insurance – TENANT shall carry General Liability Insurance covering all operations performed by or on behalf of TENANT 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.
- g. Two Million Dollars (\$2,000,000) general aggregate limit.

iii. Commercial Property Insurance - providing all risk coverage for the 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.

iv. 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 TENANT is transporting one or more non-employee passengers in relation to the Lease, 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 TENANT owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

v. Environmental Liability Insurance - This insurance shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

vi. 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.

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

i. 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 (\$3,000,000) in General Liability and Auto Liability coverage.

ii. 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.

iii. 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.

iv. TENANT agrees to require all parties, subcontractors, or others, including, but not limited to, architects, it hires or contracts with in relation to the Lease to provide insurance covering the contracted operations with the requirements in this Paragraph 20, (including, but not limited to, waiver of subrogation rights) and naming DISTRICT as an additional insured. TENANT agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

v. 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.

C. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming DISTRICT and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the Lease. The additional insured endorsements shall not limit the scope of coverage for DISTRICT to vicarious liability but shall allow coverage for DISTRICT 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.

D. Waiver of Subrogation Rights – TENANT shall require the carriers of required coverages to waive all rights of subrogation against DISTRICT, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit TENANT and TENANT's employees or agents from waiving the right of subrogation prior to a loss or claim. TENANT hereby waives all rights of subrogation against DISTRICT.

E. 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 DISTRICT.

F. Severability of Interests – TENANT 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 TENANT and DISTRICT or between DISTRICT and any other insured or additional insured under the policy.

G. Proof of Coverage – TENANT shall furnish Certificates of Insurance to DISTRICT's RESD administering the Lease evidencing the insurance coverage at the time the Lease is executed, additional endorsements, as required, shall be provided 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 DISTRICT RESD, and TENANT shall maintain such insurance from the time the Lease is executed until the expiration or earlier termination of the Lease. Within fifteen (15) days of the Commencement Date, TENANT 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.

H. Acceptability of Insurance Carrier – Unless otherwise approved by DISTRICT's Director 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".

I. 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.

J. Failure to Procure Coverage – All insurance required must be maintained in force at all times by TENANT. In the event that any policy of insurance required under the Lease does not comply with the requirements, is not procured, or is canceled and not replaced, DISTRICT has the right but not the obligation or duty to cancel the Lease or obtain insurance if it deems necessary and any premiums paid by DISTRICT will be promptly reimbursed by TENANT or DISTRICT payments to TENANT will be reduced to pay for DISTRICT purchased insurance.

K. Insurance Review – Insurance requirements are subject to periodic review by DISTRICT. DISTRICT's Director of Risk Management or designee is authorized, but not required, to reduce, waive, or suspend any insurance requirements whenever DISTRICT's Director 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 DISTRICT. In addition, if DISTRICT's Director of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, 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 DISTRICT, inflation, or any other item reasonably related to DISTRICT's risk.

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

Any failure, actual or alleged, on the part of DISTRICT RESD 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 DISTRICT RESD or DISTRICT.

L. 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 TENANT in TENANT's operations.

M. TENANT agrees to require all parties, subcontractors, or others it hires or contracts with in relation to the Lease to provide insurance covering the contracted operation with the requirements in this Paragraph 20, (including, but not limited to, waiver of subrogation rights) and naming DISTRICT as an additional insured.

5. EFFECTIVE January 1, 2020, DELETE, in its entirety, **Paragraph 32, NOTICES**, and SUBSTITUTE, the following as a new **Paragraph 32, NOTICES**:

32. **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 service, 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 or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by reputable overnight courier service or postage pre-paid, first-class United States mail, certified or registered, return receipt requested.

DISTRICT'S Address:	San Bernardino County Flood Control District
	825 East Third Street
	San Bernardino, CA 92415-0835

TENANT'S Address: Judy Ying Ng, Trustee of the George Ng and
Judy Ying Ng Trust dated September 11, 1991
12550 Whittier Boulevard
Whittier, CA 90602

6. EFFECTIVE January 1, 2020, DELETE, in its entirety, **Paragraph 38, VENUE**, and SUBSTITUTE, the following as a new **Paragraph 38, VENUE**:

38. **VENUE:** The parties acknowledge and agree that this 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 this Lease will be the Superior Court of the State 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 which would allow them to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of the State of California, County of San Bernardino.

7. EFFECTIVE January 1, 2020, DELETE, in its entirety, **Paragraph 46, USE OF AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDS AND REQUIREMENTS**, and SUBSTITUTE, the following as **Paragraph 46, RESERVED**:

46. **RESERVED.**

8. EFFECTIVE January 1, 2020, DELETE, in its entirety, **Paragraph 47, SCHEDULE OF EXPENDITURE OF FEDERAL AWARDS**, and SUBSTITUTE, the following as **Paragraph 47, RESERVED**:

47. **RESERVED.**

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

END OF THIRD AMENDMENT

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

►

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

JUDY YING NG, TRUSTEE OF THE GEORGE NG AND JUDY YING NG TRUST DATED SEPTEMBER 11, 1991

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name Judy Ying Ng
(Print or type name of person signing contract)

Title Trustee
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

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 _____