



**CONFIDENTIAL**

**Contract Number**

07-596 A-4

**SAP Number**

## Real Estate Services Department

<b>Department Contract Representative</b>	Terry W. Thompson, Director
<b>Telephone Number</b>	(909) 387-5252
<b>Contractor</b>	Martha Mary Green-Whitney as Trustee of the Green-Whitney Family Living Trust, U/A dated October 25, 2012
<b>Contractor Representative</b>	Martha Mary Green-Whitney Trustee
<b>Telephone Number</b>	909-794-2283
<b>Contract Term</b>	Three years, commencing 12/1/2019
<b>Original Contract Amount</b>	\$138,384
<b>Amendment Amount</b>	\$45,792
<b>Total Contract Amount</b>	\$184,176
<b>Cost Center</b>	
<b>GRC/PROJ/JOB No.</b>	33002307
<b>Internal Order No.</b>	

### IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino ("COUNTY"), as tenant, and Robert David Whitney and Martha Mary Green-Whitney, as Co-Trustees of the Green-Whitney Family Living Trust, U/A dated October 25, 2012 ("LANDLORD"), as landlord, previously entered into Lease Agreement, Contract No. 07-596 dated July 17, 2007, as amended by a First Amendment dated July 13, 2010, Second Amendment dated April 23, 2013 and a Third Amendment dated June 28, 2016 (collectively, the "Lease"), wherein LANDLORD leases certain premises to COUNTY for a term that expired on June 30, 2019, and has continued on a permitted month-to-month holdover; and,

WHEREAS, by Affidavit of Death of Trustee, which was recorded as Instrument No. 219-0287405 on August 21, 2019 in the Official Records of the County of San Bernardino, CA, Martha Mary Green-Whitney is the sole acting trustee of the Green-Whitney Family Living Trust, U/A dated October 25, 2012, and as such, Martha Mary Green-Whitney, as the sole trustee of said trust, shall hereinafter be referred to as LANDLORD, and;

WHEREAS, COUNTY and LANDLORD now desire to amend Lease to reflect a six (6) month holdover period with LANDLORD'S express consent, extend, following said holdover, the term of the Lease through

December 31, 2022 due to the COUNTY's exercise of its final three-year extension option, adjust the rental rate schedule, and amend certain other terms of the Lease as more specifically set forth in this amendment ("Fourth Amendment"); and,

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

1. Pursuant to **Paragraph 8, HOLDING OVER**, COUNTY shall, with LANDLORD's express consent granted herein, occupy the Premises on a holdover tenancy for the period from July 1, 2019 through December 31, 2019 in the amount of \$1,036.17 per month.

2. Effective as the date the last of the parties hereto executes this Fourth Amendment, DELETE in its entirety the existing **Paragraph 1, PARTIES**, and SUBSTITUTE therefore the following as a new **Paragraph 1, PARTIES**:

1. **PARTIES**: This lease ("Lease") is made between Martha Mary Green-Whitney as Trustee of the Green-Whitney Family Living Trust, U/A dated October 25, 2012 ("LANDLORD"), as landlord, and the County of San Bernardino ("COUNTY"), as tenant, who agree on the terms and conditions contained in this Lease. LANDLORD hereby represents and warrants to COUNTY that LANDLORD is the legal owner with sole fee title to the building and land on which it is situated, commonly known as 41003 Valley of the Falls Drive, Units A and B, Forest Falls, CA, and LANDLORD has the right to enter into this Lease without the 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, protect, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its officers, employees, contractors, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of said breach.

3. Effective, January 1, 2020, pursuant to the COUNTY's exercise of its option in **Paragraph 6, OPTION TO EXTEND TERM**, DELETE in its entirety the existing **Paragraph 3, TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 3, TERM**:

3. **TERM**: The term of the Lease for the Premises shall be extended for three (3) years, commencing on January 1, 2020 and expiring on December 31, 2022 (the "Fourth Extended Term").

4. Effective January 1, 2020, DELETE the existing **Paragraph 4, RENT, sub-paragraph a** and SUBSTITUTE therefore the following as a new **Paragraph 4, RENT, subparagraph a**:

4. **RENT**:

a. COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears not later than the last day of each month, commencing when the Fourth Extended Term commences and continuing for the duration of the Fourth Extended Term, as more specifically set forth below:

January 1, 2020 to December 31, 2020 – monthly rental amount of \$1,067.00

January 1, 2021 to December 31, 2021 – monthly rental amount of \$1,099.00

January 1, 2022 to December 31, 2022 – monthly rental amount of \$1,132.00

5. Effective January 1, 2020, DELETE the existing **Paragraph 17, HOLD HARMLESS**, and SUBSTITUTE therefore the following as a new **Paragraph 17, INDEMNIFICATION**:

17. **INDEMNIFICATION**: The LANDLORD agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers (collectively, the "Indemnitees") 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 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 LANDLORD's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

6. Effective January 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**:

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.

7. Effective January 1, 2020, DELETE in its entirety **Paragraph 25, NOTICES**, and SUBSTITUTE therefore the following as a new **Paragraph 25, NOTICES**:

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 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 addresses 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) 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:	Martha Mary Green-Whitney, Trustee of the Green-Whitney Family Living Trust dated October 25, 2012 40924 Mill Creek Crossing Forest Falls, CA. 92339
COUNTY's address:	County of San Bernardino Real Estate Services Department 385 North Arrowhead Avenue, Third Floor San Bernardino, CA 92415-0180



b. If, at any time after the Commencement Date, LANDLORD intends to transfer its ownership interest (whether controlling or non-controlling) in the Property 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 Property, LANDLORD and the new owner shall provide COUNTY with evidence of completion of transfer; in which case, the new owner and COUNTY shall document by written amendment said change of ownership. In addition, the new owner shall, within five (5) days of acquiring the Property, provide COUNTY with evidence 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 new LANDLORD solely for the purposes of reflecting any changes in the legal ownership of the Property and to update the LANDLORD's notice. The new LANDLORD acknowledges and agrees new LANDLORD execution of such COUNTY standard amendment is a pre-requisite for Rents under this Lease to be paid to the new LANDLORD.

8. Effective January 1, 2020, DELETE the existing **Paragraph 44, FORMER COUNTY OFFICIALS**, and SUBSTITUTE therefore the following as a new **Paragraph 44, FORMER COUNTY OFFICIALS** and SUBSTITUTE a new **EXHIBIT "C"**:

44. **FORMER COUNTY OFFICIALS:** LANDLORD has set forth on Exhibit "C" of the Lease, which is attached hereto and incorporated herein by reference, certain information on former COUNTY administrative officials (as defined below) who are employed by or represent LANDLORD. The information provided includes a list of the full names of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of LANDLORD. The information should also include the title/description of the official's last position with COUNTY, the date the official terminated COUNTY employment, the official's current employment and/or representative capacity with LANDLORD, and the date the official entered LANDLORD's employment and/or representation. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

9. Effective January 1, 2020, DELETE in its entirety the existing **Paragraph 49, PUBLIC RECORDS DISCLOSURE** and SUBSTITUTE therefore the following as a new **Paragraph 49, PUBLIC RECORDS DISCLOSURE**:

49. **PUBLIC RECORDS DISCLOSURE:** LANDLORD acknowledges and agrees that all information received by COUNTY from LANDLORD or any source concerning the Lease or the Property, including the Lease itself, may be treated by COUNTY as public information, subject to disclosure under the provisions of the California Public Records Act (Government Code Section 6250 *et seq.*), the Ralph M Brown Act, or any other open records laws ("Public Records Laws"). LANDLORD further acknowledges and agrees that, although all information received by COUNTY in connection with the Lease or the Property are intended for the exclusive use of COUNTY, such information is potentially subject to disclosure under Public Records Laws. In the event LANDLORD, at the time any information is provided to COUNTY, has reasonably requested in writing that certain information as to the Lease or the Property be held in confidence and a request for disclosure of such information is thereafter received by COUNTY, COUNTY shall endeavor to notify LANDLORD of said request and shall thereafter disclose the requested information unless LANDLORD, within five (5) days of COUNTY's notice of such disclosure request: (i) requests that the information not be disclosed; (ii) provides a legally sound basis for nondisclosure (as determined in COUNTY's sole discretion); and (iii) agrees in writing 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 or related the required disclosure. Notwithstanding anything to the contrary in the Lease, if COUNTY does not notify LANDLORD of such disclosure request or if COUNTY does not deem LANDLORD's basis for nondisclosure to be legally sufficient, as determined by COUNTY in its sole discretion, COUNTY shall not be liable for any claims for damages, lost profits, or other injuries of any and all kinds and LANDLORD waives any and all such claims against COUNTY. LANDLORD's indemnity obligation shall survive the expiration or earlier termination of the Lease.

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

END OF FOURTH AMENDMENT

COUNTY OF SAN BERNARDINO

MARTHA MARY GREEN-WHITNEY AS  
TRUSTEE OF THE GREEN-WHITNEY FAMILY  
LIVING TRUST, U/A dated October 25, 2012  
*(Print or type name of corporation, company, contractor, etc.)*

►  
Curt Hagman, Chairman, Board of Supervisors

By ► Martha Green-Whitney  
*(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 Marcie Green-Whitney  
*(Print or type name of person signing contract)*

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

Title Trustee  
*(Print or Type)*

By \_\_\_\_\_  
Deputy

Dated: 11-13-2019

Address 40924 Mill Creek Crossing  
Forest Falls, CA 92339

FOR COUNTY USE ONLY

Approved as to Legal Form  
► Agnes Cheng, Deputy County Counsel  
Date 10/30/19

Reviewed for Contract Compliance  
► \_\_\_\_\_  
Date \_\_\_\_\_

Reviewed/Approved by Department  
► Keith Burke for Jim Miller  
Jim Miller, Real Property Manager, RESD  
Date \_\_\_\_\_

**EXHIBIT "C"**

**LIST OF FORMER COUNTY OFFICIALS**

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

OFFICIAL'S NAME:

REQUIRED INFORMATION

LANDLORD hereby certifies the information it has provided in this Exhibit "C" is true, complete, and accurate.

**LANDLORD:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_