



OPTION AGREEMENT

THIS OPTION AGREEMENT (“**Option Agreement**”) is made _____, 2025, (“**Effective Date**”) by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter called “**District**”) and CITY OF CHINO, a California municipal corporation duly organized under the Constitution and law of the State of California (hereinafter called “**Optionee**”). District and Optionee may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties**.”

Recitals

- A. Optionee desires to obtain an option to lease certain real property described as the “**Premises**” in Exhibit A to that certain ground lease, attached hereto as **Attachment I** and made a part hereof (“**Lease**”), for the purposes and uses provided in the Lease.
- B. District is the fee owner of the Premises and is willing to enter into an option to lease said Premises for such purposes and uses as set forth herein and in the Lease as part of the conditions of approvals for the Majestic Chino Heritage project (Vesting Tentative Parcel Map No. 20071).

NOW, THEREFORE the Parties agree as follows:

1. DEFINITIONS (PM02.1 S)

- a. “**Board of Supervisors**” means the Board of Supervisors of the County of Orange, a political subdivision of the State of California, who serve as the governing body for the District.
- b. “**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.
- c. “**City**” means the City of Chino, State of California, within which the Premises is located.
- d. “**County**” means the County of Orange, a political subdivision of the State of California, and shall include its Board of Supervisors, its elected and appointed officials, officers, agents, employees, and contractors
- e. “**District**” means the Orange County Flood Control District, a body corporate and politic. Any reference to the District herein, unless expressly stated to the contrary, shall refer to the District solely in its capacity as owner of the Premises and not the District in its capacity as a land use or other governmental approval authority.
- f. “**Lease**” means that certain Ground Lease attached hereto as **Attachment I**, including any and all addenda, amendments and exhibits hereto.
- g. “**Premises**” means that certain real property containing approximately seventy-five acres with Assessor Parcel Nos: 1033-082-04-0000, 1033-082-09-0000, 1033-082-10-0000, 1033-081-

06-0000, 1033-081-07-0000, 1033-081-08-0000, 1033-091-01-0000, and 1057-211-05-0000 in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Optionee pursuant to the Lease for the uses and purposes as set forth therein. The legal description of the Premises is attached to the Lease as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is also attached to the Lease as **Exhibit A-1**.

2. OPTION (PM03.1 S)

District hereby grants Optionee the option (“**Option**”) to lease said Premises in accordance with the covenants and conditions set forth herein and in the Lease.

3. TERM (PM05.1 S)

The term of this Option Agreement shall be one hundred twenty (120) months (“**Option Term**”) and shall commence on the Effective Date shown above; provided that if Optionee is unable to secure the required approvals for its use of the Premises, despite its reasonable efforts, the Option Term may extend for such time as is necessary to secure said approvals upon request of the Optionee to the Chief Real Estate Officer, which request will not be unreasonably denied by the District. Any such extension shall be memorialized in an amendment to this Option Agreement executed by the Optionee and the Chief Real Estate Officer on behalf of the District. This Term is conditioned upon the District’s termination rights set forth in Section 16.

4. OPTION PRICE (PM04.2 N)

The price of the Option granted herein is \$1.00 (“**Option Price**”), which shall be paid to District in full upon execution of this Option Agreement.

The Option Price shall be retained by District in consideration for the granting of the Option. No portion of the Option Price shall be refunded or credited to rent payments under the Lease regardless of whether Optionee exercises the Option prior to the expiration of the Option Term.

5. INTENTIONALLY DELETED (PM06.1 N)

6. CONDITIONS (PM07.1 N)

The Option may not be exercised until the Optionee has provided evidence of insurance coverage which fully complies with Section 8.1 (Insurance) of the Lease.

7. REVIEW BY DISTRICT (PM08.1 N)

Optionee hereby acknowledges that one of the purposes of this Option Agreement is to afford Optionee and District the opportunity to determine whether Optionee is able to meet the various conditions of this Option Agreement and is able to obtain the required approvals as set forth in this Option Agreement. Several of those conditions involve obtaining reviews and approvals from officers, employees or agents of the District, and/or the City. Optionee shall also provide evidence of review by the Army Corps of Engineers for its park development to satisfy any Section 408 permit requirements. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review. Optionee shall reimburse the District for staff time to review any permit application to meet the terms and conditions of this Option Agreement.

Nothing contained in this Option Agreement shall be deemed to imply that required approvals will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of the District, and/or the City shall not be deemed in any manner a breach of this Option Agreement, nor shall any such denial give rise to any claim, liability, obligation, or cause of action with respect to this Option Agreement or the attached Lease.

No permit, approval, or consent given by the District, and/or the City, or their officers, employees, or agents, acting in its/their governmental capacity, shall affect or limit Optionee's obligations under this Option Agreement or under the Lease, nor shall any approvals or consents given under this Option Agreement by District, as a Party hereto, or by the Chief Real Estate Officer be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, and/or regulations.

8. DISCLAIMER OF REPRESENTATIONS OF WARRANTIES (PM015.1 N)

District hereby represents and warrants that it has the authority to enter into this Option Agreement and the Lease for the purposes intended for its use by Optionee. Optionee agrees that District has made no representations, warranties, or agreements as to any matters concerning the Premises, including, but without being limited to, the land, marketability of title, topography, climate, air, water, water rights, utilities, present or future zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the Premises is suited, drainage, access to public roads, proposed routes of roads or extensions thereof or the availability of governmental permits or approvals of any kind. Optionee represents and warrants to District that it and its representatives and employees have made or will make their own independent inspection and investigation of such matters concerning the Premises.

9. OPTIONEE'S RIGHT TO ENTER PREMISES, INDEMNIFICATION (PM09.1.1 S)

Subject to prior written approval and conditions as may be specified by the Chief Real Estate Officer, Optionee and its authorized representatives shall have the right to enter upon, to pass and to repass over and along said Premises. Optionee hereby agrees to indemnify District and hold District, its officers, and employees harmless from any loss, claims, liability, or costs arising out of or incurred by reason of such investigation. Whether or not this option terminates or expires, Optionee agrees to repair any and all physical damages caused to the Premises by reason of and caused by any such investigation or investigations.

10. HOLD HARMLESS (PMGE10.1 S)

Optionee hereby releases and waives all claims and recourse against District, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Option Agreement except claims arising from the concurrent active or sole negligence of District, its officers, agents, employees and contractors. Optionee hereby agrees to indemnify, defend (with counsel approved in writing by District), and hold harmless, District, the County and its elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the Optionee's exercise of the rights under this Option Agreement, except for liability arising out of the concurrent active or sole negligence of District, the County and its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If District is named as co-defendant in a lawsuit, Optionee shall notify District of such fact and shall represent District in such legal action unless District undertakes to represent itself as co-defendant in such legal action, in which event, Optionee shall pay to District its litigation costs, expenses, and attorneys' fees. If judgment is entered against District and Optionee by a court of competent jurisdiction because of the concurrent active negligence of District and Optionee, District and

Optionee agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Optionee acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Optionee, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

11. INSURANCE (PM09.2.2S)

A. General Requirements

Optionee agrees to purchase all required insurance at Optionee's expense or maintain a program of self insurance and to deposit with District certificates of insurance, including all endorsements required herein, necessary to satisfy District that the insurance provisions of this Option Agreement have been complied with and to keep such insurance coverage and the certificates and endorsements therefor on deposit with District during the entire term of this Option Agreement and any extension thereof.

The Option shall automatically terminate at the same time Optionee's insurance coverage is terminated. If within ten (10) business days after termination under this Section, Optionee obtains and provides evidence of the required insurance coverage acceptable to Chief Real Estate Officer, this Option Agreement may be reinstated at the sole discretion of Chief Real Estate Officer. Optionee shall pay District Seven Hundred Fifty Dollars (\$750.00) for processing the reinstatement of this Option Agreement.

Optionee agrees that Optionee shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Chief Real Estate Officer. In no cases shall assurances by Optionee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Optionee also agrees that upon cancellation, termination, or expiration of Optionee's insurance, District may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Chief Real Estate Officer reinstates the Option.

If Optionee fails to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the term of the Option, District and Optionee agree that this shall constitute a material breach of this Option Agreement. Whether or not a notice of default has or has not been sent to Optionee, said material breach shall permit District to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and Optionee's employees and agents, from entering the Premises until such time as Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Optionee further agrees to hold District harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from District's action.

All contractors performing work on behalf of Optionee pursuant to this Option Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Optionee. Optionee shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by District from the Optionee under this Option Agreement. It is the obligation of the Optionee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by Optionee through the entirety of this Option Agreement and be available for inspection by a District representative at any reasonable time.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by the County's County Executive Office/Office of Risk Management, or designee ("**Risk Manager**"). The County reserves the right to require current audited financial reports from Optionee. If Optionee is self-insured, Optionee will indemnify and defend County for any and all claims resulting or arising from Optionee's use of the premises, services, or other performance in accordance with the indemnity provision stated in this Option Agreement.

If the Optionee fails to maintain insurance acceptable to District for the full term of this Option Agreement, District may terminate this Option Agreement.

B. Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's key Rating Guide/Property-Casualty/United States or ambest.com.

If the insurance carrier does not have an A.M. Best rating of A-/VIII, the Risk Manager retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

C. Minimum Limits

The policy or policies of insurance maintained by the Optionee shall provide the minimum limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicle	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease

D. Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form

CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

E. Required Endorsements

- 1) The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:
 - a. an Additional Insured endorsement using ISO form CG 20 26 03 or a form at least as broad naming the District, County of Orange its elected and appointed officials, officers, employees, agents as Additional Insureds;
 - b. a primary non-contributing endorsement using ISO for CG 20 01 04 13 or a form at least as broad evidencing that the Optionee's insurance is primary and any insurance or self-insurance maintained by District shall be excess and non-contributing; and
- 2) All insurance policies required by this contract shall waive all rights of subrogation against the District, County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.
- 3) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the District, County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees. Blanket coverage may also be provided which will state "As Required by Written Contract."
- 4) All insurance policies required by this contract shall give DISTRICT thirty (30) days' notice in the event of cancellation and ten (10) days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

F. Severability of Interest Clause - Commercial General Liability

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

G. Delivery

Insurance certificates should be forwarded to District address provided in Section 17 (Notices) below or to an address provided by the Chief Real Estate Officer. Optionee has ten (10) business days to provide adequate evidence of insurance or this Option Agreement may be cancelled.

H. Insurance Requirement Changes

District expressly retains the right to require Optionee to increase or decrease insurance of any of the above insurance types throughout the term of this Option Agreement. Any increase or decrease in insurance will be as deemed by the Risk Manager as appropriate to adequately protect District.

Chief Real Estate Officer shall notify Optionee in writing of changes in the insurance requirements. If Optionee does not deposit copies of acceptable certificates of insurance and endorsements with District incorporating such changes within thirty (30) days of receipt of such notice, this Option Agreement may be in breach without further notice to Optionee, and District shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Optionee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Option Agreement, nor in any way to reduce the policy coverage and limits available from the insurer.

12. ASSIGNMENT (PM010.1 S)

This Option shall not be sold, assigned, or otherwise transferred without the prior written consent of District, which consent may be withheld in the District's sole and absolute discretion. Failure to obtain District's required written consent shall render said sale, assignment, or transfer void.

13. EXERCISE OF OPTION TO LEASE (PM011.1 S)

At any time during the Option Term that Optionee shall have performed all conditions as set forth in Section 6 (Conditions) of this Option Agreement to the satisfaction of Chief Real Estate Officer, Optionee may exercise the Option by giving Chief Real Estate Officer written notice of election to do so, accompanied by properly executed copies of the Lease in triplicate.

14. EXECUTION OF LEASE (PM012.1 N)

Acting as District's representative, Chief Real Estate Officer shall execute the Lease within _____ () days of receipt of Optionee's notice of election to exercise the Option and the Lease executed by Optionee.

15. LEASE EFFECTIVE DATE (PM013.1 S)

It is understood and agreed by the Parties hereto that the Effective Date of the Lease shall be the date of execution of the Lease by District.

16. TERMINATION (PM014.1 S)

Failure of Optionee to fully and satisfactorily meet the terms and conditions of this Option Agreement within the time limits stated shall absolutely and conclusively terminate Optionee's rights hereunder, notwithstanding the fact that District may choose to negotiate a lease with Optionee within a reasonable time after the expiration of this Option Agreement. The District shall also have the right to terminate this Option Agreement as to any parcels of land not then optioned to ground lease by the Optionee in the event the Army Corps of Engineers disapproves the permits being sought by Majestic as part of the Majestic Chino Heritage project.

Upon execution of this Option Agreement, the Optionee shall execute, acknowledge, and deliver to the Chief Real Estate Officer a quitclaim deed, in a form as approved by the Chief Real Estate Officer, quitclaiming all right title and interest created by this Option Agreement back to the District ("**Quitclaim Deed**"). The Quitclaim Deed shall be retained by the Chief Real Estate Officer for the duration of this Option Agreement and shall be recorded in the event of the termination of this Option Agreement for any reason to remove any cloud on title created by this Option Agreement.

17. NOTICES (PM018.1 N)

All notices, documents, correspondence and communications concerning this Option Agreement shall be addressed as set forth in this Section 17, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, return receipt requested or with other proof of delivery, with postage prepaid, by personal delivery, Federal Express or similar courier service, or by facsimile. Notices so given shall be deemed to have been given upon receipt with the exception of transmittals via facsimile which shall be deemed delivered on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To DISTRICT:

Orange County Flood Control District
c/o CEO Real Estate
Attn: Chief Real Estate Officer
County Administration North
400 W. Civic Center Dr., Fifth Floor
Santa Ana, CA 92701

To OPTIONEE:

City of Chino
13220 Central Avenue
Chino, CA 91710
Attn: City Manager

With a copy to:

Orange County Flood Control District
c/o OC Public Works
Attn: Director
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

18. VENUE (PMES13.1S)

The Parties hereto agree that this Option Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Option Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

19. SEVERABILITY (PMES15.1S)

If any term, covenant, condition, or provision of this Option Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

20. ATTORNEYS' FEES (PMES16.1S)

In any action or proceeding brought to enforce or interpret any provision of this Option Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

21. SUCCESSORS AND ASSIGNS (PMES18.1S)

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.

22. AUTHORITY (PMES20.1S)

The Parties to this Option Agreement represent and warrant that it has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

23. ENTIRE AGREEMENT (PM017.1 S)

This instrument contains the entire agreement between the Parties relating to the Option granted herein and all negotiations and agreements between the Parties hereto or their agents with respect to this transaction are merged herein. Any oral representations, modifications, or waivers concerning this instrument shall be of no force and effect, except in a subsequent instrument made in writing and signed by both Parties. Time is of the essence in the performance of the Parties' respective obligations herein contained. Subject to the restrictions against sale, assignment, or other transfer above, this Option Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors, and assigns.

IN WITNESS WHEREOF, the Parties have executed this Option Agreement the day and year first above written.

OPTIONEE

a _____

By:

By: _____
Name:
Title:

By: _____
Name:
Title:

DISTRICT

APPROVED AS TO FORM:
COUNTY COUNSEL

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

By: _____
Deputy

Date _____

Thomas A. Miller, Chief Real Estate Officer
Orange County, California

EXHIBIT A
GROUND LEASE
[to be attached]