CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING AGENDA
MARCH 22, 2016

Closed Session at 6:00 PM *(when scheduled)*
General Business Session at 7:00 PM

Barbara D. Kogerman, Mayor

Don Sedgwick, Mayor Pro Tempore
Melody Carruth, Council Member
Andrew Blount, Council Member
Dore J. Gilbert, M.D., Council Member

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, California 92653

Any person wishing to address the City Council/Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a pink "Request to Speak" form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council/Planning Agency. Completion of the form is voluntary. All persons may attend the meeting regardless of whether this form is completed.

Members of the public wishing to address the City Council can do so during the Public Comments portion of the Agenda with a time limitation of three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes for Public Comments. If you are commenting on an Agenda item, your comments will be heard at the time that item is scheduled on the Agenda. If you are addressing the City Council on an item not listed on the Agenda, the City Council is prohibited by law from discussing or taking any action on that item.

CLOSED SESSION - CONVENING AT 6:00 PM

CALL TO ORDER

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

ROLL CALL OF CITY COUNCIL MEMBERS

ANNOUNCEMENT OF CLOSED SESSION ITEMS

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9 Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) and paragraph (1) of subdivision (e) of Government Code Section 54956.9: (1 potential case)

PUBLIC COMMENT ON CLOSED SESSION ITEMS

ADJOURN TO CITY COUNCIL CONFERENCE ROOM

CONVENE INTO CLOSED SESSION

RECONVENE TO CITY COUNCIL CHAMBER

RECESS

CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING AGENDA
MARCH 22, 2016

Closed Session at 6:00 PM *(when scheduled)*
General Business Session at 7:00 PM

Barbara D. Kogerman, Mayor
Don Sedgwick, Mayor Pro Tempore **Melody Carruth, Council Member**
Andrew Blount, Council Member **Dore J. Gilbert, M.D., Council Member**

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, California 92653

Any person wishing to address the City Council/Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a pink "Request to Speak" form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council/Planning Agency. Completion of the form is voluntary. All persons may attend the meeting regardless of whether this form is completed.

Members of the public wishing to address the City Council can do so during the Public Comments portion of the Agenda with a time limitation of three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes for Public Comments. If you are commenting on an Agenda item, your comments will be heard at the time that item is scheduled on the Agenda. If you are addressing the City Council on an item not listed on the Agenda, the City Council is prohibited by law from discussing or taking any action on that item.

GENERAL BUSINESS - RECONVENING AT 7:00 PM

CALL TO ORDER

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

PLEDGE OF ALLEGIANCE: COUNCIL MEMBER CARRUTH

ROLL CALL OF CITY COUNCIL MEMBERS

CLOSED SESSION REPORT

1. PRESENTATIONS AND PROCLAMATIONS

1.1 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL REPORT FROM LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON CALISTA SHANG.

1.2 2015 LAGUNA HILLS DEPUTY OF THE YEAR

RECOMMENDATION: THAT MAYOR KOGERMAN INVITE LIEUTENANT CHACON TO PRESENT THE 2015 LAGUNA HILLS DEPUTY OF THE YEAR AWARD TO DEPUTY PETER ADA.

2. PUBLIC COMMENTS

This is the time to address the City Council on any matter not listed on this Agenda that is within the subject matter jurisdiction of the City Council. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

3. CONSENT CALENDAR

All matters listed under "CONSENT CALENDAR" are considered to be routine and will be enacted by one motion approving the recommendation listed on the Agenda. There will be no separate discussion unless Members of the City Council or Staff request specific items be removed from the Consent Calendar.

3.1 WAIVE READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA

RECOMMENDATION: THAT THE CITY COUNCIL WAIVE READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA AND DECLARE THAT SAID TITLES WHICH APPEAR ON THE PUBLIC AGENDA SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED.

3.2 APPROVAL OF MINUTES FOR MARCH 8, 2016

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MINUTES OF THE MARCH 8, 2016, REGULAR MEETING.

3.3 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED MARCH 22, 2016

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $530,818.99.

3.4 PROGRESS PAYMENT NO. 3 FOR LAGUNA HILLS COMMUNITY CENTER AND SPORTS COMPLEX SITE IMPROVEMENTS, CIP NO. 514

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 3, IN THE NET AMOUNT OF $79,924.26, TO HORIZONS CONSTRUCTION COMPANY FOR LAGUNA HILLS COMMUNITY CENTER AND SPORTS COMPLEX SITE IMPROVEMENTS, CIP NO. 514.

3.5 PROGRESS PAYMENT NO. 1 AND CONTRACT CHANGE ORDER NO. 1 FOR WATER QUALITY IMPROVEMENT CATCH BASIN DEBRIS GATE PROJECT, CIP NO. 412E

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE CONTRACT CHANGE ORDER NO. 1 AND PROGRESS PAYMENT NO. 1, IN THE NET AMOUNT OF $66,439.20, TO G2 CONSTRUCTION, INC., FOR WATER QUALITY IMPROVEMENT CATCH BASIN DEBRIS GATE PROJECT, CIP NO. 412E.

3.6 ESCHEATMENT OF UNCLAIMED FUNDS

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING THE ESCHEATMENT OF UNCLAIMED FUNDS HELD IN ACCORDANCE WITH STATE LAW."

3.7 SECOND READING AND ADOPTION OF AN ORDINANCE APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT."

3.8 SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING AND RESTATING CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES."

3.9 REVISED EFFECTIVE DATE TO AN AMENDMENT OF THE WASTE DISPOSAL AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE CITY OF LAGUNA HILLS

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING THE REVISED EFFECTIVE DATE TO AN AMENDMENT TO THE 2009 WASTE DISPOSAL AGREEMENT WITH THE COUNTY OF ORANGE."

ITEMS REMOVED FROM THE CONSENT CALENDAR

4. PLANNING AGENCY

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

4.2 PUBLIC COMMENTS

This is the time to address the Planning Agency on any matter not listed on this Agenda that is within the subject matter jurisdiction of the Planning Agency. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

4.3 APPROVAL OF MINUTES FOR MARCH 8, 2016

RECOMMENDATION: THAT THE PLANNING AGENCY APPROVE THE MINUTES OF THE MARCH 8, 2016, REGULAR MEETING.

4.4 ADMINISTRATIVE REPORTS

4.5 PLANNING AGENCY PUBLIC HEARINGS

PLANNING AGENCY ADJOURNMENT

JOINT PLANNING AGENCY / CITY COUNCIL MEETING

ROLL CALL OF JOINT PLANNING AGENCY / CITY COUNCIL MEMBERS

PUBLIC COMMENTS

SITE DEVELOPMENT PERMIT, MASTER SIGN PROGRAM, CONDITIONAL USE PERMIT, PARKING USE PERMIT, VESTING TENTATIVE TRACT MAP, AND

PRECISE PLAN NO. 2-15-3114, A REQUEST BY MERLONE GEIER MANAGEMENT, LLC, TO REDEVELOP THE LAGUNA HILLS MALL LOCATED AT 24155 LAGUNA HILLS MALL AND ADOPTION OF A THIRD ADDENDUM TO THE CITY OF LAGUNA HILLS GENERAL PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 20080811100)

RECOMMENDATION: THAT THE PLANNING AGENCY/CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A JOINT RESOLUTION OF THE PLANNING AGENCY AND CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING A THIRD ADDENDUM TO THE CITY OF LAGUNA HILLS PROGRAM ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 20080811100) AND APPROVING A SITE DEVELOPMENT PERMIT, MASTER SIGN PROGRAM, CONDITIONAL USE PERMIT, PARKING USE PERMIT, VESTING TENTATIVE TRACT MAP, PRECISE PLAN NO. 2-15-3114, A REQUEST BY MERLONE GEIER MANAGEMENT, LLC, TO REDEVELOP THE LAGUNA HILLS MALL SITE LOCATED AT 24155 LAGUNA HILLS MALL, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH."

JOINT PLANNING AGENCY / CITY COUNCIL MEETING ADJOURNMENT

5. CITY COUNCIL PUBLIC HEARINGS

6. ADMINISTRATIVE REPORTS

6.1 City Manager

6.2 Assistant City Manager

6.2.1 EVALUATION OF ALTERNATIVE SERVICE DELIVERY OPTIONS FOR ANIMAL CONTROL AND SHELTER SERVICES - PROPOSAL FROM THE CITY OF MISSION VIEJO

RECOMMENDATION: THAT THE CITY COUNCIL DIRECT STAFF TO FINALIZE ALL PERTINENT AGREEMENTS WITH THE CITY OF MISSION VIEJO FOR REVIEW AND APPROVAL AT THE APRIL 12, 2016, CITY COUNCIL MEETING CONSISTENT WITH COST PROPOSAL SCHEME NO. 2.

7. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS AND MAYOR

8. CITY COUNCIL MEMBER COMMENTS

9. CLOSED SESSION

ADJOURNMENT

The next Regular Meeting of the City Council will be April 12, 2016, in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, MELISSA AU-YEUNG, City Clerk of the City of Laguna Hills, do hereby certify that a copy of the foregoing Agenda was posted at Laguna Hills City Hall, Laguna Hills Community Center, and the Courtyard at La Paz Center by March 18, 2016, at 5:00 PM.

MELISSA AU-YEUNG, CITY CLERK

March 18, 2016
DATE

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the office of the City Clerk at (949) 707-2635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 24035 El Toro Road, Laguna Hills, California, during normal business hours.

City Council Members receive no additional compensation or stipend as a result of simultaneously convening meetings of the Laguna Hills Planning Agency.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: LIEUTENANT ROLAND CHACON
CHIEF OF POLICE SERVICES

ISSUE: 2015 LAGUNA HILLS DEPUTY OF THE YEAR

RECOMMENDATION: THAT MAYOR KOGERMAN INVITE LIEUTENANT CHACON TO PRESENT THE 2015 LAGUNA HILLS DEPUTY OF THE YEAR AWARD TO DEPUTY PETER ADA.

SUMMARY:

Each year a deputy is selected from those assigned to the City of Laguna Hills as the Deputy of the Year. This selection is made by polling all Sheriff's Department personnel assigned to the City to select the deputy whose contributions set him/her apart from the rest. Deputy Peter Ada has been selected as the 2015 Laguna Hills Deputy of the Year.

BACKGROUND:

Deputy Peter Ada has been assigned to the City of Laguna Hills since April 2013. He has worked as a Patrol Deputy, Critical Incident Response Team member, Special Enforcement Team member, and in other supporting roles. Deputy Ada has worked diligently in all of his assignments within the City.

Deputy Ada is currently assigned to our Special Enforcement Team (SET), which consists of two deputies that are assigned to handle specific problems that face the City. The deputies that are assigned to this team are typically our most seasoned and skilled. Their focus is on specific problems which can range from keeping track of the City's parolees and probationers, to handling problems such as graffiti and specific crime trends. This team works directly with the Chief to determine where their efforts are most needed. During Deputy Ada's time in this assignment his work performance has been exemplary and he has become one of our City's most well respected deputies.

Deputy Peter Ada should be commended for his outstanding efforts with the City of Laguna Hills. Through his hard work and diligence he has made Laguna Hills a safer community.

ATTACHMENTS:

- Certificate of Recognition

CERTIFICATE OF RECOGNITION

DEPUTY SHERIFF
PETER ADA

WHEREAS, *Deputy Peter Ada transferred to Laguna Hills Police Services on April 5th, 2013; and*

WHEREAS, *Deputy Ada has performed in an exemplary manner as a Patrol Deputy, Critical Incident Response Team member, Special Enforcement Team member and in other supporting roles that have added to the quality of life we enjoy in Laguna Hills ; and*

WHEREAS, *Deputy Peter Ada's devotion to his country is reflected in over 21 years of combined service to the Guam and California Air National Guards; and*

WHEREAS, *Deputy Peter Ada was recognized for his dedication to duty by being named the 2015 Laguna Hills Deputy of the Year.*

NOW, THEREFORE, *I, Mayor Barbara Kogerman, on behalf of the City Council of the City of Laguna Hills, California, do hereby recognize, commend, and thank Deputy Sheriff Peter Ada for his dedication to duty, and urge all Laguna Hills citizens to join the City in this expression of our appreciation for his dedication to duty.*

Dated this 22nd day of March 2016.

BARBARA D. KOGERMAN, MAYOR

CITY OF LAGUNA HILLS, CALIFORNIA
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING
MINUTES
MARCH 08, 2016

GENERAL BUSINESS - CONVENING AT 7:00 PM

CALL TO ORDER

Mayor Kogerman called the Regular Meeting of the City Council of the City of Laguna Hills, California, to order at 7:00 p.m. in the Laguna Hills City Council Chamber, 24035 El Toro Road, Laguna Hills, California.

PLEDGE OF ALLEGIANCE: COUNCIL MEMBER BLOUNT

ROLL CALL OF CITY COUNCIL MEMBERS

Present: Mayor Kogerman, Mayor Pro Tempore Sedgwick, Council Member Blount, Council Member Carruth, Council Member Gilbert

CLOSED SESSION REPORT

There was no Closed Session Report.

1. PRESENTATIONS AND PROCLAMATIONS

1.1 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

THE CITY COUNCIL RECEIVED AN ORAL REPORT FROM LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON CALISTA SHANG.

1.2 ORANGE COUNTY FIRE AUTHORITY PRESENTATION REGARDING THE PULSEPOINT MOBILE APP

THE CITY COUNCIL RECEIVED A BRIEF ORAL REPORT AND POWERPOINT PRESENTATION FROM JEFF ADAMS, DIVISION CHIEF OF THE ORANGE COUNTY FIRE AUTHORITY, REGARDING THE PULSEPOINT MOBILE APP.

2. PUBLIC COMMENTS

OC ANIMAL CARE SERVICES

Mike Bland, a resident of Laguna Hills, requested staff and Council keep an open mind when analyzing the cost proposal from the City Mission Viejo regarding animal care services.

3. CONSENT CALENDAR

MOTION TO APPROVE THE CONSENT CALENDAR, WITH COUNCIL MEMBER BLOUNT REMOVING ITEM NO. 3.2, AND MAYOR KOGERMAN REMOVING ITEM NO. 3.10, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER BLOUNT.
APPROVED BY A VOTE OF 5-0.

3.1 WAIVE READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA

THE CITY COUNCIL WAIVED READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA AND DECLARED THAT SAID TITLES WHICH APPEAR ON THE PUBLIC AGENDA SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED.

3.3 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED MARCH 8, 2016

THE CITY COUNCIL APPROVED THE WARRANT REGISTER IN THE AMOUNT OF $273,610.29.

3.4 PROPOSED SECOND AMENDMENT TO LEASE WITH THE COUNTY OF ORANGE FOR 24031 EL TORO ROAD, SUITES 150 AND 310, LAGUNA HILLS, CALIFORNIA

THE CITY COUNCIL APPROVED THE SECOND AMENDMENT TO THE LEASE WITH THE COUNTY OF ORANGE FOR 24031 EL TORO ROAD, SUITES 150 AND 310, LAGUNA HILLS, CALIFORNIA, AND AUTHORIZED THE CITY MANAGER TO EXECUTE THE LEASE AMENDMENT.

3.5 2016 VOLUNTEER CONNECTION DAY, DOCUMENT SHREDDING PRE-EVENT REPORT, AND ARBOR DAY RECOGNITION

THE CITY COUNCIL RECEIVED AND FILED THE REPORT AND AUTHORIZED THE MAYOR TO SIGN THE ATTACHED ARBOR DAY PROCLAMATION AS REQUIRED BY THE ARBOR DAY FOUNDATION FOR TREE CITY USA CERTIFICATION.

3.6 PARTICIPATION IN EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA) FOR EMPLOYMENT PRACTICES LIABILITY COVERAGE

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2016-03-08-1, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING PARTICIPATION IN THE EMPLOYMENT RISK MANAGEMENT AUTHORITY.

3.7 2016 4TH OF JULY CELEBRATION AND FIREWORKS AGREEMENT

THE CITY COUNCIL: (1) RECEIVED AND FILED THE 2016 4TH OF JULY CELEBRATION PRE-EVENT REPORT; (2) APPROVED THE FIREWORKS DISPLAY AGREEMENT BETWEEN FIREWORKS AND STAGE FX AMERICA, INC., AND THE CITY OF LAGUNA HILLS FOR 2016; AND (3) AUTHORIZED THE CITY MANAGER TO EXECUTE THE AGREEMENT.

3.8 NOTICE OF INTENT TO VACATE A PORTION OF A STREET EASEMENT ON THE WESTERLY SIDE OF AVENIDA DE LA CARLOTA NORTHERLY OF LOS ALISOS BOULEVARD, A FORMER DRIVEWAY ACCESS TO OAKBROOK VILLAGE

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2016-03-08-2, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DECLARING ITS INTENTION TO VACATE AND ABANDON A PORTION OF A PUBLIC STREET EASEMENT ON THE WESTERLY SIDE OF AVENIDA DE LA CARLOTA NORTHERLY OF LOS ALISOS BOULEVARD, A FORMER DRIVEWAY ACCESS TO OAKBROOK VILLAGE, AND SETTING A PUBLIC HEARING THEREON.

3.9 SUMMARY VACATION OF A PORTION OF A SUPERSEDED PUBLIC SERVICE EASEMENT FOR DRAINAGE PURPOSES LOCATED NORTHERLY OF LA PAZ ROAD AND EASTERLY OF MOULTON PARKWAY WITHIN LOT A OF TRACT NO. 11237

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2016-03-08-3, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ORDERING THE SUMMARY VACATION OF A PORTION OF A 20' WIDE PUBLIC SERVICE EASEMENT FOR STORM DRAIN PURPOSES (APPROX. 4,000 SQ. FT.) WITHIN LOT A, TRACT NO. 11237, LOCATED NORTHERLY OF LA PAZ ROAD AND EASTERLY OF MOULTON PARKWAY.

3.11 SUBMISSION OF AN APPLICATION FOR COVERAGE UNDER THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR POLLUTANT DISCHARGES RELATING TO THE CITY'S 4TH OF JULY FIREWORKS DISPLAY AND ADOPTION OF A CATEGORICAL EXEMPTION DETERMINING THAT THE EVENT IS EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO TITLE 14, CHAPTER 3, SECTION 15304(E) OF THE CALIFORNIA CODE OF REGULATIONS

THE CITY COUNCIL: (1) DIRECTED STAFF TO SUBMIT AN APPLICATION FOR COVERAGE UNDER THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD'S NATIONAL POLLUTANT

DISCHARGE ELIMINATION SYSTEM PERMIT FOR POLLUTANT DISCHARGES RELATING TO THE CITY'S 4TH OF JULY FIREWORKS DISPLAY; AND (2) ADOPTED A CATEGORICAL EXEMPTION.

ITEMS REMOVED FROM THE CONSENT CALENDAR

3.2 APPROVAL OF MINUTES FOR FEBRUARY 23, 2016

Council Member Blount removed Item No. 3.2 from the Consent Calendar due to his absence at the February 23, 2016, Regular Meeting.

THE CITY COUNCIL APPROVED THE MINUTES OF THE FEBRUARY 23, 2016, REGULAR MEETING, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER BLOUNT.
APPROVED BY A VOTE OF 4-0 WITH COUNCIL MEMBER BLOUNT ABSTAINING.

3.10 COOPERATIVE AGREEMENT NO. C-5-3586 BETWEEN ORANGE COUNTY TRANSPORTATION AUTHORITY AND CITIES OF LAGUNA HILLS, ALISO VIEJO, LAGUNA NIGUEL, AND MISSION VIEJO FOR ALICIA PARKWAY REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROJECT (CITY DESIGNATED PROJECT, CIP NO. 168G)

Mayor Kogerman removed Item No. 3.10 from the Consent Calendar for additional information.

Public Services Director Rosenfield reviewed the information provided in the Staff Report.

THE CITY COUNCIL APPROVED COOPERATIVE AGREEMENT NO. C-5-3586 BETWEEN ORANGE COUNTY TRANSPORTATION AUTHORITY AND CITIES OF LAGUNA HILLS, ALISO VIEJO, LAGUNA NIGUEL, AND MISSION VIEJO FOR ALICIA PARKWAY REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROJECT (CITY DESIGNATED PROJECT, CIP NO. 168G) AND AUTHORIZED THE MAYOR TO SIGN AND THE CITY CLERK TO ATTEST THERETO, BY M/MAYOR KOGERMAN, S/COUNCIL MEMBER GILBERT.
APPROVED BY A VOTE OF 5-0.

4. PLANNING AGENCY

Mayor Kogerman recessed the City Council meeting and acting in the capacity of Chair, called the regular meeting of the Planning Agency of the City of Laguna Hills, California, to order at 7:33 p.m.

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Kogerman, Vice Chair Sedgwick, Agency Member Blount, Agency Member Carruth, Agency Member Gilbert

4.2 PUBLIC COMMENTS

There were no Public Comments.

4.3 APPROVAL OF MINUTES FOR FEBRUARY 23, 2016

THE PLANNING AGENCY APPROVED THE MINUTES OF THE FEBRUARY 23, 2016, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/VICE CHAIR SEDGWICK.
APPROVED BY A VOTE OF 4-0 WITH AGENCY MEMBER BLOUNT ABSTAINING.

4.4 ADMINISTRATIVE REPORTS

There were no Administrative Reports.

4.5 PLANNING AGENCY PUBLIC HEARINGS

There were no Planning Agency Public Hearings.

PLANNING AGENCY ADJOURNMENT

Mayor Kogerman adjourned the Planning Agency meeting and acting in the capacity of Chair/Mayor, called the Joint Planning Agency/City Council Meeting to order at 7:34 p.m.

JOINT PLANNING AGENCY / CITY COUNCIL MEETING

ROLL CALL OF JOINT PLANNING AGENCY / CITY COUNCIL MEETING

Present: Chair/Mayor Kogerman, Vice Chair/Mayor Pro Tempore Sedgwick, Agency/Council Member Blount, Agency/Council Member Carruth, Agency/Council Member Gilbert

PUBLIC COMMENTS

There were no Public Comments.

PUBLIC HEARINGS

CONSIDERATION OF A REQUEST BY LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, TO AMEND AN EXISTING DEVELOPMENT AGREEMENT AND MODIFY CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF SITE DEVELOPMENT PERMIT/MASTER

SIGN PROGRAM/CONDITIONAL USE PERMIT/PARKING USE PERMIT/ VESTING TENTATIVE TRACT MAP/PRECISE PLAN/DEVELOPMENT AGREEMENT NO. 12-11-2137 TO EXTEND THE TIME PERIODS FOR COMPLETION OF CERTAIN ON-SITE IMPROVEMENTS IN PHASE 1 OF THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT LOCATED AT 24231-24391 AVENIDA DE LA CARLOTA

Community Development Director Chantarangsu briefly reviewed the item and provided a PowerPoint presentation.

Chair/Mayor Kogerman opened the Public Hearing, and upon seeing no one rise, closed the Public Hearing.

(1) THE PLANNING AGENCY AND CITY COUNCIL CONDUCTED A JOINT PUBLIC HEARING TO CONSIDER THE PROPOSED DEVELOPMENT AGREEMENT AMENDMENT AND MODIFICATION OF CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF THE EXISTING LAND USE ENTITLEMENTS FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT LOCATED AT 24231-24391 AVENIDA DE LA CARLOTA;

(2) THE CITY COUNCIL INTRODUCED FOR FIRST READING, READ BY TITLE ONLY, AND WAIVED FURTHER READING OF AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING AN AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT; AND

(3) THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2016-03-08-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING RESOLUTION NOS. PA2015-02-10-1, PA2014-02-11-2 AND PA2012-11-13-1 TO MODIFY CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT/PARKING USE PERMIT/VESTING TENTATIVE TRACT MAP/ PRECISE PLAN/DEVELOPMENT AGREEMENT NO. 12-11-2137 TO EXTEND THE TIME PERIODS FOR COMPLETION OF CERTAIN PHASE 1 ON-SITE IMPROVEMENTS, A REQUEST BY LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC FOR THE OAKBROOK VILLAGE SHOPPING CENTER LOCATED AT 24231-24391 AVENIDA DE LA CARLOTA, BY M/AGENCY/COUNCIL MEMBER BLOUNT, S/AGENCY/COUNCIL MEMBER GILBERT.
APPROVED BY A VOTE OF 5-0.

JOINT PLANNING AGENCY / CITY COUNCIL MEETING ADJOURNMENT

Chair/Mayor Kogerman recessed the Joint Planning/City Council Meeting and reconvened the City Council meeting at 7:48 p.m.

5. CITY COUNCIL PUBLIC HEARINGS

There were no City Council Public Hearings.

6. ADMINISTRATIVE REPORTS

6.1 City Manager

6.1.1 SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS GENERAL ASSEMBLY DELEGATE

THE CITY COUNCIL APPOINTED MAYOR PRO TEMPORE SEDGWICK AS THE DELEGATE, AND COUNCIL MEMBER BLOUNT AS THE ALTERNATE, TO ATTEND THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS GENERAL ASSEMBLY MEETING, BY M/COUNCIL MEMBER GILBERT, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 5-0.

6.2 Assistant City Manager

6.2.1 AMENDED AND RESTATED PURCHASING ORDINANCE

Finance Manager Janice Reyes reviewed the information provided in the Staff Report.

THE CITY COUNCIL INTRODUCED AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES," BY M/COUNCIL MEMBER GILBERT, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 5-0.

7. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS AND MAYOR

There were no matters agendized and presented by City Council Members and Mayor.

8. CITY COUNCIL MEMBER COMMENTS

COUNCIL MEMBER CARRUTH

Council Member Carruth reported that she attended the Laguna Hills Little League Opening Ceremony on Saturday.

Council Member Carruth also reported there was an article in the OC Register regarding the TCA's new advanced warning signs alerting drivers when they are entering a toll road, and that the TCA has improved their programs for waiving penalties and is reaching out to car rental agencies to insure that visitors to Orange County have an easier time understanding how to use the toll roads.

MAYOR KOGERMAN

Mayor Kogerman reported that she attended the OCBC Advocacy Trip to Sacramento and stated the presentations were very informative. A few of the topics included: increased funding to perform maintenance and improve existing infrastructure, climate change, CEQA, and changing term limits.

Mayor Kogerman reported that she attended the Laguna Hills Little League Opening Ceremony on Saturday and the official Grand Opening and Ribbon Cutting Ceremony for "Strength In Support," a non-profit organization, on Thursday, March 3, 2016.

ADJOURNMENT

There being no further business at this City Council session, Mayor Kogerman adjourned the City Council meeting at 8:12 p.m.

____
MELISSA AU-YEUNG, CITY CLERK

ATTEST:

____
BARBARA D. KOGERMAN, MAYOR

APPROVED AT MEETING OF MARCH 22, 2016.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE:	**MARCH 22, 2016**
TO:	**MAYOR AND COUNCIL MEMBERS**
FROM:	**DONALD J. WHITE, ASSISTANT CITY MANAGER**
ISSUE:	**APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED MARCH 22, 2016.**

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $530,818.99.

SUMMARY:

In accordance with Government Code Section 37202, the attached Warrant Register reflects the disbursements of the City of Laguna Hills for the period reported thereon. The Assistant City Manager certifies and attests to its accuracy and the availability of funds for the payment thereof. These warrants are hereby submitted to the City Council for approval of payment.

Prepared by:

JANICE MATEO REYES
Finance Manager

Certified:

DONALD J. WHITE
Assistant City Manager

3-15-16
DATE

FISCAL IMPACT:

The warrant register total is $530,818.99.

ATTACHMENTS:

1. **Warrant Register**

Check Register Report

Warrant Register 03/22/16

Date: 03/10/2016
Time: 4:25 pm
Page: 1

CITY OF LAGUNA HILLS

BANK: UNION BANK- GENERAL

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
UNION BANK- GENERAL Checks							
8810621	03/03/2016	Printed		A-0309	AT&T- CALNET 2	Alarm, CC, Feb '16	71.08
8810622	03/03/2016	Printed		C-0023	COX COMMUNICATION	T-1 Line CC & Cable CH Feb	331.96
8810623	03/03/2016	Printed		R-1964	REFUND, COMMUNITY DEV FEES	R. Mirua, Site Dev Plan	125.00
8810624	03/03/2016	Printed		R-1964	REFUND, COMMUNITY DEV FEES	RS Myers Co., C&D Deposit	741.60
8810625	03/03/2016	Printed		S-1902	SAN DIEGO GAS & ELECTRIC	ST Lites, TC, Jan '16	1,333.71
8810626	03/03/2016	Printed		S-1904	SOUTHERN CALIFORNIA EDISON	ST Lites, TC, Feb '16	1,748.24
8810627	03/03/2016	Printed		W-2441	WEST COAST MOVEMENT PROJECT,	Contract Inst Svcs., Dance	812.00
8810628	03/10/2016	Printed		A-0130	AAA AWARDS & MONOGRAMMING	Operating Supplies, Pol Svcs	119.88
8810629	03/10/2016	Printed		A-0138	ALL CITY MANAGEMENT, INC.	Crossing Guard Svc, 1/31-2/13	3,223.68
8810630	03/10/2016	Printed		A-0359	ANDERSON PENNA PARTNERS, INC.	Inspection Services, Feb '16	15,603.50
8810631	03/10/2016	Printed		A-0331	AT&T MOBILITY	Wireless Service, Feb '16	63.02
8810632	03/10/2016	Printed		B-0276	BANK OF AMERICA	Departmental Expenditure,Feb	8,602.34
8810633	03/10/2016	Printed		B-0304	BEE MAN, THE	Bee Removal, Pub Svcs, Feb	150.00
8810634	03/10/2016	Printed		C-0412	C&D ELECTRIC, INC.	Building Maint., Com Svcs, Feb	210.92
8810635	03/10/2016	Printed		C-1168	CAPITAL ONE COMMERCIAL	Costco, Program Expense, CS	51.23
8810636	03/10/2016	Printed		C-0402	CARDONA, VINCE	Reimbursement, VISA charge	275.00
8810638	03/10/2016	Printed		C-0408	CARL WARREN & COMPANY	Processing Fee, Sml Claims Feb	3,183.25
8810639	03/10/2016	Printed		C-1139	COMPLETE OFFICE OF CALIFORNIA	Comp Office&Operating Supplies	998.87
8810640	03/10/2016	Printed		C-1176	COMPUTER SERVICE CO.	Traffic Sig. Maint, Dec '15	6,725.95
8810641	03/10/2016	Printed		C-0023	COX COMMUNICATION	WiFi Svcs, CC & CH, Feb-Mar	343.30
8810642	03/10/2016	Printed		C-1146	CYBERSOURCE CORPORATION	Gateway Expense, Feb '16	29.00
8810643	03/10/2016	Printed		D-0491	DELL COMPUTER CORPORATION	Computer Hardware, Feb	2,638.20
8810644	03/10/2016	Printed		D-0561	DOCU-TRUST	Offsite Data Storage, Feb '16	65.00
8810645	03/10/2016	Printed		E-0554	ECONOMICS, INC.	Prof Svcs, Recycling Program	12,446.65
8810646	03/10/2016	Printed		E-0593	EISENBERG, DALE	Contract Inst Svcs., Aikido	52.50
8810647	03/10/2016	Printed		F-0604	FEDERAL EXPRESS CORPORATION	Delivery Services, Dec '15	34.52
8810648	03/10/2016	Printed		F-0714	FIREWORKS & STAGE FX AMERICA,	Deposit, 4th of July Event	13,250.00
8810649	03/10/2016	Printed		F-0623	FUN SERVICES	Deposit, 4th of July Event	805.00
8810650	03/10/2016	Printed		G-0821	G2 CONSTRUCTION INC.	Professional Svcs, CIP # 412E	66,439.20
8810651	03/10/2016	Printed		H-0804	HINDERLITER, DE LLAMAS & ASSOC	Sales Tax 4thQtr,AuditSales2nd	2,994.93
8810652	03/10/2016	Printed		H-0957	HORIZONS CONSTRUCTION CO, INT'	Progress Payment #3, CIP# 514	79,924.26
8810653	03/10/2016	Printed		H-0955	HR GREEN CALIFORNIA, INC.	Professional Svcs, CIP # 514	6,105.60
8810654	03/10/2016	Printed		H-0953	HRDIRECT	Office Supplies, CC, Feb '16	75.59
8810655	03/10/2016	Printed		H-0952	HYLAND SOFTWARE, INC.	SIRE Maintenance 4/1-6/30	1,552.21
8810656	03/10/2016	Printed		I-0942	IRVINE RANCH WATER DISTRICT	Water Usage, Public Svcs, Feb	110.97
8810657	03/10/2016	Printed		J-1057	JAMEY CLARK, INC.	Park Repair, Feb '16	1,089.62
8810658	03/10/2016	Printed		L-1335	LA CONSULTING, INC.	Professional Svcs, Feb '16	724.00
8810659	03/10/2016	Printed		C-1007	LAW ENFORCEMENT	FingerprintID Sys, Comm Sys	1,640.50
8810660	03/10/2016	Printed		C-1007	LAW ENFORCEMENT	Law Enforcement Svcs, Mar '16	122,694.49
8810661	03/10/2016	Printed		L-1376	LONG BEACH BMW MOTORCYCLES	Motorcycle Maint, PS, Feb	942.21
8810662	03/10/2016	Printed		L-1368	LONG, AURORA	Contract Inst Svcs, Theatre	6,132.00
8810663	03/10/2016	Printed		M-1388	MOBILE MINI, INC.	Storage Rental, CC, 3/1-3/28	83.16
8810664	03/10/2016	Printed		M-1396	MONOGRAM MAGIC	Uniforms, Police Services	1,415.19
8810665	03/10/2016	Printed		M-1583	MOORE IACOFANO GOLTSMAN, INC.	Planning Services, Com Dev.	34,558.75
8810666	03/10/2016	Printed		N-1411	NATIONAL RECREATION AND PARK	Membership, Com Services	165.00
8810667	03/10/2016	Printed		N-1474	NIEVES LANDSCAPE, INC.	Monthly Landscape, Mar '16	74,609.24
8810668	03/10/2016	Printed		C-1008	NPDES	Watershed Monitoring,CIP#410	3,390.61
8810669	03/10/2016	Printed		O-1502	OC SHERIFF'S ADVISORY COUNCIL	Medal of Valor Luncheon	700.00

CITY OF LAGUNA HILLS

BANK: UNION BANK- GENERAL

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
UNION BANK- GENERAL Checks							
8810670	03/10/2016	Printed		O-1546	OFFICE SOLUTIONS	Office/Operating Supplies	275.45
8810671	03/10/2016	Printed		O-1552	ORANGE COUNTY FIRE AUTHORITY	Remit, Fire Fees Collected,Feb	4,199.00
8810672	03/10/2016	Printed		O-1575	ORANGE COUNTY REGISTER-FREEDOM	Legal Advertising, Feb '16	798.42
8810673	03/10/2016	Printed		R-1830	RALPHS GROCERY COMPANY	Program Expense, CS, Feb	101.71
8810674	03/10/2016	Printed		R-1964	REFUND, COMMUNITY DEV FEES	American Solar, Permit	150.00
8810675	03/10/2016	Printed		R-1889	REFUND,FACILITY RENTAL DEPOSIT	Girl Scouts, V# 2003708.002	67.50
8810676	03/10/2016	Printed		R-1889	REFUND,FACILITY RENTAL DEPOSIT	Nellie Gail HOA, V#2003709.002	300.00
8810677	03/10/2016	Printed		R-1939	REYES, JANICE MATEO	Petty Cash Funding	500.00
8810678	03/10/2016	Printed		R-1946	RK ENGINEERING GROUP, INC.	Traffic Study, MNWD	660.00
8810679	03/10/2016	Printed		R-1813	RPW SERVICES, INC.	Rodent Control, Pub Svcs	3,120.00
8810680	03/10/2016	Printed		S-2197	SAFECHECKS	Printing Expense, Finance	314.82
8810681	03/10/2016	Printed		S-1902	SAN DIEGO GAS & ELECTRIC	ST Lites, Feb '16	13,861.80
8810682	03/10/2016	Printed		S-2194	SECURE LIVE SCAN	Pre-employment Fingerprinting	20.00
8810683	03/10/2016	Printed		S-1904	SOUTHERN CALIFORNIA EDISON	ST Lites, TC, Feb '16	861.33
8810684	03/10/2016	Printed		S-2059	STAPLETON, VIVIAN	Cntr Inst Svcs Early Childhood	796.75
8810685	03/10/2016	Printed		S-2259	STRAIGHT 78	Deposit, 4th of July Event	625.00
8810686	03/10/2016	Printed		S-2201	SUNSET PROPERTY SERVICES	Street Sweeping, Feb '16	10,551.72
8810687	03/10/2016	Printed		T-2693	TELEPACIFIC COMMUNICATIONS	Communications Expense, Mar	1,158.67
8810688	03/10/2016	Printed		T-2644	TRAILS 4 ALL	Inner Coastal Watershed Cleanu	750.00
8810689	03/10/2016	Printed		U-2165	UNDERGROUND SERVICE ALERT	Street Maintenance, Feb '16	103.50
8810690	03/10/2016	Printed		U-2162	UNIVERSAL PROTECTION SECURITY	Security Camera Maint, CC	250.00
8810691	03/10/2016	Printed		V-2249	US BANK VOYAGER FLEET SYS	Vehicle Fuel, Feb '16	1,159.38
8810692	03/10/2016	Printed		V-2224	VERIZON WIRELESS	Communication Expense, Feb '16	1,398.66
8810693	03/10/2016	Printed		W-2337	WEST COAST ARBORISTS, INC.	Tree Trimming, Feb '16	3,300.00
8810694	03/10/2016	Printed		W-2438	WILLDAN FINANCIAL SERVICES	Professional Svcs, Fee Study	5,158.00
8810695	03/10/2016	Printed		X-2400	XEROX CORPORATION	Copier Lease & Usage, Feb '16	954.35

Total Checks: 74 **Checks Total (excluding void checks): 530,818.99**

Total Payments: 74 **Bank Total (excluding void checks): 530,818.99**

Total Payments: 74 **Grand Total (excluding void checks): 530,818.99**

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: KENNETH H. ROSENFIELD, P.E.
DIRECTOR OF PUBLIC SERVICES/CITY ENGINEER

ISSUE: PROGRESS PAYMENT NO. 3 FOR LAGUNA HILLS COMMUNITY CENTER AND SPORTS COMPLEX SITE IMPROVEMENTS, CIP NO. 514

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 3, IN THE NET AMOUNT OF $79,924.26, TO HORIZONS CONSTRUCTION COMPANY FOR LAGUNA HILLS COMMUNITY CENTER AND SPORTS COMPLEX SITE IMPROVEMENTS, CIP NO. 514.

SUMMARY:

Work on the Laguna Hills Community Center and Sports Complex Site Improvements, CIP No. 514, began on November 16, 2015, and is being performed by Horizons Construction Company. Work performed in January and February included: removal and replacement of sidewalks, access ramps, pre-cast wall caps and restroom building repairs. The contractor has submitted the third progress payment request for approval.

BACKGROUND:

A routine monthly action for capital improvement projects is the submission, review, and approval of the contractor's invoice. Procedurally, field staff verifies the contractor's quantities and matches them with the submitted invoice. The unit prices and total costs of the project are confirmed by the office staff and a progress payment is then processed. A five-percent (5%) retention is withheld from each payment to assure final performance of the work. The contractor for this project, Horizons Construction Company, has submitted the third progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	$ AMOUNT
1	Clearing and grubbing	.1	LS	$9,360.00	$936.00
2	Remove and replace pcc sidewalk	200	SF	$13.00	$2,600.00

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	$ AMOUNT
3	Construct pcc access ramp with cast in place blue truncated dome	4	EA	$4,550.00	$18,200.00
4	Remove and replace 6” curb and gutter	19	LF	$78.00	$1,482.00
6	Remove efflorescence on wall water feature trough	50	SF	$52.00	$2,600.00
7	Remove and replace backsplash tiles on wall feature fountains	56	SF	$32.50	$1,820.00
14	Reset loose pre-cast wall cap	50	EA	$58.50	$2,925.00
15	Remove and replace pre-cast wall cap (12”x24”)	16	EA	$91.00	$1,456.00
16	Remove and replace pre-cast wall cap (8”x24”)	109	EA	$65.00	$7,085.00
17	Remove and replace pre-cast wall cap (10”x24”)	2	EA	$65.00	$130.00
18	Remove and replace pre-cast wall cap (8”x24” flat-top cap)	38	EA	$54.60	$2,074.80
20	Remove and replace barbeque units	2	EA	$910.00	$1,820.00
21	Remove and replace ADA accessible barbeque unit	.5	LS	$975.00	$487.50
22	Repair roof fascia/soffit at restrooms	.01	LS	$23,400.00	$2,340.00
23	Remove and replace signage w/ADA signs	2	EA	$123.50	$247.00
25	Remove and replace soap dispenser at restrooms	7	EA	$260.00	$1,820.00
26	Remove and replace towel dispenser at restrooms	3	EA	$585.00	$1,755.00
27	Remove and patch sanitary napkin dispenser at restroom	1	EA	$195.00	$195.00
28	Remove and replace mirror and graffiti film	8	EA	$325.00	$2,600.00
29	Refinish concrete floor, including remove and replace base tile at restrooms	0.60	LS	$9,750.00	$5,850.00
30	Remove and replace interior ceiling light	10	EA	$455.00	$4,550.00
31	Add screen at bottom of sky light at restrooms	2	EA	$227.50	$455.00
32	Repaint interior walls plus Vitrocem see appendix F item K	1	LS	$2,990.00	$2,990.00

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	$ AMOUNT
33	Repaint exterior of restrooms/concession building	1	LS	$9,100.00	$9,100.00
34	Repair wainscot cap	1	LS	$2,990.00	$2,990.00
35	Replace missing 16”x16” slate veneer on low wall steps	4	EA	$390.00	$1,560.00
36	Replace missing 12”x12” slate veneer on low wall steps	6	EA	$325.00	$1,950.00
37	Replace missing 12”x16” slate veneer on pilaster	2	EA	$357.50	$715.00
38	Replace missing 12”x12” slate veneer on pilaster	5	EA	$279.50	$1,397.50

TOTAL TO DATE	$253,540.30	
LESS PRIOR BILLING	$169,409.50	
TOTAL THIS PERIOD	$84,130.80	$84,130.80
LESS 5% RETENTION		$(4,206.54)
DUE		$79,924.26

FISCAL IMPACT:

The progress payment is within the Capital Improvement Program Budget for the Laguna Hills Community Center and Sports Complex Site Improvements, CIP No. 514.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: KENNETH H. ROSENFIELD, P.E.
DIRECTOR OF PUBLIC SERVICES/CITY ENGINEER

ISSUE: PROGRESS PAYMENT NO. 1 AND CONTRACT CHANGE ORDER NO. 1 FOR WATER QUALITY IMPROVEMENT CATCH BASIN DEBRIS GATE PROJECT, CIP NO. 412E

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE CONTRACT CHANGE ORDER NO. 1 AND PROGRESS PAYMENT NO. 1, IN THE NET AMOUNT OF $66,439.20, TO G2 CONSTRUCTION, INC., FOR WATER QUALITY IMPROVEMENT CATCH BASIN DEBRIS GATE PROJECT, CIP NO. 412E.

SUMMARY:

Work on the Water Quality Improvement Catch Basin Debris Gate Project, CIP No. 412E, began on February 9, 2016, and has been substantially completed by G2 Construction, Inc. Work performed included custom fabrication and installation of catch basin debris gates. Additional field work has been identified as needed to repair two existing catch basin lids. Contract Change Order (CCO) No. 1 is proposed for approval for this extra work. Approval of the first progress payment and CCO No. 1 is recommended.

BACKGROUND:

A routine monthly action for capital improvement projects is the submission, review, and approval of the contractor's invoice. Procedurally, field staff verifies the contractor's quantities and matches them with the submitted invoice. The unit prices and total costs of the project are confirmed by the office staff and a progress payment is then processed. A five-percent (5%) retention is withheld from each payment to assure final performance of the work. The contractor for this project, G2 Construction, Inc., has submitted the first progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	$ AMOUNT
1	21' Debris Gate	12	EA	$2,399.00	$28,788.00

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	$ AMOUNT
2	14' Debris Gate	14	EA	$1,469.00	$20,566.00
3	10' Debris Gate	9	EA	$999.00	$8,991.00
4	10' Debris Gate Remove and Replace	3	EA	$1,109.00	$3,327.00
5	7' Debris Gate	5	EA	$869.00	$4,345.00
6	7' Debris Gate Remove and Replace	1	EA	$979.00	$979.00
7	4' Debris Gate	3	EA	$548.00	$1,644.00
8	4' Debris Gate Remove and Replace	2	EA	$648.00	$1,296.00

TOTAL TO DATE	$69,936.00	
LESS PRIOR BILLING	0.00	
TOTAL THIS PERIOD	69,936.00	69,936.00
LESS 5% RETENTION		$(3,496.80)
DUE		$66,439.20

CONTRACT CHANGE ORDER

During the course of the field work for this project, staff identified two catch basins which require reconstruction of the concrete lids. G2 Construction, Inc. is qualified to perform this work and provided satisfactory quotes for the work in the total amount of $9,550.00. Contract Change Order No. 1, attached, is proposed for approval to authorize this work.

FISCAL IMPACT:

The progress payment for the debris gates is within the Capital Improvement Program Budget for the Water Quality Improvement Catch Basin Debris Gate Project, CIP No. 412E, and the catch basin lid repairs described in CCO No. 1 are included within the Public Works Maintenance Budget.

ATTACHMENT:

- Contract Change Order No. 1

CITY OF LAGUNA HILLS
CONTRACT CHANGE ORDER

CONTRACT CHANGE ORDER NO. 1 SHEET 1 OF 2 SHEETS

PROJECT: Catch Basin Debris Gate Project, CIP No. 412E

CONTRACTOR: G2 Construction, Inc.

In accordance with contract provisions, the following changes in the contract and/or contract work are hereby authorized and as compensation therefore, the following addition to or deductions from the contract price are hereby approved.

Note: This change order is not effective until approved by the City Engineer.

Description of work to be done, estimate of quantities, and prices to be paid. Segregate between additional work at contract price, agreed price and force account. Unless otherwise stated, rates for rental of equipment is actually used and no allowance will be made for idle time.

1. Remove and replace 7' Catch Basin Deck at northwesterly corner of Indian Hill Lane at Autumn Hill.
   Lump Sum $4,175.00

2. Remove and replace 14' Catch Basin Deck and Local Depression northeasterly corner of Indian Hill Lane at Sand Creek Lane.
   Lump Sum $5,375.00

/
/
/
/
/
/
/
/
/
/
/

Increase $ 9,550.00 Decrease $______________

By reason of this order the time of completion will be adjusted as follows: Add 10 Working Days.

The compensation (time and cost) set forth in this Change Order comprises the total compensation due the Contractor, all Subcontractors and all suppliers, for the work or change defined in this Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees, on behalf of himself, all Subcontractors, and all suppliers, that the stipulated compensation includes payment for all work contained in this Change Order, plus all payment for the interruption of schedules.

Extended overhead costs, delay, and all impact, ripple effect or cumulative impact on all other, work under this Contract:

The signing of this Change Order shall indicate that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the Contractor, all Subcontractors, and all suppliers, as a result of the change. The Contractor, on behalf of himself, all Subcontractors, and all suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the work under this Contract.

SUMMARY OF CONTRACT TIME

Notice to Proceed Date:	2/9/2016
Original Contract Time:	30
Original Completion Date:	3/23/16
Time Extension this C.O.:	10
Total Contract Time Extension:	10
Revised Contract Time:	40
Revised Final Completion Due Date:	4/6/16
Time Subject to Liquidated Damages:	0
Actual Final Completion Date:	0

Original Contract Price	$69,936.00
Prev. Authorized Changes	$ 0
This Change (Add)	$ 9,550.00
Amended Contract Price	$79,486.00

If the Contractor does not sign acceptance of this order, his attention to the requirements of the specifications as to proceeding with the order work and filing a written protest within the time therein specified.

Approved by: Accepted by:

Director of Public Services Date

Contractor G2 Construction, Inc. Date

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: ESCHEATMENT OF UNCLAIMED FUNDS

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING THE ESCHEATMENT OF UNCLAIMED FUNDS HELD IN ACCORDANCE WITH STATE LAW."

SUMMARY:

Over time the City has accumulated a cumbersome amount of unclaimed funds that have remained on the City's ledger. The City's auditors recommended that the City begin a process for the escheatment of these funds. Escheatment of unclaimed property in the possession of local agencies is governed by the laws set forth in California Government Code Sections 50050 through 50056. Funds that are not the property of a local agency, that remain unclaimed for three years, become the property of the local agency after notice if not claimed. Pursuant to State statute, the City published a notice of the unclaimed funds in the Saddleback Valley News. The City received only one claim, which was rejected. Based on the laws set forth in the California Government Code, staff is recommending that the City Council adopt a Resolution approving the escheatment of the publicly noticed unclaimed funds and authorize permanent transfer to the General Fund.

BACKGROUND:

Each year the City accumulates a small amount of unclaimed funds that remain on the City's ledger. These unclaimed funds consist mainly of outstanding checks issued through Accounts Payable and refundable funds deposited with the City, namely refundable cash bonds for pool/spa building permits. Attempts are made to contact the payees and issue release of the funds; however, there are still a few that remain year after year. Over time, these items have amassed to a weighty sum, which overstate the City's liability on its financial statements. It was recommended by the City's auditors that the City begin a process for the escheatment of these funds.

Escheatment of unclaimed property in the possession of local agencies is governed by the laws set forth in California Government Code Sections 50050 through 50056. Funds that are not the property of a local agency, that remain unclaimed for three years, become the property of the local agency after notice if not claimed or if no verified complaint is filed and served. At any time after the expiration of the three-year period, the local agency may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation. The notice will state the amount of money and that it is proposed that the money will become the property of the local agency on a designated date not less than 45 days, or more than 60 days, after the first publication of the notice. Upon or prior to publication, a party of interest may file a claim with the local agency which must include the claimants name, address, amount of claim, the grounds on which the claim is founded, and any other information required. The local agency shall accept or reject the claim. When any such money becomes the property of a local agency, the legislative body may transfer it to the General Fund.

On June 26, 2015, and July 3, 2015, the City published a notice of the unclaimed funds in the Saddleback Valley News, which included a statement that the money will become the property of the City if not claimed by August 10, 2015, forty-five days after the initial publication of the notice. The City received only one claim in response to this published notice, which was rejected on the basis of failure to submit proof that all obligations to the entitlement had been satisfied. Based on the laws set forth in the California Government Code, staff is recommending that the City Council adopt a Resolution approving the escheatment of the unclaimed funds and authorize permanent transfer to the General Fund.

Attached is the proposed Resolution, which references two different exhibits. Exhibit A is a copy of the notice that was published. Exhibit B is a listing of only those items in the notice which fully meet the definition of “unclaimed” and may be transferred to the General Fund, namely outstanding checks and refundable pool bonds. The list in Exhibit B does not include the waste recycling security deposits in the notice as these meet the definition of “forfeiture of security deposit” pursuant to Section 5-48.090 of the City’s Municipal Code concerning the City’s Construction and Demolition Waste Recycling Program. The use by the City of waste recycling security deposits is limited pursuant to Section 5-48.100 of the City’s Municipal Code and; therefore, may not be transferred to the City’s General Fund.

FISCAL IMPACT:

The total amount of unclaimed funds listed in Exhibit B which may become the property of the City and transferred to the City’s General Fund is $30,846.77.

ATTACHMENTS:

- Resolution

RESOLUTION NO. 2016-03-22-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING THE ESCHEATMENT OF UNCLAIMED FUNDS HELD IN ACCORDANCE WITH STATE LAW

The City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, the City of Laguna Hills desires to escheat unclaimed funds which have remained unclaimed for three or more years to the General Fund, pursuant to California Government Code Sections 50050 through 50056; and

WHEREAS, Section 50050 of the California Government Code allows for funds that are not the property of the City that remain unclaimed for three years to become the property of the City after notice if not claimed or if no verified complaint is filed and served; and

WHEREAS, Section 50050 of the California Government Code authorizes the City Treasurer to publish notice once per week for two consecutive weeks in a newspaper of general circulation in the City at any time after the expiration of the three-year period; and

WHEREAS, pursuant to Section 2-16.020 of the Laguna Hills Municipal Code, the City Manager is appointed the City Treasurer; and

WHEREAS, Section 50056 of the California Government Code authorizes the City Treasurer to delegate the responsibilities of the City Treasurer pursuant to California Government Code Sections 50050 through 50056 to the Finance Manager; and

WHEREAS, the City Manager, as the appointed City Treasurer, has delegated the functions and responsibilities for the escheatment of unclaimed funds pursuant to California Government Code Sections 50050 through 50056 to the Finance Manager; and

WHEREAS, the Finance Manager provided notice by publication of the unclaimed funds in the Saddleback Valley News on June 26, 2015 and July 3, 2015, as provided in Exhibit "A," a copy of which is attached hereto and incorporated herein by reference, pursuant to Sections 50050 and 50051 of the California Government Code; and

WHEREAS, Section 50053 of the California Government Code provides that when unclaimed funds become the property of the City and are in a special fund, the City Council may authorize transfer to the General Fund; and

WHEREAS, the unclaimed funds identified in Exhibit “B,” a copy of which is attached hereto and incorporated herein by reference, meet the criteria set forth in Government Code Section 50053, which may be authorized by the City Council to be transferred to the General Fund.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The unclaimed funds identified in Exhibit “B,” a copy of which is attached hereto and incorporated herein by reference, totaling $30,846.77, are hereby authorized to be transferred to the General Fund in accordance with the provisions of Sections 50050 through 50056 of the California Government Code.

PASSED, APPROVED, AND ADOPTED this 22nd day of March 2016.

BARBARA D. KOGERMAN, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2016-03-22-x adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 22nd day of March 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

AFFIDAVIT OF PUBLICATION

STATE OF CALIFORNIA,)
) ss.
County of Orange)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the **Saddleback Valley News,** a newspaper that has been adjudged to be a newspaper of general circulation by the Superior Court of the County of Orange, State of California, on December 7, 1976, Case No. A-86742 in and for the South Orange County Judicial District, County of Orange, State of California; that the notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

June 26, July 3, 2015

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct":

Executed at Santa Ana, Orange County, California, on

Date: July 3, 2015

Signature

Saddleback Valley News
625 N. Grand Ave.
Santa Ana, CA 92701
(714) 796-2209

CITY OF LAGUNA HILLS
NOTICE OF UNCLAIMED PROPERTY/FUNDS

NOTICE IS HEREBY GIVEN the City of Laguna Hills has been holding property/funds for the following person(s) for three years or more. If said property and/or funds are not claimed by August 10, 2015, forty-five days (45) days after the initial publication of this notice, these funds will become the property of the City of Laguna Hills in accordance with California Government Code Section 50050 - 50057.

The said funds may be released to the depositor, their heir, beneficiary, or duly appointed representative provided a claim form has been completed with the necessary information establishing entitlement to the property/funds. The information needed is as follows:

- Name, address, telephone number
- Amount of claim
- Proof of identity such as copy of driver's license, birth certificate or passport
- Grounds on which claim is founded, including proof of (1) entitlement to the property/funds and (2) that all obligations to the entitlement have been satisfied.

The claim shall be filed before the date the unclaimed property/funds become the property of the City. The Unclaimed Property/Funds Form is available at the City of Laguna Hills Finance Department, located at 24035 El Toro Road, Laguna Hills, CA 92653, or by emailing payee@ci.laguna-hills.ca.us.

Persons with funds on deposit for over three (3) years are:

Name	Description/Type	Amount
Cardinal Construction	Unclaimed check	$500.00
Gina Aldana or Edier David	Unclaimed check	20.00
Kathryn Barnett	Unclaimed check	500 00
Connie Gutierrez	Unclaimed check	500.00
Anthony & Sylvan Pools	Unclaimed check	500.00
Joaquin Aguilar	Unclaimed check	30.00
SCCCA	Unclaimed check	35.00
Johnson, Larry	Unclaimed check	75 00
John Wayne Airport	Unclaimed check	50.00
Silver Dollar Pool Excavation	Unclaimed check	500 00
Unique Homes	Unclaimed check	600.00
California Concepts Exclusive Pools	Unclaimed check	136.77
Kinney Landscape Construction	Unclaimed check	500.00
South Pacific Construction	Unclaimed check	1,000.00
Advanced Pools	Unclaimed check	500 00
Shoreline Pool and Spas	Unclaimed check	500.00
America's Poolbuilders	Unclaimed check	500.00
Ruva Pool & Spa, Inc.	Unclaimed check	250.00
Golden West Pools	Unclaimed check	500.00
Euro Engineering	Sec. Dep. Waste Recycl	329.00
John Petty	Sec. Dep. Waste Recycl	276 80
Shires Construction	Sec. Dep. Waste Recycl	275.80
Ray Hart	Sec. Dep. Waste Recycl	1,410 15
Urio & Assoc	Sec. Dep. Waste Recycl	392.20
Pav-Kote	Sec. Dep. Waste Recycl	5,000.00
MK Custom	Sec. Dep. Waste Recycl	2,500.00
Ed Hygh Co	Sec. Dep. Waste Recycl	308.80
Nelson	Sec. Dep. Waste Recycl	2,500.00
Vaugn Smith	Sec. Dep. Waste Recycl	622 40
Laguna Hills Investment	Sec. Dep. Waste Recycl	2,093.00
Ron Engelhard	Sec. Dep. Waste Recycl	300.00
Earl Brown	Sec. Dep. Waste Recycl	1,211.00
Diane White	Sec. Dep. Waste Recycl	427.80
South Shore Indusirtes	Sec. Dep. Waste Recycl	160.00
Hosn	Sec. Dep. Waste Recycl	222.40
Todd Andre	Sec. Dep. Waste Recycl	380.20
Dumont Eng.	Sec. Dep. Waste Recycl	551.40
A.L. Vineyard Construction Inc	Sec. Dep. Waste Recycl	469 00
Saba Arch	Sec. Dep. Waste Recycl	980.00
Mustang Dr LLC	Sec. Dep. Waste Recycl	1,016.40
Mark Ward Goings, INC dba		
MGI Construction Inc	Sec. Dep. Waste Recycl	339 40
Michael J Smith, Debra Smith	Sec. Dep. Waste Recycl	481.20
FS Builder	Sec. Dep. Waste Recycl	276 20
Joel Harrison, Kerry Harrison	Sec. Dep. Waste Recycl	594 10
Danea T Riley, James S Riley	Sec. Dep. Waste Recycl	500.00
Swinerton Builders	Sec. Dep. Waste Recycl	2,062,50
Quickel Paving	Sec. Dep. Waste Recycl	518.00
AMG Construction	Sec. Dep. Waste Recycl	262.00
ASR Construction	Sec. Dep. Waste Recycl	541.20
Candy Cohen-Levy, Bradley H Levy	Sec. Dep. Waste Recycl	221.40
Kang Suh COM-3322	Sec. Dep. Waste Recycl	1 360 45
Sunbelt Limited Co Inc	Sec. Dep. Waste Recycl	408.00
G&M Oil Company Inc	Sec. Dep. Waste Recycl	5,000.00
Chmielowski, Chris	Sec. Dep. Waste Recycl	1 439 20
Andrew M Phillips, Susan V Phillips	Sec. Dep. Waste Recycl	5,000 00
Andrew M Phillips, Susan V Phillips	Sec. Dep. Waste Recycl	2,787.40
Muller-Taj LLC	Sec. Dep. Waste Recycl	5,000.00
Muller-Taj LLC	Sec. Dep. Waste Recycl	2,638 65
Coastal Pacific Construction Inc	Sec. Dep. Waste Recycl	1 386 00
William Brooks	Sec. Dep. Waste Recycl	301.00
Aikens, Fred and Julia	Sec. Dep. Waste Recycl	283.85
Mission Pools BP5176	Swimming Pool Bond	500.00
Mission Pools 5190	Swimming Pool Bond	500 00
Kinney Landscape BP9080	Swimming Pool Bond	500 00
Paragon Landscape Con BP11035	Swimming Pool Bond	500 00
McLaughlin Landscape BP11290	Swimming Pool Bond	500 00
Kinney Landscape Cons BP12036	Swimming Pool Bond	500.00
Santigo Pools & Spas BP12120	Swimming Pool Bond	500 00
Aqua Scapes Pools & Spas BP12320	Swimming Pool Bond	500.00
Kinney Landscape BP12403	Swimming Pool Bond	500 00
Integrity Custom Pool BP12510	Swimming Pool Bond	500.00
Ca Concepts Ex Pools BP12706	Swimming Pool Bond	1,000.00
McLaughlin Landscape BP12864	Swimming Pool Bond	500.00
Pools BP13183	Swimming Pool Bond	500.00
Ca Pools & Spas BP13100	Swimming Pool Bond	500 00
Ocean Ridge LA BP13260&63	Swimming Pool Bond	500 00
Steve Kopp BP2002-0776	Swimming Pool Bond	250 00
Pools BP2003-0576	Swimming Pool Bond	500 00
Crystal Co BP2003-1169	Swimming Pool Bond	500 00
Hacienda Pools BP2004-0120	Swimming Pool Bond	500 00
Paradiso P BP2004-0243	Swimming Pool Bond	500 00
D Gregory L BP2004-0298	Swimming Pool Bond	500 00
D Gregory L BP2004-0228	Swimming Pool Bond	500 00
Baja Pools BP2004-0444	Swimming Pool Bond	500 00
Blue Banan BP2004-0498	Swimming Pool Bond	500 00
Ali Bou BP2004-0542	Swimming Pool Bond	500.00
Pools BP2004-0650	Swimming Pool Bond	500,00
Enviroscap BP2004-0673	Swimming Pool Bond	250,00
Knight Custom BP2004-1159	Swimming Pool Bond	500.00
ISI Blue BP2004-1157	Swimming Pool Bond	500 00
Mr Landscape BP2005-0050	Swimming Pool Bond	500.00
Designer P BP2005-0330	Swimming Pool Bond	500.00
Serenity Pools BP2005-0630	Swimming Pool Bond	500.00
Bella Vista BP2005-0687	Swimming Pool Bond	500.00
Potter Con BP2005-0705	Swimming Pool Bond	500 00
Jackson BP2005-0716	Swimming Pool Bond	500.00
Gordon BP2005-0963	Swimming Pool Bond	500,00
Mission Pools BP2005-1044	Swimming Pool Bond	500 00
Deruyter BP2006-0172	Swimming Pool Bond	500.00
Schulte La BP2006-0420	Swimming Pool Bond	500.00
Mission Pools BP2006-0536	Swimming Pool Bond	500.00
Pool Construction by BH Inc	Swimming Pool Bond	500.00
Black Mountain Pools	Swimming Pool Bond	500,00
Pools	Swimming Pool Bond	500.00
Aqua Scapes Pools & Spas Inc	Swimming Pool Bond	250 00
Allure Construction SP-7-09-2047	Swimming Pool Bond	500 00
SP-3-10-2775	Swimming Pool Bond	500,00
SH Pools, Steve Howard	Swimming Pool Bond	500 00
Matsueda, Shoji	Swimming Pool Bond	500 00

Publish: Saddleback valley News June 26, July 3, 2015 10062605

EXHIBIT B
UNCLAIMED FUNDS

Date	*Name*	*Type*		*Amount*
06/24/00	Cardinal Construction	Unclaimed check	$	500.00
12/02/03	Gina Aldana or Edier David	Unclaimed check		20.00
10/19/06	Kathryn Barnett	Unclaimed check		500.00
11/09/06	Connie Gutierrez	Unclaimed check		500.00
06/30/08	Anthony & Sylvan Pools	Unclaimed check		500.00
07/24/08	Joaquin Aguilar	Unclaimed check		30.00
08/14/08	SCCCA, c/o City of La Quinta	Unclaimed check		35.00
08/28/08	Johnson, Larry	Unclaimed check		75.00
09/18/08	John Wayne Airport	Unclaimed check		50.00
08/26/10	Silver Dollar Pool Excavation	Unclaimed check		500.00
08/26/10	Unique Homes	Unclaimed check		500.00
09/16/10	California Concepts Exclusive Pools	Unclaimed check		136.77
09/16/10	Kinney Landscape Construction	Unclaimed check		500.00
09/16/10	South Pacific Construction	Unclaimed check		1,000.00
09/30/10	Advanced Pools	Unclaimed check		500.00
09/30/10	Shoreline Pool and Spas	Unclaimed check		500.00
10/14/10	America's Poolbuilders	Unclaimed check		500.00
11/18/10	Ruva Pool & Spa, Inc.	Unclaimed check		250.00
08/31/12	Golden West Pools	Unclaimed check		500.00
08/09/96	Mission Pools BP5176	Pool Bond		500.00
12/11/97	Mission Pools 5193	Pool Bond		500.00
08/20/98	Kinney Landscape BP9080	Pool Bond		500.00
12/23/99	Paragon Landscape Con BP11035	Pool Bond		500.00
03/16/00	McLaughlin Landscape BP11290	Pool Bond		500.00
10/24/00	Kinney Landscape Cons BP12036	Pool Bond		500.00
11/20/00	Santigo Pools & Spas BP12120	Pool Bond		500.00
01/03/01	Aqua Scapes Pools & Spas BP12320	Pool Bond		500.00
01/17/01	Kinney Landscape BP12403	Pool Bond		500.00
03/07/01	Integrity Custom Pool BP12510	Pool Bond		500.00
04/13/01	Ca Concepts Ex Pools BP12706	Pool Bond		1,000.00
05/25/01	McLaughlin Landscape BP12864	Pool Bond		500.00
08/21/01	Pools BP13183	Pool Bond		500.00
08/24/01	Ca Pools & Spas BP13100	Pool Bond		500.00
09/18/01	Ocean Ridge LA BP13260&63	Pool Bond		500.00
11/12/02	Steve Kopp BP2002-0776	Pool Bond		250.00
06/27/03	Pools BP2003-0576	Pool Bond		500.00
09/29/03	Crystal Co BP2003-1189	Pool Bond		500.00
01/21/04	Hacienda Pools BP2004-0120	Pool Bond		500.00
03/05/04	Paradise P BP2004-0243	Pool Bond		500.00
03/12/04	D Gregory L BP2004-0298	Pool Bond		500.00
03/12/04	D Gregory L BP2004-0228	Pool Bond		500.00
04/14/04	Baja Pools BP2004-0444	Pool Bond		500.00
04/28/04	Blue Banan BP2004-0498	Pool Bond		500.00
05/07/04	Ali Bou BP2004-0542	Pool Bond		500.00
06/16/04	Pools BP2004-0650	Pool Bond		500.00
06/22/04	Enviroscap BP2004-0673	Pool Bond		250.00
11/16/04	Knight Custom BP2004-1159	Pool Bond		500.00
11/17/04	ISl Blue BP2004-1167	Pool Bond		500.00
01/21/05	Mr Landscape BP2005-0050	Pool Bond		500.00
04/22/05	Designer P BP2005-0330	Pool Bond		500.00
07/21/05	Serenity Pools BP2005-0630	Pool Bond		500.00
08/05/05	Bella Vista BP2005-0687	Pool Bond		500.00
08/16/05	Potter Con BP2005-0705	Pool Bond		500.00
08/17/05	Jackson BP2005-0716	Pool Bond		500.00
11/21/05	Gordon BP2005-0963	Pool Bond		500.00
12/01/05	Mission Pools BP2005-1044	Pool Bond		500.00
02/22/06	Deruyter BP2006-0172	Pool Bond		500.00
05/17/06	Schulte La BP2006-0420	Pool Bond		500.00
06/27/06	Mission Pools BP2006-0536	Pool Bond		500.00
07/02/07	Pool Construction by BH Inc	Pool Bond		500.00
09/25/07	Black Mountain Pools	Pool Bond		500.00
02/05/08	Pools	Pool Bond		500.00
05/01/09	Aqua Scapes Pools & Spas Inc	Pool Bond		250.00
07/22/09	Allure Construction SP-7-09-2047	Pool Bond		500.00
04/01/10	SP-3-10-2775	Pool Bond		500.00
03/07/11	SH Pools, Steve Howard	Pool Bond		500.00
02/22/12	Matsueda, Shoji	Pool Bond		500.00
		Total	**$**	**30,846.77**

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: MELISSA AU-YEUNG
ASSISTANT TO THE CITY MANAGER

ISSUE: SECOND READING AND ADOPTION OF AN ORDINANCE APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT."

SUMMARY:

The Ordinance would amend the Development Agreement between the City of Laguna Hills and the Laguna Hills Investment Company and Oakbrook Urban Village I, LLC, by extending the time periods required to complete certain improvements and incorporating new site improvements.

A copy of the proposed Ordinance and the staff report for the introduction of the Ordinance, including attachments, are included as attachments to this report. The City Council introduced the Ordinance by a vote of 5-0. It is in order to adopt the Ordinance.

ATTACHMENTS:

- Proposed Ordinance
- March 8, 2016 Introduction to Ordinance Staff Report and Attachments

ORDINANCE NO. 2016-2

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT

WHEREAS, the City of Laguna Hills (the “City”) and Laguna Hills Investment Company previously entered into to that certain Development Agreement, which was approved pursuant to City Council Ordinance No. 2012-4 on November 27, 2012, became effective December 28, 2012, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on January 2, 2013, as Document No. 2013000002329 (the "Development Agreement"), pertaining to the redevelopment of the Oakbrook Village Shopping Center property (the "Property"), located at 24231-24391 Avenida de la Carlota in the Urban Village Specific Plan area with a multi-phase, mixed-use project consisting of multi-family residential units, renovated and expanded retail uses, public open space, pedestrian pathways, and private and public infrastructure improvements within the Village Commercial District of the Urban Village Specific Plan area, generally located south of the Laguna Hills Mall along Avenida de la Carlota to the East, north of Los Alisos Boulevard (the "Project"). A copy of the Development Agreement is on file in the office of the City Clerk of the City of Laguna Hills; and

WHEREAS, on November 27, 2012, pursuant to the California Environmental Quality Act ("CEQA"), the City Council and Planning Agency determined that the Project is within the scope of the "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100" ("PEIR"), and that the Project would not result in any new significant effects that were not examined in the PEIR, a substantial increase in the severity of significant effects examined in the PEIR, or require any new mitigation measures or alternatives. The City therefore adopted Addendum to the PEIR for the Project pursuant to Public Resources Code Sections 21166 , 21083.3, and CEQA Guidelines Sections 15168, 15162, 15164, and 15183. The City filed a Notice of Determination on November 28, 2012; and

WHEREAS, following the approval and execution of the Development Agreement, Laguna Hills Investment Company subsequently assigned an interest in the Development Agreement to Oakbrook Urban Village I, LLC, as described and as set forth in that certain Assignment of Development Agreement dated April 24, 2014, as recorded in the Official Records, Orange County, Clerk Recorder, on April 24, 2014, bearing document number 2014000157001; and

WHEREAS, Laguna Hills Investment Company and Oakbrook Urban Village I, LLC are collectively referred to herein as the "Owner"; and

WHEREAS, on February 24, 2015, the City Council of the City of Laguna Hills adopted Ordinance No. 2015-3 approving Amendment No. 1 to Development Agreement between the City and the Owner, which Amendment No. 1 to Development Agreement became effective March 27, 2015, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on March 31, 2015, as Document No. 2015000163595; and

WHEREAS, the Development Agreement establishes specified time periods by which the Owner is required to commence and complete the various components of Phase 1 of the Project, including, without limitation, the renovation of the façades of all remaining retail structures located on the Property and various pedestrian paseos and trails; and

WHEREAS, in accordance with Section 13 of the Development Agreement, the Owner has proposed that the Development Agreement be amended again to modify the timing, location, and scope of development of certain on-site pedestrian, landscaping, and building façade improvements; and

WHEREAS, the City Council serves as, and is, the Planning Agency of the City pursuant to Government Code Section 65100; and

WHEREAS, on January 29, 2016 as required by Government Code Section 65867, the City caused public notice to be given of the City Council's intention to consider adoption of the Amendment No. 2 to Development Agreement for the Project (the "Amendment No. 2"), and on February 9, 2016, and March 8, 2016, as required by Government Code Section 65867, the City Council held a public hearing on adoption of the Amendment No. 2, and introduction and first reading of this ordinance; and

WHEREAS, on March 22, 2016, the City Council considered the adoption of this ordinance approving and authorizing the execution of the Amendment No. 2; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City hereby determines that no further environmental review is required. The Amendment No. 2 will merely make minor modifications to the scope and timing of development of façade renovations and pedestrian, vehicular and landscaping improvements on the Property, and will not affect the size, scope, or timing of development of any structures on the Property. Accordingly, the City hereby determines that the Amendment No. 2 is within the scope of the Addendum adopted on November 27, 2012, and that none of the circumstances triggering further environmental review have occurred since the adoption of the Addendum: (i) there are no substantial changes in the Project requiring major revisions of the PEIR or

Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the Project is being undertaken which will require major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and (iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR or Addendum was adopted showing that: (a) the Project will have one or more significant effects not discussed in the PEIR or Addendum; (b) significant effects previously examined will be substantially more severe than shown in the PEIR or Addendum; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR or Addendum would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Section 21166 and CEQA Guidelines Sections 15162.)

<u>SECTION 2</u>. The Amendment No. 2 to Development Agreement with the Owner for the Project attached hereto as Exhibit "A" is hereby APPROVED based on the following statement of findings:

A. The findings set forth in City Council Ordinance No. 2012-4, adopted on November 27, 2012, supporting the adoption and approval of the Development Agreement, are hereby incorporated by reference as if set forth in full herein.

B. The Amendment No. 2 has been properly requested pursuant to Section13 of the Development Agreement.

C. The Development Agreement, as amended by the Amendment No. 2, and the Project remain consistent with the objectives, policies, general land uses, and programs of the Laguna Hills General Plan and the Urban Village Specific Plan encouraging an urban village identity to include a variety of high quality public, regional commercial, recreational, and high density residential uses working in concert to create an "urban village" with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas. The Amendment No. 2 merely modifies the timing of development of façade renovations and the scope and timing of the development of on-site pedestrian, vehicular and landscaping improvements required by the Development Agreement in order to enhance linkages with future adjacent residential and commercial uses, but will not affect the size, scope, or timing of development of any structures or village greens on the Property.

D. The Development Agreement, as amended by the Amendment No. 2, and the Project remain consistent with the densities and uses authorized for the Project site specified in the Laguna Hills General Plan, the Urban Village Specific Plan, and the Zoning and Development Code of the City.

E. The Development Agreement, as amended by the Amendment No. 2, continues to provide for the orderly development of the Project property. The Development Agreement, as amended by the Amendment No. 2, continues to identify the different phases and timing for construction of the Project and public improvements.

F. The Development Agreement, as amended by this Amendment No. 2, and the Project remain consistent with the Zoning and Development Code of the City, compatible with the present and future logical growth of the proposed project area (as envisioned in the Laguna Hills General Plan and Urban Village Specific Plan), and designed to protect and promote the public health, safety and welfare.

SECTION 3. The City Council finds that the above recitations are true and correct and constitute the findings of the City Council and Planning Agency in this case.

SECTION 4. The City Manager is hereby directed and authorized to take all necessary actions to implement this ordinance, including but not limited to, updating the legal description of the Property described in the Amendment No. 2 to Development Agreement attached hereto as Exhibit "A", if necessary, and executing the Amendment No. 2 and other related documents.

SECTION 5. A fully executed copy of the Amendment No. 2 to Development Agreement attached hereto as Exhibit "A" between the City and the Owner shall be filed and maintained in the office of the City Clerk.

SECTION 6. The City Clerk shall record a copy of the Amendment No. 2 to Development Agreement within 10 days of the effective date of this ordinance, on or before May 2, 2016.

SECTION 7. This ordinance shall become effective 30 days after its adoption, on April 22, 2016.

SECTION 8. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

SECTION 9. The City Clerk shall certify to the adoption of this ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this ordinance and a certified copy of the text of this ordinance shall be posted in the office of the City Clerk five days prior to the date of adoption of this ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this ordinance, together with the vote for and against the same, in the office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 22nd day of March 2016.

BARBARA D. KOGERMAN, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 2016-2 was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 8th day of March 2016, and that thereafter, said ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the 22nd day of March 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

AFFIDAVIT OF POSTING
AND PUBLICATION

MELISSA AU-YEUNG, being first duly sworn, deposes and says:

That she is the duly appointed and qualified City Clerk of the City of Laguna Hills;

That in compliance with State Laws of the State of California, Ordinance No. 2016-2, being:

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT

on the 1st day of April 2016, was published in the Saddleback Valley News; and was, in compliance with City Resolution No. 2004-05-25-2, on the 1st day of April 2016, caused to be posted in three places in the City of Laguna Hills, to wit:

Laguna Hills City Hall
Laguna Hills Community Center
Courtyard at La Paz Center

____
MELISSA AU-YEUNG, CITY CLERK
Laguna Hills, California

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 8, 2016

TO: MAYOR AND COUNCIL MEMBERS & PLANNING AGENCY

FROM: DAVID CHANTARANGSU, AICP
COMMUNITY DEVELOPMENT DIRECTOR

ISSUE: CONSIDERATION OF A REQUEST BY LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, TO AMEND AN EXISTING DEVELOPMENT AGREEMENT AND MODIFY CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT/PARKING USE PERMIT/ VESTING TENTATIVE TRACT MAP/PRECISE PLAN/DEVELOPMENT AGREEMENT NO. 12-11-2137 TO EXTEND THE TIME PERIODS FOR COMPLETION OF CERTAIN ON-SITE IMPROVEMENTS IN PHASE 1 OF THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT LOCATED AT 24231-24391 AVENIDA DE LA CARLOTA

RECOMMENDATION: (1) THAT THE PLANNING AGENCY AND CITY COUNCIL CONDUCT A JOINT PUBLIC HEARING TO CONSIDER THE PROPOSED DEVELOPMENT AGREEMENT AMENDMENT AND MODIFICATION OF CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF THE EXISTING LAND USE ENTITLEMENTS FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT LOCATED AT 24231-24391 AVENIDA DE LA CARLOTA;

(2) THAT THE CITY COUNCIL INTRODUCE FOR FIRST READING, READ BY TITLE ONLY, AND WAIVE FURTHER READING OF AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT; AND

(3) THAT THE PLANNING AGENCY ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING RESOLUTION NOS. PA2015-02-10-1, PA2014-02-11-2, AND PA2012-11-13-1 TO MODIFY CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT/PARKING USE PERMIT/VESTING TENTATIVE TRACT MAP/ PRECISE PLAN/

DEVELOPMENT AGREEMENT NO. 12-11-2137 TO EXTEND THE TIME PERIODS FOR COMPLETION OF CERTAIN PHASE 1 ON-SITE IMPROVEMENTS, A REQUEST BY LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER LOCATED AT 24231-24391 AVENIDA DE LA CARLOTA."

SUMMARY:

Laguna Hills Investment Company and Oakbrook Urban Village I, LLC, (collectively, the "Owner") have requested that the City approve an amendment to the existing Development Agreement for the Oakbrook Village Shopping Center Redevelopment Project (the "Project") to extend the time periods by which the Owner is required to complete certain improvements and propose new site improvements generally described as follows:

1. Obtain all applicable permits for the renovation of the façades of Buildings A, P, Q, and C (Marshalls, Road Runner, and adjoining retail spaces);

2. Complete construction of the improved north-south pedestrian paseo adjacent to Buildings A, P, and Q;

3. Coordinate the construction of the hillside paseo connecting the north-south pedestrian paseo with the redevelopment of the Five Lagunas project (Laguna Hills Mall); and

4. Make improvements along the north property line adjacent to the Five Lagunas project to create a seamless transition between the two projects.

The proposed Amendment No. 2 to the existing Development Agreement would result in the granting of additional time to complete items 1 through 3. Item 4 would be deferred to allow the coordination of improvements occurring on and around the property line with the anticipated Five Lagunas project. **Attachment 1** describes the current timing required, and the proposed new timing for commencement, and completion of items 1 through 4. In addition, Amendment No. 2 incorporates Exhibits D through H depicting the north property line area (Exhibit D), anticipated location of new retail buildings and pedestrian walkways (Exhibit E), and revised façade and landscape improvements for buildings A, P, C, and Q (Exhibits F, G, H).

If the City Council approves the proposed Amendment No. 2 to Development Agreement, it will be necessary for the Planning Agency to modify Condition of Approval No. 47 of the current zoning approval for the project so that it remains consistent with the amended Development Agreement. Additionally, the Owner has requested more time to comply with Condition of Approval No. 54 which requires the Owner to construct required site entry improvements. This change would delay the construction of the improvements by approximately five months.

BACKGROUND:

The City's Urban Village Specific Plan (UVSP) area is envisioned as a community gathering place where a variety of public, commercial, recreational, and residential uses work together to create an "urban village." Oakbrook Village is one of the key properties of the UVSP where important features of the approved plan are envisioned to be located. In addition to the housing and commercial uses the property can support, these features include public plazas, internal roads, and pedestrian walkways important to the walkability and vehicular circulation of the planning area.

<u>Entitlement/ Development Agreement History</u>
On November 13, 2012, the Planning Agency approved Site Development Permit/Master Sign Program/Conditional Use Permit/Parking Use Permit/Vesting Tentative Tract Map/ Precise Plan/Development Agreement No. 12-11-2137 for Phase 1 of the Project (the "Phase 1 Land Use Entitlements"), subject to several Conditions of Approval. To facilitate the redevelopment of Oakbrook Village and carry out the City's adopted land use and economic development goals for the UVSP, the City also entered into a Development Agreement with the Laguna Hills Investment Company for the Project, which took effect on December 28, 2012.

On February 11, 2014, the Planning Agency adopted Resolution No. PA2014-02-11-2 approving various modifications to the Conditions of Approval for the Phase 1 Land Use Entitlements and allowing for early issuance of building permits and addressing other Project sequencing matters.

In April 2014, Laguna Hills Investment Company assigned an interest in the Development Agreement to Oakbrook Urban Village I, LLC, a Shea Homes related entity.

On February 10, 2015, the Planning Agency adopted Resolution No. PA2015-02-10-1 approving modifications to Condition of Approval No. 47 for the Phase 1 Land Use Entitlements to extend the time periods for the construction of three pedestrian paseos. On February 24, 2015, the City Council adopted Ordinance No. 2015-3 approving and adopting Amendment No. 1 to the existing Development Agreement for the Project to extend the time periods pursuant to which Owner had to commence façade renovations of the existing retail structures on the Property (with the exception of Lone Star and El Torito, for which no façade renovations are required), and to complete the construction of certain pedestrian paseos/trails on the western and northern areas of the Property.

The Development Agreement provides for the redevelopment of the property in two phases. Phase 1 of the Project is reflected in the Phase 1 Land Use Entitlements and includes: (i) the demolition of approximately 82,730 square feet of the approximately 190,956 square feet of existing retail space on the Property; (ii) the construction of two

"Deferred Retail Pads" and approximately 9,000 square feet of additional new retail space; (iii) the renovation of the façades of all remaining retail structures located on the Property other than restaurant Buildings D and E (Lone Star and El Torito); (iv) the construction of a maximum of 289 multi-family residential units; and (v) the construction of a 17,000 square foot Village Green, several pedestrian and parking lot paseos, a pedestrian trail on the Property, and various off-site public improvements. The Development Agreement provides for the Owner to commence and complete the various Phase 1 improvements within specified timeframes.

Phase 2 of the Project contemplates the potential future construction of up to an additional 200 multi-family residential units, replacement retail structures, and another approximately 7,000 square foot Village Green. For Phase 2 improvements, Owner has until eleven (11) years from the effective date, or December 28, 2023, to obtain all Phase 2 project approvals from the City. In the event Owner meets this requirement, the Development Agreement is automatically extended another four (4) years, or until December 28, 2027. A copy of the 2012 Development Agreement is included as **Attachment 2**. Amendment No. 1 is included as **Attachment 3.**

DISCUSSION:

Both staff and the Applicant believe Amendment No. 2 to the Development Agreement is necessary to ensure the project can proceed in a manner that provides the best opportunity for success as the City implements its vision for the UVSP. Amendment No.2 and the proposed Planning Agency Resolution address the following:

Better Coordination between the Redevelopment of Oakbrook Village and the Contemplated Five Lagunas Project. Certain site improvements slated to occur at Oakbrook Village would be more effective in promoting pedestrian circulation, wayfinding, and maintain a unified appearance in design and quality if they can be coordinated with the expected redevelopment of the Five Lagunas project. Staff would like to see a seamless transition between the two projects in terms of the pedestrian environment, vehicular connections, and landscaping, and proposes allowing the Applicant to defer improvements along the north property line to provide for close coordination with the timing of the Five Lagunas project.

Complex timing issues in the Contemplated Phase 2 Area. The Applicant is concerned about constructing building façade and landscape improvements for buildings A, P, and Q only to have them torn down within the next few years when construction of Phase 2 could commence. The Applicant has requested that the City reconsider the extent of improvements needed to modify existing buildings A, P, and Q.

New Construction – Buildings A and B. The Applicant intends to apply for land use approvals to construct new retail buildings with adjacent enhanced pedestrian paseos near the north property line (Buildings A & B) in the near future. Consequently, the Applicant has asked that renovations to Building C be revised as submitted, and that the project's Parking Lot Paseo No. 2 be moved when these new buildings are constructed.

Modifications to Project Conditions of Approval. Condition of Approval No. 47 to the existing Land Use Approvals currently contains time frames related to the construction of the pedestrian and parking lot paseos that are consistent with those set forth in the existing Development Agreement. Therefore, in conjunction with the amendment of the Development Agreement modifying these timeframes, it is necessary for the Planning Agency to likewise modify Condition of Approval No. 47 to maintain consistency between the Project Conditions and the Development Agreement.

Additionally, the Owner has requested a modification to Condition of Approval No. 54 to the Phase 1 Land Use Entitlements for the Project. Condition No. 54 requires the Owner to construct secondary entry signs (depicted by Exhibit G of the Project's Master Sign Program) prior to the issuance of the last residential certificate of occupancy for Phase 1. The applicant is requesting more time to satisfy this condition. If the time extension is approved, the Applicant would have to construct the secondary entry signs prior to the issuance of building permits for the façade renovations on Buildings A, P, Q, and C.

A proposed Resolution approving the necessary modifications to Conditions of Approval No. 47 and No. 54 is included as **Attachment 4** to this report.

The project's current circumstances could not have been anticipated when the City Council entered into the Development Agreement in 2012. Amendment No. 2 is now needed to revise the project to address the issues previously described above. To memorialize these changes to the timing and design of the improvements between the City and the Applicant, staff and the Applicant have negotiated the proposed Amendment No. 2 to the Development Agreement, and the City Attorney has prepared a proposed Ordinance for its adoption, which are included as **Attachment 5** to this report.

FISCAL IMPACT:

None.

CEQA FINDINGS:

It is recommended that the City Council and Planning Agency find that no further environmental review is required. The approval of Amendment No. 2 to the Development Agreement and corresponding modifications to the Conditions of Approval of Planning Agency Resolution No. PA2012-11-13-1 (as modified by Planning Agency Resolution Nos. PA2015-02-10-1 and PA2014-02-11-2), as set forth in the attached Resolution, will merely make minor modifications to the scope and timing of the development of façade renovations and pedestrian, vehicular, and landscaping improvements on the Property, and will not affect the size, scope, or timing of development of any structures on the Property. It is recommended that the Planning Agency find that the approval of

Amendment No.2 to the Development Agreement and modification to Conditions of Approval, as set forth in the attached Resolution, are within the scope of the Addendum adopted in conjunction with the approval of SDPM/MSP/CUP/PUP/TTM/PREC/DEVA No. 12-11-2137 and the Development Agreement, and that none of the circumstances triggering further environmental review have occurred since the adoption of the Addendum: (i) there are no substantial changes in the project requiring major revisions of the PEIR or the Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the project is being undertaken which will require major revisions of the PEIR or the Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and (iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR or the Addendum was adopted showing that: (a) the project will have one or more significant effects not discussed in the PEIR or the Addendum; (b) significant effects previously examined will be substantially more severe than shown in the PEIR or the Addendum; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR or the Addendum would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Section 21166 and CEQA Guidelines Sections 15162).

ATTACHMENTS:

- Timing Exhibit
- 2012 Development Agreement
- Amendment No. 1
- Proposed Planning Agency Resolution of Approval
- Proposed Ordinance / Amendment No. 2 to Development Agreement

Attachment #1
Explanation of Timing Changes

Summary of Proposed Timing Modifications

Phase 1 Improvement Obligation	Existing Timeframe	Proposed Extended Time
Obtain building permits for façade renovations for Buildings A, C, P and Q.	On or before September 30, 2015.	Construction completed by December 31, 2016.
Complete construction of the north-south pedestrian paseo.	Prior to issuance of *final* residential certificate of occupancy for Phase 1.	Construction completed by December 31, 2016.
Complete construction of the hillside paseo connecting the north-south pedestrian paseo with the Laguna Hills Mall property.	On or before December 28, 2017	Within six months of the City's issuance of the first certificate of occupancy for residential Building B on the Five Lagunas property, or December 28, 2023, whichever occurs first.
Complete construction of the pedestrian trail along the north Property line.	On or before December 28, 2017.	Eliminate trail. Instead owner shall coordinate with the owner of the Laguna Hills Mall to plan and construct improvements along Owner's north property line, including vehicular access, enhanced paving, pedestrian connections and other enhanced landscaping improvements within six months of the City's issuance of the first certificate of occupancy for Building A on the Five Lagunas property, or by December 28, 2023, whichever occurs first.

Attachment #2
2012 Development Agreement

6

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

Recorded in Official Records, Orange County
Renee Ramirez, Assistant Clerk-Recorder
NO FEE
* $ R 0 0 0 5 4 7 7 4 6 8 $ *
2013000002329 2:13 pm 01/02/13
62 417 A12 59
0.00 0.00 0.00 0.00 174.00 0.00 0.00 0.00

(Space Above Line for Recorder's Use)
Exempt from Recorder's Fees Pursuant to
Government Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT
(Oakbrook Village Shopping Center Mixed Use Project)

BY AND BETWEEN

THE CITY OF LAGUNA HILLS, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California

AND

LAGUNA HILLS INVESTMENT COMPANY, a Delaware limited partnership

H
59P
10f
NF
NFF

THIS DEVELOPMENT AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF ITS EFFECTIVE DATE PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

889416.1

TABLE OF CONTENTS

DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAGUNA HILLS
AND
LAGUNA HILLS INVESTMENT COMPANY

This Development Agreement ("Development Agreement") is made and entered into this 28th day of December, 2012 ("Development Agreement Date"), by and between the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California ("City") and Laguna Hills Investment Company, a Delaware limited partnership (collectively "Owner"), pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division I of Title 7, Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Statute").

RECITALS

This Development Agreement is predicated upon the following facts:

A. City is authorized, pursuant to California Government Code §§65864 through 65869.5 (the "Development Agreement Statute") and Chapter 9-84 of the Laguna Hills Municipal Code (the "Development Agreement Ordinance") to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: encourage and provide for the development of public facilities in order to support development projects; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in project costs and to encourage investment in and commitment to comprehensive land use planning, which will make maximum efficient utilization of resources at the least economic cost to the public; provide assurance to the applicants of development projects: (i) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to the conditions of approval of such projects and provisions of such development agreements, and (ii) encourage private participation in comprehensive planning and reduce the private and public economic costs of development.

B. These Recitals refer to and utilize certain terms which are defined in this Development Agreement. The Parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

C. City desires that the approximately 240 acre area bounded by Paseo de Valencia on the north and west, Los Alisos Boulevard on the south, and I-5 on the east be developed in a manner consistent with the Village Commercial land use designation of the City's General Plan, which generally envisions the development of this area as a community core in which a variety of public, regional commercial, recreational, and high density residential uses work in concert to create an "urban village" with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas.

D. In order to carry out the goals and policies of the General Plan for the Village Commercial area, on November 26, 2002, the Laguna Hills City Council adopted the Urban Village Specific Plan (the "Specific Plan"), establishing a land use concept, plans for additional public open space and pedestrian pathways, design guidelines, and development standards for new developments in the Specific Plan area aimed at creating an urban village identity. The allowed development intensity in the Specific Plan area is determined based upon vehicle trip generation limits, rather than land use type or size, and the Specific Plan provides for flexibility in development options and the mixture of land uses, provided established anticipated aggregate vehicle trip limits generated by new development are not exceeded. The City implements this aspect of the Specific Plan through a vehicle trip budget debiting process pursuant to which additional peak hour vehicle trips generated by each new development or redevelopment project are subtracted from the current aggregate total additional peak hour vehicle trips available to accommodate future new development in the Specific Plan area (the "Specific Plan Area Trip Budget Allocation"). Pursuant to the Specific Plan, applicants for new development projects are authorized to develop to the maximum intensity of their plans upon verification that the vehicle trip generation impacts created by the new development will not exceed the remaining Specific Plan Area Trip Budget Allocation. In July 2009, the Laguna Hills City Council adopted a comprehensive update to the City's General Plan, which authorized increased development intensity, and a corresponding increased number of authorized aggregate additional vehicle trips to accommodate future development projects, within the Specific Plan area. In April 2011, the Laguna Hills City Council approved amendments to the Specific Plan in order to implement the General Plan update.

E. In 2009, in connection with approving the updated General Plan, the City prepared a Program Environmental Impact Report entitled City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100 ("PEIR"). On July 14, 2009, the City Council certified the PEIR, adopted a Statement of Findings of Fact, a Statement of Overriding Considerations and Mitigation Monitoring Program. City filed a Notice of Determination on July 15, 2009. On April 12, 2011, the City Council adopted an Addendum to the PEIR in connection with the adoption of the Specific Plan Amendment (the "First Addendum").

F. In order to implement the Project, Owner has submitted, and City has approved, Site Development Permit / Master Sign Program / Conditional Use Permit / Parking Use Permit / Vesting Tentative Map / Precise Plan / Development Agreement No. 12-11-2137 for Phase 1 of the Project (the "Phase 1 Project Approvals").

G. Owner represents that it owns in fee the approximately 19.2-acre existing Oakbrook Village shopping center property (the "Property") located at 24231-24391 Avenida de la Carlota, Laguna Hills, California, within the Specific Plan area, which is more particularly described in **Exhibit A** to this Development Agreement.

H. Owner desires to re-develop the existing shopping center Property in accordance with the provisions of this Development Agreement by developing a multi-phase, mixed-use project consisting of multi-family residential units, renovated and expanded retail uses, public open space, pedestrian pathways, and private and public infrastructure improvements, all as more particularly defined herein (hereinafter collectively referred to as the "Project").

I. City desires to accomplish the goals and objectives set forth in City's General Plan and the Specific Plan, and finds that the Project will accomplish said goals and objectives. The City has determined that the Project is consistent with the General Plan, the Specific Plan and the Existing Land Use Regulations, as defined below.

J. In accordance with the Specific Plan, Owner has prepared a comprehensive traffic study dated October, 2012, (the "Traffic Study"), which analyzes the anticipated traffic impacts of the Project, calculates the additional peak hour vehicle trips that will be generated as a result of the Project, and demonstrates that there are sufficient remaining additional peak hour vehicle trips available in the current Specific Plan Area Trip Budget Allocation to accommodate the Project.

K. As consideration for the benefits gained by Owner from the vested rights acquired pursuant to the Development Agreement Statute and to conform with the requirements of the Specific Plan, City is requiring that Owner construct and install as part of Development of the Project certain public improvements and provide other public benefits.

L. In order to avoid any misunderstandings or disputes which may arise from time to time between Owner and City concerning the proposed Development of the Project and to assure each party of the intention of the other as to the processing of any land use entitlements which now or hereafter may be required for such development, the Parties believe it is desirable to set forth their intentions and understandings in this Development Agreement. In order for both City and Owner to achieve their respective objectives, it is imperative that each be as certain as possible that Owner will develop and that City will permit Owner to proceed with Development of the Project and public improvements and other public benefits as approved by City within the time periods provided in this Development Agreement, except as otherwise indicated herein.

M. On November 2, 2012, as required by Section 65867 of the Development Agreement Statute, the City caused public notice to be given of the City Council's intention to consider adoption of a development agreement for the Project.

N. On November 13, 2012, as required by Section 65867 of the Development Agreement Statute, the City Council held a public hearing on the Development Agreement.

O. The City has prepared an initial study checklist and has determined that the Project is within the scope of the PEIR. Based on the initial study completed, the Project will not result in any new significant effects that were not examined in the PEIR, or require any new mitigation measures pursuant to Public Resources Code Section 21166 and/or CEQA Guidelines Section 15162. The applicable mitigation measures identified in the PEIR are incorporated into the design of the Project and will be imposed as conditions of approval, as appropriate. The City, therefore, has prepared an Addendum to the PEIR for the Project (the "Second Addendum"). The City Council, after considering the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and California Code of Regulations, Title 14, Sections 15000 *et seq.* ("CEQA), including Sections 21083.3 and 21166, of the California Public Resources Code and Sections 15168, 15162, 15164, and 15183 of the CEQA Guidelines, independently considered the Second Addendum, along with the PEIR, prior to approving this Development Agreement.

P. The City Council hereby finds and determines that this Development Agreement: (i) is consistent with the objectives, policies, general land uses, and programs contained City's General Plan and Urban Village Specific Plan; (ii) is compatible with the uses authorized in the Village Commercial land use district; (iii) provides for the orderly development of the Property; and (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute.

Q. In preparing and adopting the General Plan and in granting the Existing Development Approvals, City considered the health, safety and general welfare of the residents of City and prepared in this regard an extensive environmental impact report and other studies. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and in granting the Existing Development Approvals, the City Council carefully considered and determined the projected needs (taking into consideration the planned development of the Project and all other areas within the City) for water service, sewer service, storm drains, electrical facilities, traffic/circulation infrastructure, police and fire services, paramedic and similar improvements, facilities and services within the Specific Plan, and the appropriateness of the density and intensity of the development comprising the Project and the needs of City and surrounding areas for other infrastructure.

R. On November 27, 2012, the City Council adopted the Authorizing Ordinance approving and authorizing the execution of this Development Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, and pursuant to the Development Agreement Ordinance, and pursuant to the mutual promises and covenants herein contained, the Parties hereto agree as follows:

SECTION 1 DEFINITIONS

The following words and phrases are used as defined terms throughout this Development Agreement, and each defined term shall have the meaning set forth below.

1.1 Authorizing Ordinance. The "Authorizing Ordinance" means Ordinance No. 2012-4 approving and authorizing this Development Agreement.

1.2 CEQA. "CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and the regulations adopted pursuant thereto (Title 14 of the California Code of Regulations, Section 15000 *et seq.*), as they may be amended from time to time.

1.3 City. "City" means the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

1.4 Deferred Retail Pads. "Deferred Retail Pads" means the two pads identified as "Deferred Retail Pad" on the Phase 1 Site Plan and Phase 2 Building Envelope attached at **Exhibit C** to this Development Agreement, and on the site plan approved pursuant to the Phase 1 Project Approvals, and consisting of approximately 14,000 square feet of new retail space.

1.5 Development. "Development" or "Redevelopment" means the improvement or renovation of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, without limitation: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of buildings, structures, and other facilities; the installation of landscaping; and the construction of other facilities and improvements necessary or appropriate for the Project. "Development" or "Redevelopment" does not mean the maintenance, repair or reconstruction of any building, structure, improvement, landscaping or facility after the initial construction and completion thereof.

1.6 Development Agreement. "Development Agreement" means this Development Agreement and any subsequent amendments to this Development Agreement which have been made in compliance with the provisions of this Development Agreement, the Development Agreement Statute, and the Development Agreement Ordinance.

1.7 Development Agreement Date. The "Development Agreement Date" means the effective date of the Authorizing Ordinance, which date is shown on page 1, paragraph 1 of this Development Agreement.

1.8 Development Agreement Ordinance. The "Development Agreement Ordinance" means Chapter 9-84 of the Laguna Hills Municipal Code.

1.9 Development Agreement Statute. The "Development Agreement Statute" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Development Agreement Date.

1.10 Development Approvals. "Development Approvals" means the Specific Plan, maps, permits and other entitlements to use of every kind and nature which are approved or granted by City in connection with Development of the Property, including, but not limited to: site plans, precise plans, tentative and vesting tentative maps, final subdivision maps, variances, conditional use permits, parking use permits, master sign programs, site development permits, lot line adjustments, and grading, building and other similar permits. To the extent any of such site specific plans, maps, permits and other entitlements to use are amended from time to time, "Development Approvals" shall include such matters as so amended. If this Development Agreement is required by law to be amended in order for "Development Approvals" to include any such amendments, "Development Approvals" shall not include such amendments unless and until this Development Agreement is so amended.

1.11 Development Fees. "Development Fees" shall have the meaning ascribed in Section 10.1 of this Development Agreement, as specified in **Exhibit B** to this Development Agreement.

1.12 Development Plan. "Development Plan" means Development of the Property pursuant to this Development Agreement, the Existing Development Approvals, and the Existing Land Use Regulations, as well as all Subsequent Development Approvals, and all Subsequent Land Use Regulations to which Owner has consented to in writing.

1.13 Discretionary Action(s), Discretionary Approval(s), or Discretionary Permit(s). "Discretionary Action(s)", "Discretionary Approval(s)", or "Discretionary Permit(s)" means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Action, Ministerial Approval, or Ministerial Permit.

1.14 Existing Development Approvals. "Existing Development Approvals" means all Development Approvals, including, without limitation, the Specific Plan, this Development Agreement, and the Phase 1 Project Approvals, approved or issued for the Project on or before the Development Agreement Date.

1.15 Existing Land Use Regulations. "Existing Land Use Regulations" means all ordinances, laws, resolutions, codes, rules, regulations, moratoria, initiatives, policies, requirements, or guidelines of the City in effect on the Development Agreement Date, which govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the Zoning Code, the Specific Plan, Mitigation Monitoring Program, and all other ordinances of City establishing subdivision standards, park regulations, impact or Development Fees and building and improvement standards. Existing Land Use Regulations do not include non-land use regulations, which include, without limitation, all City ordinances, resolutions, rules, regulations or official policies governing: business licenses issued by the City for the conduct of businesses, professions, and occupations; taxes and assessments; the control and abatement of nuisances; the granting of encroachment permits and the conveyance of rights and interests which provide for the use of the entry upon public property; and/or the exercise of the power of eminent domain.

1.16 General Plan. "General Plan" means the City General Plan, as updated on July 14, 2009.

1.17 Ministerial Action(s), Ministerial Approval(s), or Ministerial Permit(s). "Ministerial Action(s)", "Ministerial Approval(s)", and "Ministerial Permit(s)" means a permit approval or clearance in conformance with the Existing Land Use Regulations, including, without limitation, conformance maps for tentative maps, determinations of compliance with the Project conditions of approval of the Development Approvals, grading plans, improvement plans, buildings plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, grading permits, improvement permits, wall permits, building permits, demolition permits, lot line adjustments, encroachment permits, temporary use permits, and certificates of use and occupancy as necessary for completion of the Development of the Property, as distinguished from an activity which is defined herein as a Discretionary Action, Discretionary Approval, or Discretionary Permit.

1.18 Mitigation Monitoring Program. "Mitigation Monitoring Program" means the Mitigation Monitoring and Reporting Program adopted by the City Council on July 14, 2009 in conjunction with certification of the Program Environmental Impact Report prepared in connection with the 2009 Comprehensive Update of the City's General Plan.

1.19 Mortgage. "Mortgage" means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security.

1.20 Mortgagee. "Mortgagee" means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.21 Owner. "Owner" is Laguna Hills Investment Company, and any person or entity with which or into which Laguna Hills Investment Company may merge, and any person or entity who may acquire substantially all of the assets of Laguna Hills Investment Company, and any person or entity who receives any of the rights or obligations under this Development Agreement in accordance with the provisions of Section 21 (Assignment) of this Development Agreement.

1.22 Parties. "Parties" means the Owner and the City.

1.23 Phase 1. "Phase 1" of the Project means those certain improvements described in the Phase 1 Project Approvals and the public improvements required to be constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals. Phase 1 of the Project generally includes, without limitation: (i) the demolition of approximately 82,730 square feet of the approximately 190,956 square feet of existing retail space on the Property; (ii) the construction of the Deferred Retail Pads and approximately 9,000 square feet of additional new retail space, resulting in approximately 132,200 square feet, and no less than a minimum of 124,000 square feet of retail space on the Property; (iii) the renovation of the façades of all remaining retail structures located on the Property other than restaurant Buildings D and E (Lone Star and El Torito); (iv) the construction of a maximum of 289 multi-family residential units; and (v) the construction of the Phase 1 Public Improvements, as defined in Section 1.25, below.

1.24 Phase 1 Project Approvals. "Phase 1 Project Approvals" means Site Development Permit / Master Sign Program / Conditional Use Permit / Parking Use Permit / Vesting Tentative Map / Precise Plan / Development Agreement No. 12-11-2137 and all conditions of approval with respect thereto.

1.25 Phase 1 Public Improvements. "Phase 1 Public Improvements" means the following improvements, as more specifically described in the Phase 1 Project Approvals and this Development Agreement: (i) the construction of an approximately 17,000 square foot Village Green; (ii) the construction of an east-west pedestrian paseo; (iii) the construction of an improved north-south pedestrian paseo; (iv) the construction of a hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall; (v) the construction of a pedestrian trail along the north property line; (vi) the construction of two parking lot paseos; (vii) the construction of various pedestrian connections between all buildings; (viii) the installation of a traffic signal at the intersection of Avenida de la Carlota and the main entrance to the Property, including interconnection to the existing traffic signal at the intersection of Avenida de la Carlota and Los Alisos Boulevard, and construction on the easterly side of Avenida de la Carlota of a public sidewalk connection to the Oakbrook Plaza office development; (ix) dedication of the public right-of-way necessary for, and construction of, a new curb line along the entire Property frontage of Avenida de la Carlota, including a six (6) foot wide landscaped parkway space and a minimum six (6) foot wide sidewalk; (x) construction of storm drain connections, inlets, and/or other improvements necessary to eliminate all cross-gutter drainage across both the main and the northerly entrance driveway intersections with Avenida de la Carlota; (xi) the installation of debris gates at all catch basin inlets along the Property frontage to Avenida de la Carlota; (xii) the realignment of the intersection of the northerly entrance to the Property with Avenida de la Carlota; (xiii) the construction or reconstruction of all curb ramps on Avenida de la Carlota at each entrance to the Property to current Americans with Disability Act ("ADA") standards; and (xiv) construction of any and all other public improvements required to be constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals.

1.26 Phase 2. "Phase 2" of the Project means the Development or Redevelopment of the Property in accordance with the Subsequent Development Approvals and in a manner that shall result in: (i) the construction of a maximum of 200 additional multi-family residential units; (ii) the required construction of a minimum of 27,000 square feet of new retail space within the residential/retail mixed-use structures or on other areas on the Property; (iii) the required construction of such additional new retail space necessary to result in a minimum of 125,000 total aggregate square feet of retail space on the Property; and (iv) the required construction of an approximately 7,000 square foot secondary Village Green area directly adjacent to the Phase 1 Village Green area. Phase 2 may be developed in sub-phases, if, and to the extent, authorized pursuant to the Subsequent Development Approvals. The approximate locations and/or building envelope of the residential and retail structures and Village Green area on the Property following completion of Phase 2 are generally depicted on **Exhibit C** to this Development Agreement.

1.27 Phase 2 Project Approvals. "Phase 2 Project Approvals" means all Development Approvals necessary for Development of all portions and/or sub-phases Phase 2 of the Project, and which require Discretionary Action or Discretionary Approval by the City's Planning Agency or City Council.

1.28 Project. The "Project" means Phase 1 and Phase 2. In general, the Project consists of the Development of a multi-phase, mixed-use project on the Property generally consisting of multi-family residential units, renovated and expanded retail uses, public open space, pedestrian pathways, and private and public infrastructure improvements.

1.29 Project Trip Budget Allocation. "Project Trip Budget Allocation" means the total aggregate net additional AM and PM peak hour vehicle trips anticipated to be generated as a result of full development of the Project, as determined by the Traffic Study (see pages 14-15 and Table 5) and in accordance with Section 5.6. As set forth in the Traffic Study, as of the Development Agreement Date, the Project is allocated 194 total additional AM and 44 total additional PM peak hour vehicle trips.

1.30 Property. The "Property" means the real property described in **Exhibit A** to this Development Agreement.

1.31 Specific Plan. "Specific Plan" means the Urban Village Specific Plan approved by the City Council on November 26, 2002, and amended by the City Council in 2011.

1.32 Specific Plan Area Trip Budget Allocation. "Specific Plan Area Trip Budget Allocation" means the then current number of remaining AM and PM peak hour vehicle trips available to accommodate future new development in the Specific Plan area as calculated by the City in accordance with the vehicle trip budget debiting process contemplated by the General Plan and the Specific Plan.

1.33 Subsequent Development Approvals. "Subsequent Development Approvals" means all Development Approvals approved, granted, or issued for the Project after the Development Agreement Date, including the Phase 2 Project Approvals, which are required or permitted by the Existing Land Use Regulations, or by the Subsequent Land Use Regulations to which Owner has consented in writing, and this Development Agreement.

1.34 Subsequent Land Use Regulations. "Subsequent Land Use Regulations" means any change in or addition to the Existing Land Use Regulations adopted or becoming effective after the Development Agreement Date, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or any other board, agency, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, or changes in state law, which would, absent this Development Agreement, otherwise be applicable to the Project.

1.35 Term. "Term" is defined in Section 2 of this Development Agreement.

1.36 Traffic Study. "Traffic Study" means the comprehensive traffic study dated October, 2012, submitted by Owner pursuant to the Specific Plan and in conjunction with the Second Addendum, which analyzes the anticipated traffic impacts of the Project and calculates the additional AM and PM peak hour vehicle trips that will be generated by the Project. Pursuant to the Traffic Study, the estimated total additional AM and PM peak hour vehicle trips that will be generated by the Project are calculated utilizing the trip generation rates set forth in the Institute of Traffic Engineer's (ITE) Trip Generation Manual, 8th Edition.

1.37 Uniform Codes. "Uniform Codes" means codes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by the City, if applicable City-wide.

1.38 Zoning Code. "Zoning Code" refers to Title 9 of the Laguna Hills Municipal Code.

SECTION 2 TERM

2.1 Duration of Term. The term ("Term") of this Development Agreement shall be that period of time during which this Development Agreement shall be in effect and bind the Parties hereto. The Term shall commence on the Development Agreement Date and shall extend for an initial period of eleven (11) years thereafter, terminating at the end of the day on the eleventh (11th) anniversary of the Development Agreement Date, subject to the mandatory extension provisions of Section 2.2 , the termination provisions of Sections 2.3, 2.4, 2.5, and 5.4.1, the mutual cancellation provisions of Section 17, the periodic review provisions of Section 18, the default provisions of Section 19, the modification or termination provisions of Section 20, and the force majeure tolling provisions of Section 22.1, respectively, of this Development Agreement.

2.2 Extension of Term. The Term of this Development Agreement shall be automatically extended an additional four (4) years if, prior to expiration of the initial Term, as defined in Section 2.1, Owner has completed Development of all portions of Phase 1 of the Project and has obtained all Phase 2 Project Approvals. For purposes of the foregoing sentence, "completed" shall have the same meaning as defined in Section 5.4.1 of this Development Agreement. Notwithstanding the foregoing, the Parties may mutually agree to extend the Term of the Development Agreement, regardless of whether the mandatory extension provisions of this Section 2.2 are applicable.

2.3 Termination Due to Owner's Failure to Timely Commence or Complete Phase 1. This Development Agreement and all Development Approvals for the Project shall automatically terminate and be void and of no further force and effect upon the effective date of an ordinance adopted by the City Council in accordance with Section 5.4.1 of this Development Agreement terminating the Development Agreement pursuant to a finding by the City Council that Owner has failed to timely commence or complete Phase 1 of the Project.

2.4 Termination Due to Judicial Order. This Development Agreement shall terminate and be of no further force and effect upon the occurrence of the entry of a final judgment or issuance of a final order, after all appeals have been exhausted, directed to City as a result of any lawsuit filed against City to set aside, withdraw or abrogate the approval of the City Council of this Development Agreement.

2.5 Automatic Termination upon Completion of Project. If not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement shall automatically terminate and be of no further force and effect upon completion of the Project pursuant to the terms of this Development Agreement and any further amendments thereto and the issuance of all occupancy permits and acceptance by City of all dedications and improvements as required by the Development of the Project.

2.6 Effect of Expiration of Term Prior to Completion of Project. If not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement and all Development Approvals shall automatically terminate and be of no further force and effect upon expiration of the Term, regardless of whether the Project has been completed. Upon expiration of the Term, Owner's rights to proceed with Development of the Project pursuant to this Development Agreement shall also automatically terminate and be of no further force and effect.

SECTION 3 BINDING COVENANTS

The provisions of this Development Agreement to the extent permitted by law shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Development Agreement shall bind and inure to the benefit of the Parties and all successors in interest to the Parties hereto.

SECTION 4 EFFECT OF AGREEMENT

As a material part of the consideration of this Development Agreement, unless otherwise provided herein, the Parties agree that the Existing Land Use Regulations shall be applicable to development of the Project. In connection with all subsequent Discretionary Actions which City takes or has the right to take under this Development Agreement relating to the Project, including any review, approval, renewal, conditional approval or denial, City shall exercise its discretion or take action in a manner which complies and is consistent with the Existing Land Use Regulations (as same may be modified in accordance with this Development Agreement) and such other standards, terms and conditions expressly contained in this Development Agreement. City shall accept and timely process, in the normal manner for processing such matters as may then be applicable, all applications for further approvals with respect to the Project called for or required under this Development Agreement, including, without limitation, any necessary site plan, precise plan, site development permit, conditional use permit, parking use permit, lot line adjustment, tentative map, vesting tentative map, final map and any grading, construction or other permits filed by Owner in accordance with the Development Approvals.

SECTION 5 DEVELOPMENT OF PROJECT

5.1 Rights to Develop. Subject to and during the Term of this Development Agreement, including Section 16 (Reserved Authority), Owner shall have a vested right to develop the Project in accordance with, and to the extent of, the Development Plan, the Development Approvals, and this Development Agreement. No Subsequent Land Use Regulation shall delay, hinder, or impede the purpose or the effect of this vested right unless specifically permitted by this Development Agreement or agreed to in writing by Owner. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes shall be those set forth in the Development Plan.

5.2 Vesting of Rights of Developer. The City agrees that the right to Develop the Project consistent with the Development Plan is vested in Owner by this Development Agreement. Owner's right to develop the Project shall be vested in accordance with this Development Agreement and the Development Agreement Statute.

5.3 Effect of Development Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Development Agreement, the only rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be those set forth in the Existing Land Use Regulations and the Subsequent Land Use Regulations to which Owner has consented in writing, subject to the terms of this Development Agreement.

5.4 Timing of Development.

5.4.1 Phase 1. Owner expressly understands and agrees that its commitment to timely commence and complete Phase 1 of the Project is a material inducement to City's approval of this Development Agreement. Accordingly, except as otherwise expressly provided herein, Developer shall (i) have obtained all applicable grading, encroachment, building, demolition, and similar permits for Development of all portions of Phase 1 of the Project within two (2) years of the Development Agreement Date, and (ii) have completed Development of all portions of Phase 1 of the Project within five (5) years of the Development Agreement Date. For purposes of this Section 5.4.1, "completed" means that Owner (i) has obtained all required written City approvals for the façade renovations required by the Existing Development Approvals, (ii) has obtained residential and commercial certificates of occupancy for all Development contemplated under the Existing Development Approvals, and (iii) has obtained written approval from the appropriate City officials for all Phase 1 Public Improvements. Notwithstanding Sections 17, 18, 19, 20, or any other provision of this Development Agreement, and without complying with the provisions of Sections 17, 18, 19, and 20, it is expressly understood and agreed by the Parties that the City Council may unilaterally terminate this Development Agreement if, following notice and a public hearing in accordance with applicable law, the City Council finds that Owner has failed to commence or complete the required portions of Phase 1 of the Project in accordance with this Section. Notwithstanding Section 5.5, below, this Development Agreement and Development Approvals for the Project shall automatically expire, terminate and be of no further force and effect upon the effective date of an ordinance adopted by the City Council terminating this Development Agreement based on such a finding pursuant to this Section.

5.4.2 Deferred Retail Pads. Owner's Development of the Deferred Retail Pads shall not be subject to the requirements of Section 5.4.1 and may be completed at any time prior to, or concurrently with, Owner's Development of Phase 2. In addition, subject to all applicable Subsequent Development Approvals, in lieu of Development of either or both of the Deferred Retail Pads at the locations specified in the Phase 1 Project Approvals, Owner may proceed with Development or Redevelopment of an equivalent or greater amount of new retail space on the Property. If Owner elects to proceed with Development or Redevelopment of an equivalent or greater amount of new retail space on the Property, rather than proceed with the Development of either or both of the Deferred Retail Pads at the locations specified in the Phase 1 Site Plan and Phase 2 Building Envelope attached at **Exhibit C** and in the Phase 1 Project Approvals, such new retail space shall be in addition to, and not be included in the calculation of, the minimum 27,000 square feet of new retail space required to be constructed within the residential/retail mixed-use structures as part of Phase 2.

5.4.3 Phase 1 Public Improvements. Notwithstanding Section 5.4.1, Owner shall not be obligated to commence the Phase 1 Public Improvements within two (2) years of the Development Agreement Date. However, with the exception of the Village Green, Owner shall complete the Phase 1 Public Improvements prior to issuance of the first residential certificate of occupancy for Phase 1. Accordingly, Owner shall not be entitled to the issuance of, and City shall not be obligated to issue, certificates of occupancy for any residential units constructed in Phase 1 of the Project until all Phase 1 Public Improvements, other than the Village Green, have been completed and accepted by City. Owner shall complete construction of the Phase 1 Village Green prior to issuance of the final residential certificate of occupancy for Phase 1. Accordingly, Owner shall not be entitled to the issuance of, and City shall not be obligated to issue, a certificate of occupancy for the last residential unit (or the building in which the last residential unit is located, if applicable) constructed in Phase 1 of the Project until the Village Green for Phase 1 has been completed and approved in writing by the City.

5.4.4 Phase 2. In the event Owner elects to proceed with the Development of Phase 2, Owner shall apply for all Phase 2 Project Approvals simultaneously, and Owner's Development of Phase 2 of the Project shall be in accordance with the Development Plan, including, but not limited to, the Subsequent Development Approvals. Except as otherwise modified pursuant to the Subsequent Development Approvals, the approximate locations and/or building envelope of the Phase 2 residential and retail structures and Village Green area shall be as generally depicted on **Exhibit C** to this Development Agreement. Owner expressly understands and agrees that Owner's right pursuant to this Development Agreement to proceed with the Development of any residential units as part of Phase 2 is expressly contingent upon: (i) Owner's Development of a minimum of 27,000 square feet of new retail space within the residential/retail mixed-use structure or structures housing the residential units or on other areas on the Property; (ii) Owner's Development of such additional retail space necessary to result in a minimum of 125,000 total aggregate square feet of retail space on the Property (inclusive of the Deferred Retail Pads) and/or payment of a Phase 2 retail loss impact fee pursuant to Section 10.4; and (iii) Owner's construction of a minimum 7,000 square foot secondary Village Green area on the Property. Accordingly, the timing and sequencing of Development of the component portions of Phase 2 shall be subject to City's discretionary approval pursuant to the Subsequent Development Approvals, provided, however, that Development of all of Phase 2 shall be completed within the Term of this Development Agreement. For purposes of this Section 5.4.4, "completed" means that Owner (i) has obtained residential and commercial certificates of occupancy for all Development contemplated under the Subsequent Development Approvals, and (ii) has obtained written approval from the appropriate City officials for the Phase 2 secondary Village Green area.

5.4.5 Owner's Discretion in Timing of Development. The Parties acknowledge that Owner cannot at this time predict when or the precise rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand and other similar factors. The California Supreme Court held in *Pardee Construction v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a latter-enacted initiative restricting the timing of development to prevail over such parties' agreement. It is the Parties' intent to cure that deficiency by expressly addressing the timing of Development. Except as expressly set forth in the Development Plan, including, without limitation, Section 5.4 of this Development Agreement, regardless of any future enactment, whether by initiative or otherwise, Owner shall have the vested right to Develop the various components of the Project in such order, at such rate, and at such times as Owner deems appropriate within the exercise of its subjective business judgment.

5.5 Tentative Subdivision Map and Other Entitlement Extensions. Unless otherwise terminated pursuant to Section 5.4.1, above, in accordance with California Government Code Sections 65863.9 and 66452.6, all tentative subdivision maps or tentative parcel maps, whether vesting or not, or any other Development Approvals, except for grading and building permits and certificates of occupancy, which may be approved by the City in connection with Development of the Property, shall be granted an extension of time for the Term of this Development Agreement. The Parties also agree that phased final subdivision maps may be processed and recorded.

5.6 Project Trip Budget Allocation. During the Term of this Development Agreement, the City shall allocate to the Project the number of A.M. and P.M. peak hour vehicle trips equal to the Project Trip Budget Allocation and debit an equal amount from the Specific Plan Area Trip Budget Allocation available for other future new development in the Specific Plan area. As of the Development Agreement Date, the Project Trip Budget Allocation is equal to 194 total additional AM and 44 total additional PM peak hour vehicle trips, which has been calculated in accordance with the trip generation rates published in the Institute of Traffic Engineer's (ITE) Trip Generation Manual, 8th Edition (see Traffic Study, pages 14-15 and Table 5). During the Term of this Development Agreement, the Project Trip Budget Allocation shall be automatically adjusted without the need to amend this Development Agreement, to account for future changes in the trip generation rates published in future editions of the ITE Trip Generation Manual. Prior to issuance or approval of any permits or land use entitlements for the expansion or intensification of existing uses or the construction of new development in the Specific Plan area that would necessitate adjustment to the Specific Plan Area Trip Budget Allocation, City's City Manager, or his or her designee, shall review the trip generation rates published in the then latest edition of the ITE Trip Generation Manual and determine whether the Project Trip Budget Allocation should be automatically adjusted in accordance therewith. If the City Manager, or his or her designee, determines, in his or her reasonable discretion, that the Project Trip Budget Allocation should be automatically adjusted due to changes in the published trip generation rates, City shall debit the number of A.M. and P.M. peak hour vehicle trips equal to the adjusted Project Trip Budget Allocation from the Specific Plan Area Trip Budget Allocation available for other future new development in the Specific Plan area.

SECTION 6 ENFORCEMENT

Unless this Development Agreement is terminated or cancelled pursuant to the provisions of this Development Agreement, this Development Agreement or any amendment hereto, shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building ordinance adopted by City which alters or amends the rules, regulations or policies of Development of the Project as provided in this Development Agreement pursuant to Section 65865.4 of the Development Agreement Statute; provided, however, that the limitations of this Section shall not apply to changes mandated by State or Federal laws or other permissible changes or new regulations as more particularly set forth in Section 16 of this Development Agreement.

SECTION 7 PUBLIC BENEFITS

7.1 Installation of Traffic Signal. In accordance with the Phase 1 Project Approvals, before issuance of the first residential certificate of occupancy for Phase 1 of the Project, Owner shall install, to the reasonable satisfaction of the City Engineer, a traffic signal at the intersection of Avenida de la Carlota and the main entrance to the Project, including interconnection to the existing traffic signal at the intersection of Avenida de la Carlota and Los Alisos Boulevard via conduit and hardwire, and construction on the easterly side of Avenida de la Carlota of a public sidewalk connection to the Oakbrook Plaza office development. Said traffic signal shall be constructed to applicable State and City standards and specifications and shall be equipped with video detection and controller equipment as approved by City. The sidewalks and ramps at all corners of the newly signalized intersection and the sidewalk connection to the Oakbrook Plaza office development on the easterly side of Avenida de la Carlota shall be constructed and/or modified to conform to City and Americans With Disabilities Act ("ADA") standards.

7.2 Installation of New Curb Line, Landscaped Parkway, and Sidewalk. In accordance with the Phase 1 Project Approvals, before issuance of the first residential certificate of occupancy for Phase 1 of the Project, Owner shall dedicate and transfer to City the public right-of-way necessary for, and shall construct and create, a new curb line along the entire Property frontage of Avenida de la Carlota, including a six (6) foot wide landscaped parkway space and a minimum six (6) foot wide sidewalk to City standards and specifications. Such improvements shall not interfere with existing vehicular lane configurations or result in modifications that have the effect of reducing any on-site parking for the Project. Required parkway improvements shall be as shown on the landscape plans approved as part of the Phase 1 Project Approvals, shall be consistent with the Specific Plan, and shall include all irrigation and drainage facilities and improvements deemed necessary by City's City Engineer.

7.3 Provision of the Village Green Park Facilities. In accordance with the Development Approvals, Owner shall complete the construction and improvement of an approximately 17,000 square foot Village Green park facility in Phase 1 of the Project and an approximately 7,000 square foot Village Green park facility in Phase 2 of the Project. The Village Green park facilities are generally described and depicted in **Exhibit D** to this Development Agreement. Although the Village Greens will be available for public access and will be publically accessible, subject to Owner and City reaching an agreement upon park area operating hours and authorized uses, the Village Greens shall be privately owned, operated, and maintained by Owner.

7.4 Construction of Pedestrian Paseos. In accordance with the Development Approvals, Owner shall complete construction of various pedestrian paseos and pathways during Phase 1 of the Project, including, but not limited to, the following: (i) a pedestrian paseo, extending from the western driveway of the Project to the Laguna Hills Mall, connecting to the Village Green and then east to Avenida de la Carlota; (ii) a improved north-south pedestrian paseo; (iii) a hillside paseo connecting the north-south paseo with the Laguna Hills Mall; (iv) a pedestrian trail along the north Property line; (v) and two parking lot paseos. The pedestrian paseos are described and depicted in **Exhibit E** to this Development Agreement.

7.5 Provision of Public Art. Owner shall furnish public art in connection with the Project, and/or pay an in-lieu fee, pursuant to the Specific Plan and other Existing Development Approvals. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The Parties agree that, to the extent that the value of the public art provided and/or in-lieu fee paid by Owner for Phase 1 exceeds one-half percent (0.5%) of the total construction costs of Phase 1, as determined by the City, if Owner Develops Phase 2, Owner shall be entitled to a credit in such amount towards Owner's obligation to provide public art and/or pay an in-lieu fee pursuant to the Development of Phase 2.

SECTION 8 PUBLIC IMPROVEMENTS AND SERVICES

8.1 Public Improvements Required to Support the Project. As material consideration for City's entering into this Development Agreement, Owner shall undertake the construction and installation of public improvements required by the Development Approvals, the Existing Land Use Regulations, this Development Agreement, and the Specific Plan to support the Project as specified in **Exhibit F** to this Development Agreement. **Exhibit F** constitutes a complete list of all required public improvements for the Project, unless the Project is modified, requiring the modification of **Exhibit F**.

8.2 Cooperation by City and Owner for Public Improvements. The required public improvements will be designed and constructed in phases as required to service the Project or as otherwise required by the Project conditions of approval and/or this Development Agreement. Owner shall design and construct these public improvements in accordance with all applicable federal, state and City laws, ordinances, regulations, codes, standards, and other applicable requirements. These improvements shall be subject to City's approval and acceptance. City shall cooperate with Owner for the purpose of coordinating all public improvements constructed under the Development Approvals or this Development Agreement to existing or newly constructed public improvements, whether located within or outside of the Property. Owner shall be responsible for and use good faith efforts to acquire any right(s)-of-way necessary to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement or any Development Approvals. Should it become necessary due to Owner's failure or inability to acquire said right(s)-of-way within four (4) months after Owner begins its efforts to so acquire said right(s)-of-way, City shall negotiate the purchase of the necessary right(s)-of-way to construct the public improvements as required by, or otherwise necessary to comply with the conditions of, this Development Agreement and, if necessary in accordance with the procedures established by State law, and the limitations hereinafter set forth in this Section, City may use its powers of eminent domain to condemn said required right(s)-of-way. Owner agrees to pay for all costs associated with said acquisition and condemnation proceedings. If City cannot make the proper findings or if for some other reason under the condemnation laws City is prevented from acquiring the necessary right(s)-of-way to enable Owner to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, then the Parties agree to amend this Development Agreement to modify Owner's obligations accordingly. Any such required modification shall involve the substitution of other considerations or obligations by Owner (of similar value) as are negotiated in good faith between the parties hereto. Nothing contained in this Section shall be deemed to constitute a determination or resolution of necessity by City to initiate condemnation proceedings.

8.3 Timing, Phasing and Sequence of Public Improvements and Facilities. The timing, phasing and sequence of the construction of public improvements, facilities or the payment of fees therefore shall be constructed or paid in accordance with the timing, phasing and sequence set forth in the Development Plan.

8.4 Maintenance of Public Improvements. City shall not be responsible or liable for the maintenance or care of public improvements, intended to be dedicated to the City, until City approves and accepts them. City shall exercise no control over the public improvements until accepted. Any use by any person of the public improvements, or any portion thereof, shall be at the sole and exclusive risk of the Owner at all times prior to City's acceptance of the public improvements. Owner shall maintain all the public improvements in a state of good repair until they are completed by Owner and approved and accepted by City. If Owner fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Owner under this Development Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the public improvements or their condition prior to acceptance. Approval and acceptance of public improvements shall not be unreasonably withheld by the City.

8.5 Acceptance of Improvements; As-Built or Record Drawings. If the public improvements are properly completed by Owner and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City shall accept the public improvements. Prior to the total or partial acceptance of the public improvements by City, Owner shall file with the Recorder's Office of the County of Orange a notice of completion for the accepted public improvements in accordance with California Civil Code section 3093, at which time the accepted public improvements shall become the sole and exclusive property of City without payment therefore. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any public improvements. Notwithstanding the foregoing, City may not accept any public improvements unless and until Owner provides the required sets of "as built" or record drawings or plans to the City for review and approval for all such public improvements. The drawings shall be certified and shall reflect the condition of the public improvements as constructed, with all changes incorporated therein.

8.6 Facilitation of the Building of Future Pedestrian Connection Improvements. The City agrees that it shall use reasonable efforts to coordinate with the owner of the Laguna Hills Mall to facilitate the potential future building of a pedestrian connection between the northwest corner of the Property to the existing transit station and a pedestrian connection from the Property's west vehicular entry point to the Laguna Hills Mall.

SECTION 9 DEDICATIONS AND EXACTIONS

9.1 Dedications In Conjunction With Public Improvements. Right-of-way or property for required public improvements shall be irrevocably offered for dedication as required by the Phase 1 Project Approvals. These dedications shall be in fee or as an easement at the discretion of City. The City may accept the Owner's offer of dedication upon Owner's completion and acceptance by City of the associated improvements in compliance with the specifications as approved by City. Nothing contained in this Development Agreement, however, shall be deemed to preclude City from exercising the power of eminent domain with respect to the Property or the Project, or any part thereof.

9.2 Dedication for Public Roadway and Signalized Intersection at Laguna Hills Mall. In order to accommodate the potential need for a future public roadway along the southerly property line of the Laguna Hills Mall ("Mall") and a signalized intersection at the west vehicular entry point to the Mall, Owner shall irrevocably offer to dedicate real property needed for such public roadway and traffic signal improvements, as more particularly described and depicted on the vesting tentative map approved pursuant to the Phase 1 Project Approvals. If City accepts the irrevocable offer to dedicate while the Development Agreement is still in effect, Owner agrees to contribute Owner's fair share, as determined by the City in its reasonable discretion, of the cost of signal improvements for one signal for the future public roadway described above, not to exceed fifty percent (50%) of such estimated cost. Owner shall deposit said fair share of the estimated cost with City within one hundred twenty (120) days of written demand from City. If Owner's fair share of the actual cost to construct the signal improvements exceeds the amount of Owner's deposit, Owner shall deposit the difference with City within thirty (30) days of receipt of written notice and an accounting from City. If Owner's fair share of the actual cost to construct the signal improvements is less than the amount of Owner's deposit, City shall refund the difference to Owner.

9.3 Dedication for New Curb Line, Landscaped Parkway, and Sidewalk Along Avenida de la Carlota. Owner shall dedicate to City the real property necessary for the new curb line, six (6) foot wide landscaped parkway space, and a minimum six (6) foot wide sidewalk along the entire Property frontage of Avenida de la Carlota, as further described in Section 7.2. Such dedication shall be made pursuant to the vesting tentative map approved pursuant to the Phase 1 Project Approvals.

9.4 Dedication Associated with New Southerly Entrance to Property. Owner shall dedicate to City the real property necessary for street and highway and incidental purposes associated with Owner's construction of the southerly entrance to the Project. Such dedication shall be made pursuant to the vesting tentative map approved pursuant to the Phase 1 Project Approvals.

9.5 Vacation of Portion of Public Driveway Accessing Avenida de la Carlota. The Parties acknowledge that the existing driveway providing ingress and egress to the Property from Avenida de la Carlota includes property dedicated as public right of way, and that, as part of the Project, Owner intends to relocate said driveway. Subject to limitation by applicable legal and regulatory authority, upon Owner's completion of relocation of the driveway to the reasonable satisfaction of the City Engineer, in his sole discretion, City agrees to institute proceedings to vacate that portion of the public right of way over the existing driveway determined by the City to no longer be necessary for public use and to promptly pursue such proceedings to a final decision. Upon completion of said vacation proceedings and vacation of the applicable portion of public right of way, City shall convey such portion of the former public right of way at no cost to Owner, which conveyance may be executed by City's City Manager.

SECTION 10 FEES

10.1 Development Fees Applicable to the Project. Owner shall pay all existing impact and development fees applicable to the Project on the Development Agreement Date charged by City for the purpose of defraying all or a portion of the cost of public facilities related to development of the Project ("Development Fees"). All Development Fees applicable to the Project are listed in **Exhibit B** to this Development Agreement.

The Parties acknowledge that the following fees, taxes, and charges do not constitute Development Fees and that nothing in this Development Agreement is intended or shall be construed to release Owner from the obligation to pay these fees, taxes, and charges, including increases, if and when they become due:

(a) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; and

(b) Fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; and

(c) Community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the property development tax payable under the Laguna Hills Municipal Code.

10.2 Fees Applicable for Modified Development Approvals. Notwithstanding Section 10.1 of this Development Agreement, if and to the extent that the Development Approvals applicable to the Property are amended after the Development Agreement Date and Owner is authorized under the modified Development Approvals to develop any additional density or intensity of use beyond what is allowed as of the Development Agreement Date, City shall retain the right to require Owner to pay all City fees for such additional density or intensity of use to the extent such fees would be applicable in the absence of this Development Agreement.

10.3 Public Park In-lieu Fees. Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to both Phase 1 and Phase 2 of the Project, regardless of whether Owner proposes a subdivision map for each Phase. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Seven Thousand Three Hundred Ninety Two Dollars ($7,392.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code. Said fee shall be paid on a per unit basis at the time of filing of the final map or, if no final map is filed, prior to issuance of a building permit for each residential unit.

10.4 Phase 2 Retail Loss Impact Fee. Owner understands and agrees that Owner's commitment to timely construct such additional new retail space necessary to result in a minimum of 125,000 total aggregate square feet of retail space on the Property is a material inducement to City's agreement to permit Owner to demolish existing retail space and construct additional residential units on the Property in Phase 2, and that Owner's failure to complete construction of all such additional new retail space prior to completion of the additional Phase 2 residential units will result in the loss of future revenue to City necessary to offset the costs of certain City services required by the Project that are not otherwise being reimbursed to City. Accordingly, as security for Owner's commitment to construct such additional new retail space in Phase 2, prior to issuance of the first residential Certificate of Occupancy for Phase 2 for any portion of Phase 2, Owner shall provide security to the City in the amounts and forms described below.

10.4.1 Amount of Security. Owner shall provide security to the City in an amount equal to the present value of the aggregate "Projected Annual City Sales Tax Revenue" anticipated to be generated by the "Retail Square Footage Deficit" over a twenty (20) year period commencing on January 1st of the calendar year in which the "Phase 2 Retail Commencement Date" occurs, where:

(a) the assumed present value interest factor / discount rate is four percent (4.0%);

(b) "Projected Annual City Sales Tax Revenue" is assumed to equal three dollars ($3.32) per square foot of retail space as of 2012 and to increase at a rate of two and one-half percent (2.5%) per year thereafter; and

(c) the "Retail Square Footage Deficit" is an amount of retail space equal to (1) 125,000 square feet, minus (2) the total square feet of additional new retail space anticipated to be constructed within one or more residential/retail mixed use structures in Phase 2 pursuant to the Subsequent Development Approvals, minus (3) the difference between (i) the actual total square feet of usable retail space existing on the Property as of the date the City issues the first building or demolition permit for any portion of Phase 2 and (ii) the total square feet of retail space anticipated to be demolished in Phase 2 pursuant to the Subsequent Development Approvals; and

(d) the "Phase 2 Commencement Date" is the date that is the earlier of (i) the date the City issues the first residential Certificate of Occupancy for Phase 2, or (ii) the date that is thirty (30) months after the date the City issues the first building or demolition permit for any portion of Phase 2.

10.4.2 Minimum Cash Deposit. Prior to issuance of the first residential Certificate of Occupancy for Phase 2, Owner shall provide a deposit to City, in immediately payable funds, of a portion of the required security in an amount at least equal to the present value of the aggregate "Projected Annual City Sales Tax Revenue" anticipated to be generated by the "Retail Square Footage Deficit" over a five (5) year period commencing on January 1st of the calendar year in which the Phase 2 Commencement Date occurs. City shall place said deposit in a separate dedicated account and not comingle the funds with other funds of the City.

10.4.3 Alternative Security Instrument for Remaining Security Amount. Prior to issuance of the first residential Certificate of Occupancy for Phase 2, Owner shall provide City with a security instrument acceptable to City in its sole discretion, naming City as beneficiary, which guarantees payment to City upon demand of that additional amount of the required security due from Owner to City pursuant to Section 10.4.1 not included in the cash deposit described in Section 10.4.2. Such security instrument may be in the form of a letter of credit from a surety or financial institution acceptable to City, or such other type of security instrument deemed acceptable by City in its sole discretion. The terms and conditions of any letter of credit or other security instrument provided by Owner shall be subject to approval of City in its sole and absolute discretion.

10.4.4 Forfeiture of Security Due to Owner's Failure to Timely Construct Additional New Retail Space. If, prior to the earlier to occur of (i) expiration of the Term of this Development Agreement or (ii) the five (5) year anniversary of the date the Phase 2 Project Approvals are approved by the City, Owner has not obtained final certificates of occupancy for all new retail structures necessary to cause the total aggregate retail space actually existing on the Property (excluding any retail structures anticipated to be, but not yet, demolished) to equal at least 125,000 square feet, Owner shall forfeit the full amount of the security required to be provided pursuant to Section 10.4.1, City shall be entitled to retain the entire cash deposit provided by Owner pursuant to Section 10.4.2, and City shall be entitled to demand and retain payment from the surety or financial institution pursuant to the letter of credit or other security instrument provided by Owner pursuant to Section 10.4.3.

10.4.5 Partial Refund of Security to Owner. If, prior to the earlier to occur of (i) expiration of the Term of this Development Agreement or (ii) the five (5) year anniversary of the date the Phase 2 Project Approvals are approved by the City, Owner has obtained final certificates of occupancy for all new retail structures necessary to cause the total aggregate retail space actually existing on the Property (excluding any retail structures anticipated to be, but not yet, demolished) to equal at least 125,000 square feet, City shall take the following actions:

(a) City shall release the letter of credit or other security instrument provided by Owner pursuant to Section 10.4.3;

(b) City shall retain a portion of the cash deposit provided by Owner pursuant to Section 10.4.2 in an amount equal to the present value of the aggregate "Projected Annual City Sales Tax Revenue" anticipated to be generated by the "Retail Square Footage Deficit" over the period of time commencing on January 1st of the calendar year in which the Phase 2 Commencement Date occurs and running for a length of time equal to the number of days that elapse between the Phase 2 Commencement Date and the date Owner obtains a final certificate of occupancy for the retail structure or structures, which cause(s) the total aggregate retail space existing on the Property (excluding any retail structures anticipated to be, but not yet, demolished) to equal at least 125,000 square feet; and

(c) City shall refund to Owner the portion of the cash deposit not retained by City pursuant to Section 10.4.5(b).

10.4.6 Phase 2 Retail Loss Impact Fee. Owner and City hereby agree that the amounts authorized to be retained by City pursuant to Sections 10.4.4 and 10.4.5, above, are intended to offset the costs of certain City services required by the Project that are not otherwise being reimbursed to City and shall be referred to collectively in this Development Agreement as the "Phase 2 Retail Loss Impact Fee."

10.4.7 Examples. For purposes of illustration and reference, depictions of the calculations of the amount of security that would be required and the amount of the Phase 2 Retail Loss Impact Fee pursuant to this Section 10.4 under various hypothetical circumstances are set forth in **Exhibit G** to this Development Agreement. The Projected Annual City Sales Tax Revenue per year and the Net Present Value multipliers to be used in calculating the amount of the required security and the Phase 2 Retail Loss Impact Fee pursuant to this Section 10.4 shall be those set forth in **Exhibit G**.

10.4.8 Survival of Termination of Development Agreement. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, this Section 10.4 shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

SECTION 11 EXISTING USES

City and Owner agree that those existing legally established uses on the Property may be retained until the Project is implemented.

SECTION 12 FUTURE APPROVALS

12.1 Basis for Denying or Conditionally Granting Future Approvals. Before Owner can begin grading on the Property or other development of the Property, Owner must secure additional permits and/or approvals from City. The Parties agree that for Development of Phase 1 of the Project, only Ministerial Approvals are required. The Parties agree that to the extent said Development Approvals are Ministerial in nature, City shall not, through the enactment or enforcement of any subsequent ordinances, rules, regulations, initiatives, policies, requirements, guidelines, or other constraints, withhold such approvals as a means of blocking construction or of imposing conditions on the Project which were not imposed during an earlier approval period unless City has been ordered to do so by a court of competent jurisdiction. Notwithstanding the previous sentence, City and Owner will use reasonable efforts to ensure each other that all applications for and approvals of all required permits, or other Development Approvals, necessary for Owner to develop the Project in accordance with this Development Agreement are sought and processed in a timely manner.

12.2 Standard of Review. Except as otherwise provided under the terms of this Development Agreement, the rules, regulations and policies that apply to any Subsequent Development Approvals which Owner must secure prior to the Development of the Property shall be the Existing Land Use Regulations, as defined in this Development Agreement.

SECTION 13 AMENDMENT

13.1 Initiation of Amendment. Either party may propose an amendment to this Development Agreement.

13.2 Procedure. The procedure for proposing and adopting an amendment to this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance.

13.3 Consent. Except as provided elsewhere within this Development Agreement, any amendment to this Development Agreement shall require the consent of both Parties. No amendment of this Development Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each party hereto.

13.4 Effect of Amendment to Development Agreement. The Parties agree that except as expressly set forth in any such amendment, an amendment to this Development Agreement will not alter, affect, impair, modify, waive or otherwise impact any other rights, duties or obligations of either party under this Development Agreement.

13.5 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation and flexibility between the City and Owner. The Development of the Property may demonstrate that clarifications or modifications to this Development Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and Owner. To the extent allowable by law, Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Development Agreement. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications to matters, items or provisions, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda ("Operating Memoranda") approved by the Parties in writing which reference this Section 13.5. Operating Memoranda are not intended to constitute either a substantive change or an amendment to this Development Agreement, but are ministerial clarification; therefore public notices and hearings shall not be required. Operating Memoranda may be used and thus deemed non-substantive and/or procedural if they do not result in, for example: i) a material changes in fees or costs; ii) an increase in density or intensity of use; iii) a change in permitted uses; iv) an increase in the maximum height and size of buildings; v) a decrease in the amount of land to be dedicated for public purposes; or vi) the reduction of improvement and construction standards and specifications for the Project. The City Attorney shall be authorized, upon consultation with, and approval of, the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute either a substantive change or an amendment to this Agreement which requires compliance with the provisions of Section 13.2 of this Development Agreement.

SECTION 14 NON-CANCELLATION OF RIGHTS

Subject to defeasance pursuant to Sections 2, 5.4.1, 20, 21 or 22 of this Development Agreement, the Development Approvals as provided for in this Development Agreement shall be final and the rights once granted thereby shall be vested in the Property upon recordation of this Development Agreement.

SECTION 15 UNDERTAKINGS AND ASSURANCES CONTEMPLATED AND PROMOTED BY DEVELOPMENT AGREEMENT STATUTE

The mutual undertakings and assurances described above and provided for in this Development Agreement are for the benefit of City and Owner and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infrastructure and facilities supporting development which was contemplated and promoted by the Development Agreement Statute. City agrees that it will not take any actions which are intended to circumvent this Development Agreement; provided, however, that any action of the electorate shall not be deemed an action for purposes of this Section.

SECTION 16 RESERVED AUTHORITY

16.1 Reservation of Authority With Respect to Subsequent Development Approvals. Owner expressly understands and agrees that all Subsequent Development Approvals (including all Development Approvals required for Phase 2) shall be subject to review by the City pursuant to CEQA. Notwithstanding any other provision set forth in this Development Agreement to the contrary, City reserves the right after the Development Agreement Date to exercise the same degree of discretion and control in its consideration of Subsequent Development Approvals that it would have in the absence of this Agreement to impose conditions under CEQA, and other applicable laws and regulations that apply to all similar development throughout the City in order to mitigate the Project's impact on the environment.

16.2 State and Federal Laws and Regulations. In the event that the State or Federal laws or regulations enacted after this Development Agreement has been entered into prevent or preclude compliance with one or more provisions of the Development Agreement, such provisions of the Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Development Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

16.3 Uniform Codes. This Development Agreement shall not prevent City from applying new rules, regulations and policies contained in Uniform Codes as long as adoption of the Uniform Codes applies to all development in the City.

16.4 Public Health and Safety. This Development Agreement shall not prevent City from adopting new rules, regulations and policies, including amendments or modifications to Uniform Codes described in Section 16.3 of this Development Agreement which directly result from findings by City that failure to adopt such rules, regulations or policies would result in a condition injurious or detrimental to the public health and safety.

SECTION 17 CANCELLATION

17.1 Initiation of Cancellation. Either Party may propose cancellation of this Development Agreement.

17.2 Procedure. The procedure for proposing a cancellation of and cancelling this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance. Such procedures are set forth in Section 65868 of the California Government Code.

17.3 Consent of Owner and City. Any cancellation of this Development Agreement shall require the mutual consent of Owner and City.

SECTION 18 PERIODIC REVIEW

18.1 Time for Review. In accordance with the procedures set forth in the Development Agreement Ordinance, City shall, at least every twelve (12) months after the Development Agreement Date, review the extent of good faith compliance by Owner with the terms of this Development Agreement. Such periodic review shall determine compliance with the terms of this Development Agreement pursuant to California Government Code Section 65865.1 and other successor laws and regulations. If City fails to review the Project and the Owner's compliance with the material terms of this Development Agreement, Owner will be deemed to be in compliance with the provisions of this Development Agreement, and the Development Agreement will be deemed in full force and effect. The City's failure to review the Project or Owner's compliance with the terms of the Development Agreement, or Owner's failure to submit evidence concerning its good faith compliance with the material terms of the Development Agreement as specified in Section 18.2 of this Development Agreement, shall not constitute or be asserted by either Party as a breach of the Development Agreement by the other Party.

18.2 Owner's Submission. Each year, not less than forty-five (45) days nor more than ninety (90) days prior to the anniversary of the Development Agreement Date, Owner shall submit evidence to the City's Community Development Director demonstrating its good faith compliance with the terms and conditions of this Development Agreement. Owner shall pay to City a reasonable processing fee in an amount as City may reasonably establish from time to time on each occasion that Owner submits its evidence for a periodic review.

18.3 Findings. Within sixty (60) days after the submission of Owner's evidence, the City Council shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied in good faith with the terms and conditions of this Development Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds that Owner has so complied, the review for that period shall be deemed concluded. If the City Council finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms and conditions of this Development Agreement for the period under review, Owner shall be deemed to be in default of the Development Agreement, and City may proceed in accordance with Section 19.1.

18.4 Initiation of Review by City. In addition to the periodic review set forth in this Development Agreement, the City may at any time initiate a review of this Development Agreement upon the giving of written notice thereof to Owner. Within thirty (30) days following receipt of such notice, Owner shall submit evidence to the City's Community Development Director of Owner's good faith compliance with this Development Agreement and such review and determination shall proceed in the manner as otherwise provided in this Development Agreement.

SECTION 19 EVENTS OF DEFAULT

19.1 Defaults by Owner. If the City Council finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms and conditions of this Development Agreement, City may, by written notice to Owner, specify the manner in which Owner has failed to so comply and state the steps Owner must take to bring itself into compliance. Owner shall be given at least sixty (60) days to cure such non-compliance and if the actions required to cure such non-compliance take more than sixty (60) days, then City shall give Owner additional time provided that Owner is making reasonable progress towards such end. If during the cure period, Owner fails to cure such noncompliance or is not making reasonable good faith progress towards such end, then, the City Council may, at its discretion, proceed to modify or terminate this Development Agreement or establish a time schedule for compliance in accordance with the procedures set forth in Section 20 of this Development Agreement.

19.2 Specific Performance Remedy. After implementation of the Project, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Development Agreement and will be investing even more significant time in implementing the Project in reliance upon the terms of this Development Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if City fails to carry out its obligations under this Development Agreement. Therefore, specific performance of this Development Agreement is the only remedy which would compensate Owner if City fails to carry out its obligations under this Development Agreement, and City hereby agrees that Owner shall be entitled to specific performance in the event of a default by City hereunder. City and Owner acknowledge that, if Owner fails to carry out its obligations under this Development Agreement, City shall have the right to refuse to issue any permits or other approvals which Owner would otherwise have been entitled to pursuant to this Development Agreement. If City issues a permit or other approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Owner in the future, and if Owner then fails to satisfy such condition, City shall be entitled to specific performance for the sole purpose of causing Owner to satisfy such condition. City's right to specific performance shall be limited to those circumstances set forth above, and City shall have no right to seek specific performance to cause Owner to otherwise proceed with the Development of the Project in any manner.

SECTION 20 MODIFICATION OR TERMINATION

If pursuant to Section 19.1 of this Development Agreement, City elects to modify or terminate this Development Agreement or establish a revised time schedule for compliance as herein provided, then City shall proceed as set forth in this Section.

20.1 Notice to Owner. City shall give notice to Owner of the City Council's intention to proceed to modify or terminate this Development Agreement or establish a time schedule for compliance within ten (10) days of making City's findings.

20.2 Public Hearing. The City Council shall set and give notice of a public hearing on modification, termination or a time schedule for compliance to be held within forty-five (45) days after the City Council gives notice to Owner.

20.3 Decision. The City Council shall announce its findings and decisions on whether this Development Agreement is to be terminated, how this Development Agreement is to be modified or the provisions of the Development Agreement with which Owner must comply and a time schedule therefore not more than ten (10) days following completion of the public hearing.

20.4 Standard of Review. Any determination by City to terminate this Development Agreement because Owner has not complied in good faith with the terms of this Development Agreement must be based upon a finding by the City Council, on the basis of substantial evidence, that Owner is in default and has not cured that default in the timeframe permitted by Sections 18 and 19 of this Development Agreement, as applicable.

20.5 Implementation. Amending or terminating this Development Agreement shall be accomplished by City enacting an ordinance. The ordinance shall recite the reasons which, in the opinion of City, make the amendment or termination of this Development Agreement necessary. Not later than ten (10) days following the adoption of the ordinance, one copy thereof shall be forwarded to Owner. This Development Agreement shall be terminated or this Development Agreement as modified shall become effective on the effective date of the ordinance terminating or modifying this Development Agreement.

20.6 Schedule for Compliance. Setting a reasonable time schedule for compliance with this Development Agreement may be accomplished by City enacting a resolution. The resolution shall recite the reasons which, in the opinion of City, make it advisable to set a schedule for compliance and why the time schedule is reasonable. Not later than ten (10) days following adoption of the resolution, one copy thereof shall be forwarded to Owner. Compliance with any time schedule so established as an alternative to amendment or termination shall be subject to periodic review as provided in this Development Agreement and lack of good faith compliance by Owner with the time schedule shall be basis for termination or modification of this Development Agreement.

SECTION 21 ASSIGNMENT

21.1 Right to Assign. Owner shall have the right to sell, mortgage, hypothecate, assign or transfer this Development Agreement, and any and all of its rights, duties and obligations hereunder, to any person, partnership, joint venture, firm or corporation at any time during the

Term of this Development Agreement, provided that any such sale, mortgage, hypothecation, assignment or transfer must be pursuant to a sale, assignment or other transfer of the interest of Owner in the Property, or a portion thereof. In the event of any such sale, mortgage, hypothecation, assignment or transfer, (a) Owner shall notify City of such event and the name of the transferee, together with the corresponding entitlements being transferred to such transferee, and (b) the agreement between Owner and such transferee shall provide that either Owner or the transferee or both shall be liable for the performance of all obligations of Owner pursuant to this Development Agreement and the Development Approvals. Such transferee and/or Owner shall notify City in writing which entity shall be liable for the performance of such obligations, and upon the express written assumption of any or all of the obligations of Owner under this Development Agreement by such assignee, transferee or purchaser shall, without any act of or concurrence by City, relieve Owner of its legal duty to perform said obligations under this Development Agreement with respect to the Property or portion thereof, so transferred, except to the extent Owner is in default under the terms of this Development Agreement.

21.2 Release upon Transfer. It is understood and agreed by the Parties that the Property may be subdivided following the Development Agreement Date. One or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned or transferred to persons for development by them in accordance with the provisions of this Development Agreement. Effective upon such sale, mortgage, hypothecation, assignment or transfer, the obligations of Owner shall become several and not joint. Upon the sale, transfer, or assignment of Owner's rights and interests under this Development Agreement as permitted pursuant to Section 21.1 of this Development Agreement, Owner shall be released from its obligations under this Development Agreement with respect to the Property, or portion thereof so transferred, provided that (a) Owner is not then in default under this Development Agreement, (b) Owner has provided to City the notice of such transfer specified in Section 21.1 of this Development Agreement, and (c) the transferee executes and delivers to City a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all the obligations of Owner under this Development Agreement and the Development Approvals with respect to the property, or portion thereof, so transferred. Non-compliance by any such transferee with the terms and conditions of this Development Agreement shall not be deemed a default hereunder or grounds for termination hereof or constitute cause for City to initiate enforcement action against the other Party or persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder. The provisions of this Section shall be self-executing and shall not require the execution or recordation of any further document or instrument. Any and all successors, assigns and transferees of Owner shall have all of the same rights, benefits and obligations of Owner as used in this Development Agreement and the term "Owner" as used in this Development Agreement shall refer to any such successors, assigns and transferees unless expressly provided herein to the contrary.

SECTION 22 GENERAL

22.1 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes of beyond the party's control. If any such events shall occur, the Term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended for the period of time that any such events exist and/or delay or prevent performance of such obligations, provided the notice is timely given pursuant to this Section 22.1. Owner shall give notice to City of any delay which Owner believes to have occurred as a result of the occurrence of any of the events described in Section 22.1. For delays of six months or longer, this notice shall be given within a reasonable time after Owner becomes aware that the delay has lasted six (6) months or more. In no event, however, shall notice of a delay of any length be given later than thirty (30) days after the end of the delay or thirty days before the end of the Term, whichever comes first. In addition to the foregoing, any litigation filed attacking City's approval of the Development Approvals or this Development Agreement shall toll the expiration date of this Development Agreement and all Development Approvals for the length of time such litigation is pending until it is finally resolved.

22.2 Construction of Development Agreement. The language in all parts of this Development Agreement shall in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience only and shall not be considered or referred to in resolving questions of constructions. This Development Agreement shall be governed by the laws of the State of California. The Parties understand and agree that this Development Agreement is not intended to constitute, nor shall it be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of City, and in particular, City's police powers. In this regard, the Parties understand and agree that this Development Agreement shall not be deemed to constitute the surrender or abnegation of City's governmental powers over the Property.

22.3 Severability. If any provision of this Development Agreement shall be adjudged to be invalid, void or unenforceable, such provision shall in no way affect, impair or invalidate any other provision hereof, unless such judgment affects a material part of this Development Agreement, the Parties hereby agree that they would have entered into the remaining portions of this Development Agreement not adjudged to be invalid, void or illegal. In the event that all or any portion of this Development Agreement is found to be unenforceable, this Development Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event they shall take all steps necessary to comply with such public hearings and/or notice requirements as may be necessary in order to make valid this Development Agreement or that portion which is found to be unenforceable. Notwithstanding any other provisions of this Development Agreement, in the event that any material provision of this Development Agreement is found to be unenforceable, void or voidable, Owner or City may mutually agree to terminate this Development Agreement in accordance with the provisions of the Development Agreement Statute.

22.4 Cumulative Remedies. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of anyone or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

22.5 Indemnification. Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify and hold City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees harmless from any liability for damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from the construction activities of Owner or Owner's contractors, subcontractors, agents, or employees which relate to the Project whether such activities be by Owner, or by any of Owner's contractors, subcontractors, or by anyone or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Additionally, Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify, and hold harmless City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature whatsoever arising out of City's approval of or its performance under this Development Agreement and/or the Development Approvals. City may in its discretion participate in the defense of any such legal action. The provisions of this Subsection shall not be binding on Owner to the extent the liability arises out of the gross negligence or willful misconduct of City, or its elective and appointive councils, boards, commissions, officers, officials, agents, representatives or employees. Owner's indemnity obligations set forth in this Development Agreement shall survive termination of this Development Agreement.

22.6 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Development Agreement and/or the Development Approvals, the Parties hereby agree to cooperate fully with each other in defending said action and the validity of each provision of this Development Agreement; however, it is expressly understood and agreed to by Owner that Owner shall be solely liable for all legal expenses and costs incurred in defending any such action. City shall have the right to approve or select legal counsel to defend against any such legal action. Owner shall pay any attorneys' fees awarded against City or Owner, or both, resulting from any such legal action. Owner shall be entitled to any award of attorneys' fees arising out of any such legal action.

22.7 Public Agency Coordination. City and Owner shall cooperate and use reasonable efforts in coordinating the implementation of the Development Approvals with other public agencies, if any, having jurisdiction over the Property or the Project.

22.8 Initiative Measures. Both City and Owner intend that this Development Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, referendum, statute, ordinance or other limitation (whether relating to the rate, timing or sequencing of the Development or construction of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use approved, issued or granted within City, or portions of City, and which

Agreement shall apply to the Project to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation is inconsistent or in conflict with this Development Agreement. Should an initiative, measure, moratorium, referendum, statute, ordinance, or other limitation be enacted by the citizens of City which would preclude construction of all or any part of the Project, and to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Development Agreement, Owner shall have no recourse against City pursuant to the Development Agreement, but shall retain all other rights, claims and causes of action under this Development Agreement not so invalidated and any and all other rights, claims and causes of action at law or in equity which Owner may have independent of this Development Agreement with respect to the Project. The foregoing shall not be deemed to limit Owner's right to appeal any such determination that such initiative, measure, referendum, statute, ordinance or other limitation invalidates or prevails over all or any part of this Development Agreement. City agrees to cooperate with Owner in all reasonable manners in order to keep this Development Agreement in full force and effect, provided Owner shall reimburse City for its out-of-pocket expenses incurred directly in connection with such cooperation and City shall not be obligated to institute a lawsuit or other court proceedings in this connection.

22.9 Attorneys' Fees. In the event of any dispute between the Parties involving the covenants or conditions contained in this Development Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

22.10 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall not be construed as a waiver of any succeeding breach of nonperformance of the same or other covenants and conditions hereof.

22.11 Authority to Execute. The person executing this Development Agreement on behalf of Owner represents and warrants that he/she has the authority to execute this Development Agreement on behalf of his/her partnership and represents and warrants that he/she has the authority to bind Owner to the performance of Owner's obligations hereunder.

22.12 Notice.

22.12.1 To Owner. Any notice required or permitted to be given by City to Owner under or pursuant to this Development Agreement shall be deemed sufficiently given if in writing and delivered personally to an officer of Owner or mailed with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed; to Owner as follows:

Laguna Hills Investment Company
3425 Via Lido, Suite 250
Newport Beach, California 92663
Attn: Ryan Jones

With copies to:

Fritz Duda Company
The Berkshire at Preston Center
5950 Berkshire Lane
Suite 800
Dallas, TX 75225
Attn: Chief Financial Officer

and

Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614
Attn: John Condas

or such changed address as Owner shall designate in writing to City.

22.12.2 To City. Any notice required or permitted to be given to City under or pursuant to this Development Agreement shall be made and given in writing, if by mail addressed to:

City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, California 92653

With copies to:

City Attorney
City of Laguna Hills
24035 El Toro Road
Laguna Hills, California 92653

or such changed address as City shall designate in writing to Owner. Alternatively, notices to City may also be personally delivered to the City Clerk, at the Laguna Hills City Hall, 24035 El Toro Road, Laguna Hills, California 92653, together with copies marked for the City Manager and the City Attorney or, if so addressed and mailed, with postage thereon fully prepaid, registered or certified mail, return receipt requested, to the City Council in care of the City Clerk at the above address with copies likewise so mailed to the City Manager and the City Attorney, respectively and also in care of the City Clerk at the same address. The provisions of this Section shall be deemed permissive only and shall not detract from the validity of any notice given in a manner which would be legally effective in the absence of this Section.

22.13 Captions. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience and reference only and shall in no way define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Development Agreement.

22.14 Consent. Any consent required by the Parties in carrying out the terms of this Development Agreement shall not unreasonably be withheld.

22.15 Further Actions and Instruments. Each of the Parties shall cooperate with and reasonably provide to the other to the extent contemplated hereunder in the performance of all obligations under this Development Agreement and the satisfaction of the conditions of this Development Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

22.16 Subsequent Amendment to Authorizing Statute. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute in effect as of the Development Agreement Date. Accordingly, to the extent that subsequent amendments to the California Government Code would affect the provisions of this Development Agreement, such amendments shall not be applicable to this Development Agreement unless necessary for this Development Agreement to be enforceable or unless this Development Agreement is modified pursuant to the provisions set forth in this Development Agreement and California Government Code Section 65868 as in effect on the Development Agreement Date.

22.17 Governing Law. This Development Agreement, including, without limitation, its existence, validity, construction and operation, and the rights of each of the Parties shall be determined in accordance with the laws of the State of California.

22.18 Effect on Title. Owner and City agree that this Development Agreement shall not continue as an encumbrance against any portion of the Property as to which this Development Agreement has terminated.

22.19 Mortgagee Protection. Entering into or a breach of this Development Agreement shall not defeat, render invalid, diminish, or impair the lien of Mortgagees having a mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Development Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu thereof.

22.20 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If the City Clerk timely receives notice from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Development Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, for a period up to sixty (60) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy the default unless a further extension of time to cure is granted in writing by City. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or non-compliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

22.21 Bankruptcy. Notwithstanding the foregoing provisions of Section 22.20 of this Development Agreement, if any Mortgagee is prohibited from commencing or pursuing and prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving City, the times specified in this Section for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

22.22 Disaffirmance.

22.22.1 New Development Agreement upon Most Senior Mortgagee's Request. City agrees that in the event of termination of this Development Agreement by reason of any default by City, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Owner or its property, City, if requested by any Mortgagee, shall enter into a new Development Agreement for the Project with the most senior Mortgagee requesting such new agreement, for the remainder of the Term, effective as of the date of such termination, upon the terms, provisions, covenants and agreements as herein contained to the extent and subject to the law then in effect, and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(a) The Mortgagee shall make written request upon City for the new Development Agreement for the Project within thirty (30) days after the date of termination;

(b) The Mortgagee shall pay to City at the time of the execution and delivery of the new Development Agreement for the Project expenses, including reasonable attorneys' fees, to which City shall have been subjected by reason of Owner's default; and

(c) The Mortgagee shall perform and observe all covenants herein contained on Owner's part to be performed, and shall further remedy any other conditions which Owner under the terminated agreement was obligated to perform under its terms, to the extent the same are curable or may be performed by the Mortgagee.

22.22.2 New Development Agreement Not Required. Nothing herein contained shall require any Mortgagee to enter into a new Development Agreement pursuant to

Section 22.22.1 of this Development Agreement, nor to cure any default of Owner referred to above.

22.23 No Third Party Beneficiaries. This Development Agreement and all provisions hereof is made and entered into for the sole protection and benefit of City, Owner and their successors and assigns. No other person shall have right of action based upon any provision in this Development Agreement.

22.24 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Development Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

22.25 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Development Agreement. No partnership, joint venture or other association of any kind is formed by this Development Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such private property.

22.26 Restrictions. Owner shall place in any agreements to sell or convey any interest in the Property or any portion thereof, provisions making the terms of this Development Agreement binding on any successors in interest of Owner and express provision for Owner or City, acting separately or jointly, to enforce the provisions of this Development Agreement and to recover attorneys' fees and costs for such enforcement.

22.27 Recitals. The recitals in this Development Agreement constitute part of this Development Agreement and each party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Development Agreement.

22.28 Recording. The City Clerk shall cause a copy of this Development Agreement to be executed by City and recorded in the Official Records of Orange County no later than ten (10) days after the Development Agreement Date.

22.29 Entire Agreement. This Development Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Development Agreement, and this Development Agreement supersedes all previous negotiations, discussions and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

22.30 Successors and Assigns. The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement inure to all successors in interest and assigns of the Parties to the Development Agreement.

22.31 Exhibits. All exhibits, including attachments thereto, are incorporated in this Development Agreement in their entirety by this reference.

IN WITNESS WHEREOF, City and Owner have executed this Development Agreement as of the date and year first above written.

"CITY"

CITY OF LAGUNA HILLS, a California municipal corporation

By: ______________________
Bruce E. Channing
City Manager

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

"OWNER"

LAGUNA HILLS INVESTMENT COMPANY, a Delaware limited partnership

By: FRITZ DUDA COMPANY, a Texas Corporation

Its General Partner

By: ______________________
Fritz L. Duda
President

By: ______________________
Name: ______________________
Title: ______________________

All signatures to be acknowledged by a Public Notary

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On November 6, 2012, before me, Judith Coletta, a Notary Public, personally appeared Fritz L Duda, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Judith Coletta Notary Public	JUDITH COLETTA Commission # 1842864 Notary Public - California Orange County My Comm. Expires Apr 27, 2013

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On November 27, 2012, before me, Peggy J. Johns, a Notary Public, personally appeared Bruce E. Channing, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/the~~ir signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Peggy J. Johns Notary Public	PEGGY J. JOHNS Commission # 1928114 Notary Public - California Orange County My Comm. Expires Apr 5, 2015

EXHIBIT A

PROPERTY DESCRIPTION

PARCELS 1 THROUGH 16 INCLUSIVE, AS SHOWN ON A MAP FILED IN BOOK 187, PAGES 42, 43 AND 44 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA. EXCEPTING ALL RIGHTS TO OIL, GAS AND OTHER HYDROCARBON AND MINERAL SUBSTANCES LYING UNDER OR THAT MAY BE PRODUCED FROM SAID LAND, WITHOUT, HOWEVER, THE RIGHT TO ENTER UPON ANY PORTION OF THE SURFACE AND 500 FEET BELOW THE SURFACE THEREOF, AS RESERVED IN DEEDS FROM GLEN E. MATHIS AND WIFE AND FIRST WESTERN BANK AND TRUST COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 28, 1972 IN BOOK 10248, PAGES 164, 167 AND 170 OF OFFICIAL RECORDS.

EXHIBIT B

DEVELOPMENT FEES

Public Park In-lieu Fees

Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to both Phase 1 and Phase 2 of the Project, regardless of whether Owner proposes a subdivision map for each Phase. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Seven Thousand Three Hundred Ninety Two Dollars ($7,392.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code. Said fee shall be paid on a per unit basis at the time of filing of the final map or, if no final map is filed, prior to issuance of a building permit for each residential unit.

Urban Village Traffic Impact Mitigation Fee

Owner shall pay a traffic impact mitigation fee in accordance with Chapter 9-102 of Laguna Hills Municipal Code in the amount of Three Thousand Nine Hundred Fourteen Dollars ($3,914.00) per each new PM peak hour trip generated as a result of the Project, as determined by the City Engineer based upon a traffic study.

Public Art / Public Art In-Lieu Fee

Owner shall furnish public art in connection with the Project, and/or pay an in-lieu fee, pursuant to the Specific Plan and other Existing Development Approvals. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The Parties agree that, to the extent that the value of the public art provided and/or in-lieu fee paid by Owner for Phase 1 exceeds one-half percent (0.5%) of the total construction costs of Phase 1, as determined by the City, if Owner Develops Phase 2, Owner shall be entitled to a credit in such amount towards Owner's obligation to provide public art and/or pay an in-lieu fee pursuant to the Development of Phase 2.

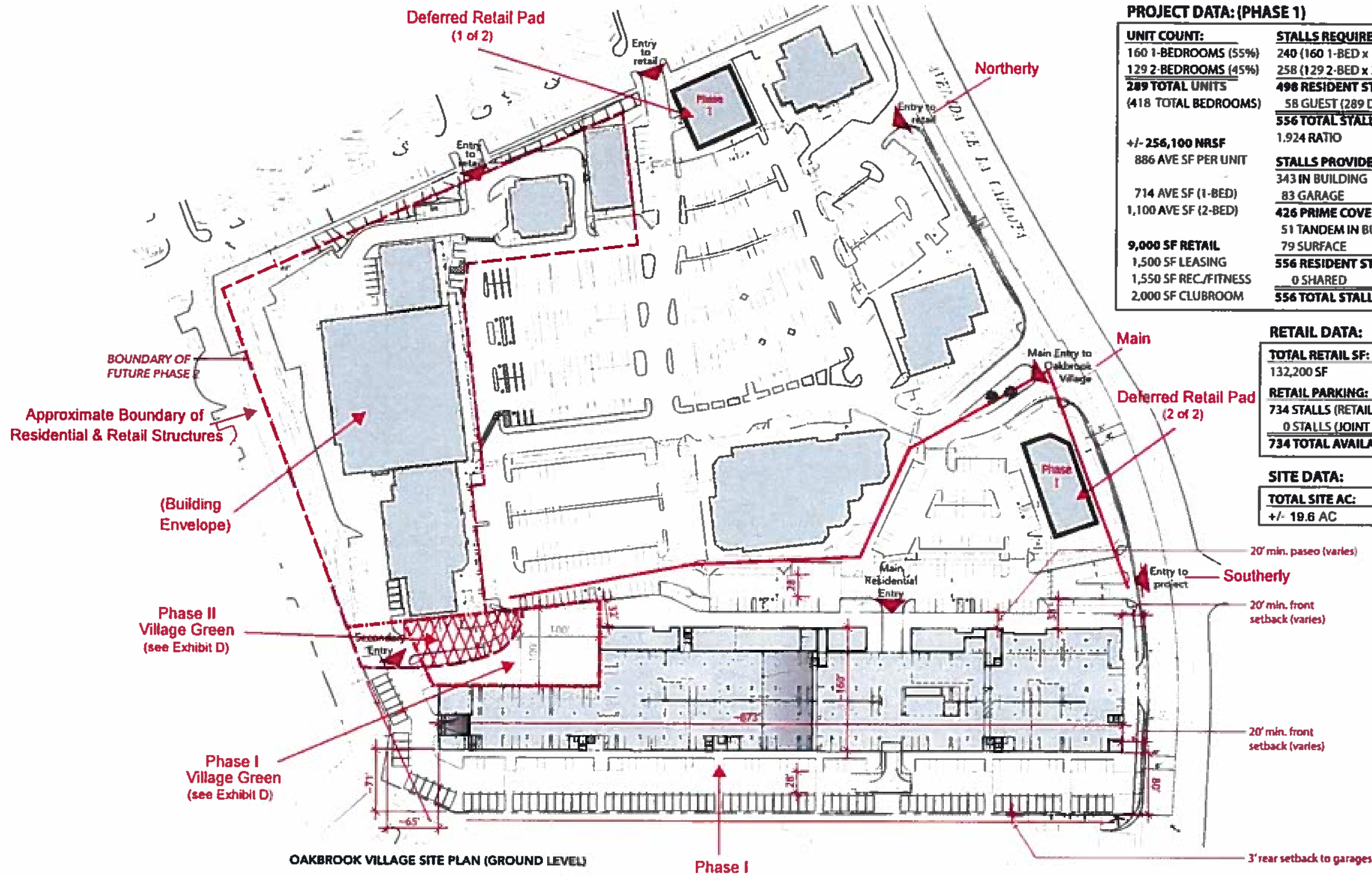
Phase 2 Retail Loss Impact Fee

Owner shall pay City a Phase 2 Retail Loss Impact Fee in an amount calculated pursuant to Section 10.4 of the Development Agreement in order to offset the costs of certain City services required by the Project that are not otherwise being reimbursed to City.

EXHIBIT C

PHASE 1 SITE PLAN AND PHASE 2 BUILDING ENVELOPE

EXHIBIT C



PROJECT DATA: (PHASE 1)

UNIT COUNT:	STALLS REQUIRED:
160 1-BEDROOMS (55%)	240 (160 1-BED x 1.5)
129 2-BEDROOMS (45%)	258 (129 2-BED x 2.0)
289 TOTAL UNITS	**498 RESIDENT STALLS**
(418 TOTAL BEDROOMS)	58 GUEST (289 DU x 0.2)
	556 TOTAL STALLS
+/- 256,100 NRSF	1.924 RATIO
886 AVE SF PER UNIT	**STALLS PROVIDED:**
	343 IN BUILDING
714 AVE SF (1-BED)	83 GARAGE
1,100 AVE SF (2-BED)	**426 PRIME COVERED STALLS**
	51 TANDEM IN BUILDING
9,000 SF RETAIL	79 SURFACE
1,500 SF LEASING	**556 RESIDENT STALLS (GATED)**
1,550 SF REC./FITNESS	0 SHARED
2,000 SF CLUBROOM	**556 TOTAL STALLS**

RETAIL DATA:

TOTAL RETAIL SF:
132,200 SF
RETAIL PARKING:
734 STALLS (RETAIL)
0 STALLS (JOINT USE)
734 TOTAL AVAILABLE STALLS

SITE DATA:

TOTAL SITE AC:
+/- 19.6 AC

OAKBROOK VILLAGE SITE PLAN

SARES-REGIS Group

TCA

SCALE 1" = 60'

PHASE 1
TECHNICAL SITE PLAN
02

3/22/2016 ITEM NO. 3.7

EXHIBIT D

VILLAGE GREEN FACILITIES FOR PHASE 1 AND PHASE 2

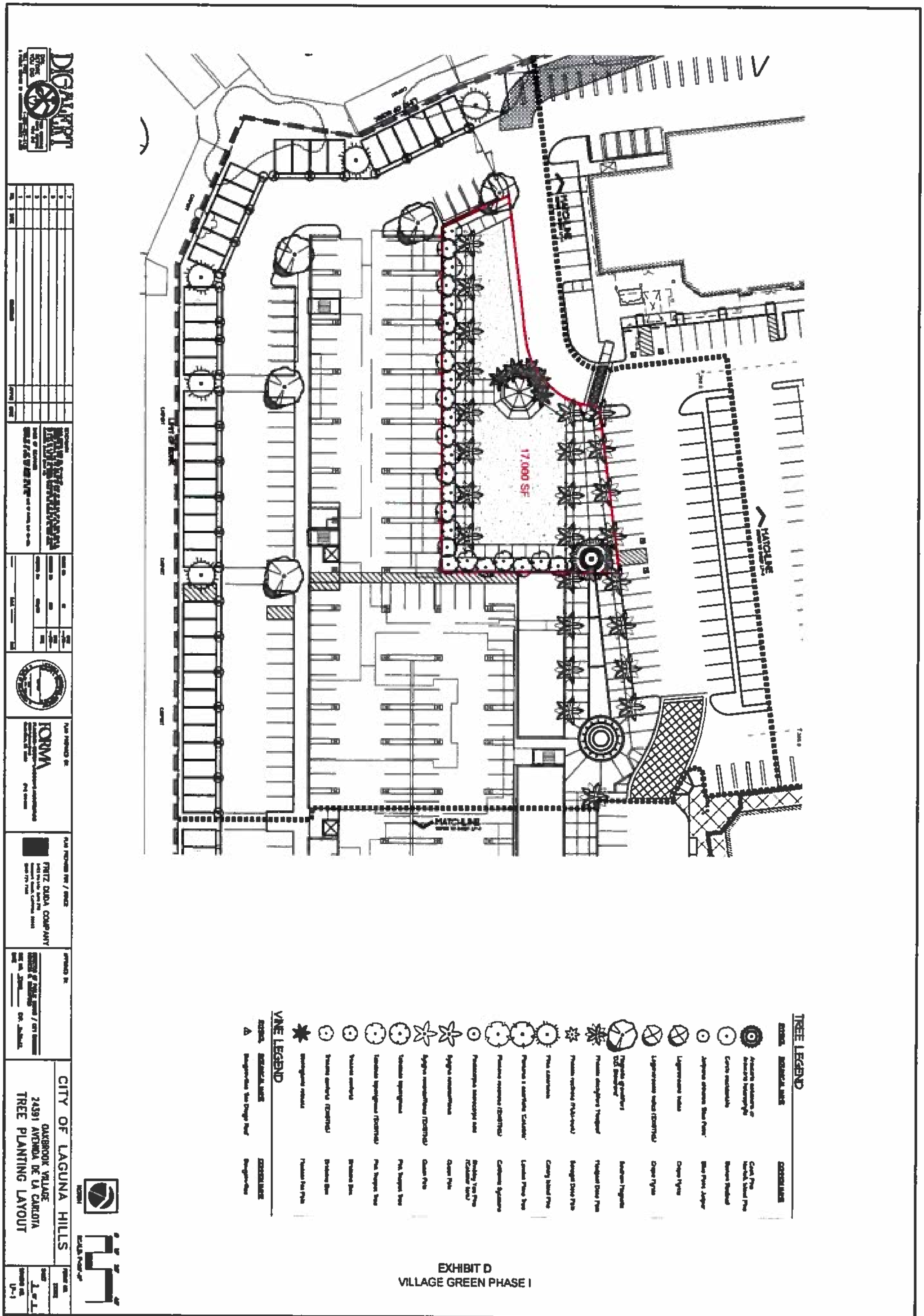
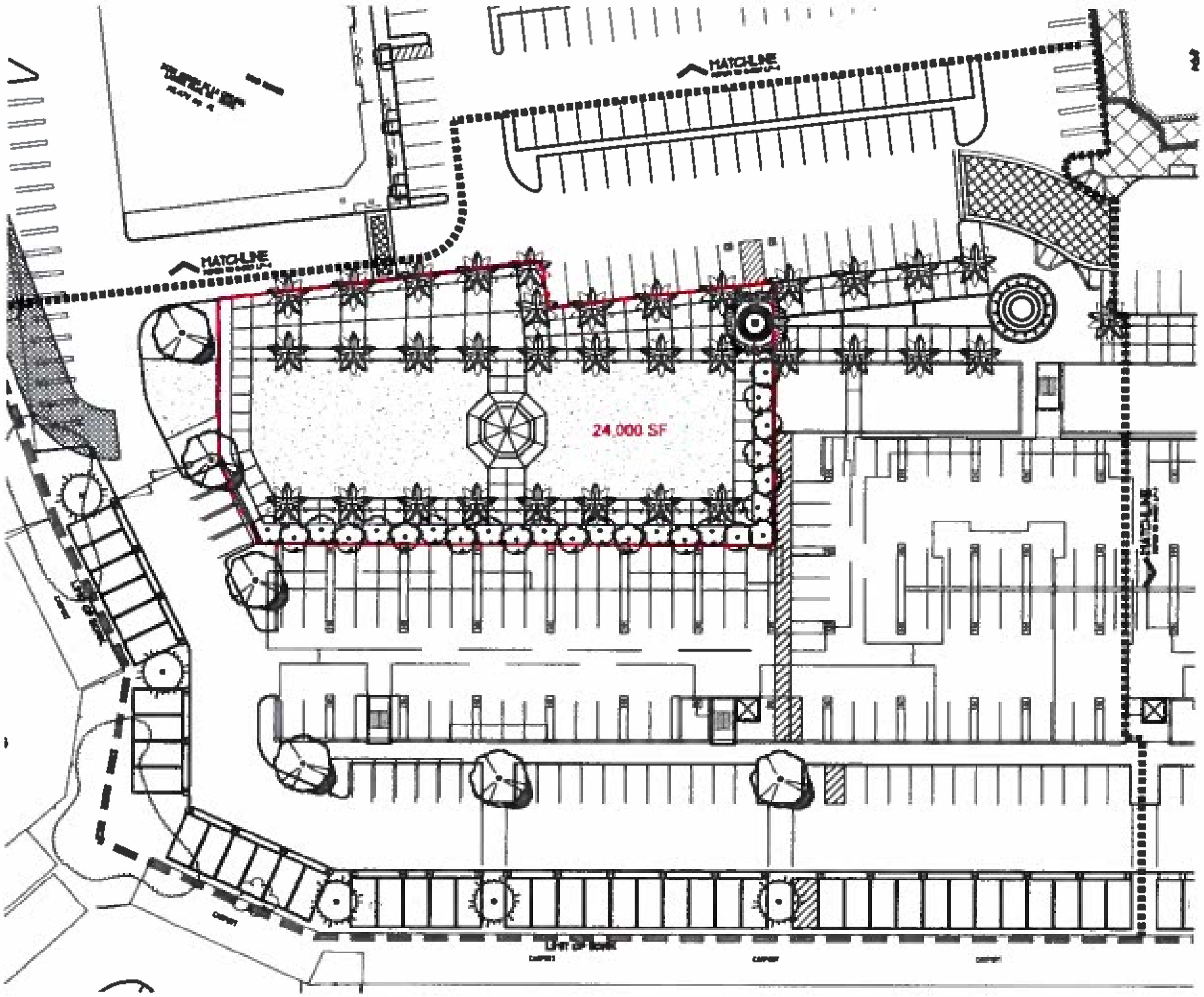


EXHIBIT D
VILLAGE GREEN PHASE I

3/22/2016 ITEM NO. 3.7



TREE LEGEND

SYMBOL	BOTANICAL NAME	COMMON NAME
	Araucaria columnaris or Araucaria heterophylla	Cook Pine Norfolk Island Pine
	Cercis occidentalis	Western Redbud
	Juniperus chinensis 'Blue Point'	Blue Point Juniper
	Lagerstroemia indica	Crape Myrtle
	Lagerstroemia indica (EXISTING)	Crape Myrtle
	Magnolia grandiflora 'D.D. Blanchard'	Southern Magnolia
	Phoenix dactylifera 'Medjool'	Medjool Date Palm
	Phoenix reclinata (Multi-trunk)	Senegal Date Palm
	Pinus canariensis	Canary Island Pine
	Platanus x acerifolia 'Columbia'	London Plane Tree
	Platanus racemosa (EXISTING)	California Sycamore
	Podocarpus macrophyllus	Shrubby Yew Pine (Columnar form)
	Syagrus romanzoffiana	Queen Palm
	Syagrus romanzoffiana (EXISTING)	Queen Palm
	Tabebuia impetiginosa	Pink Trumpet Tree
	Tabebuia impetiginosa (EXISTING)	Pink Trumpet Tree
	Tristania conferta	Brisbane Box
	Tristania conferta (EXISTING)	Brisbane Box
	Washingtonia robusta	Mexican Fan Palm

VINE LEGEND

SYMBOL	BOTANICAL NAME	COMMON NAME
	Bougainvillea 'San Diego Red'	Bougainvillea

EXHIBIT D
VILLAGE GREEN PHASE II

DIGALERT

FORMA

FRITZ DUDA COMPANY

CITY OF LAGUNA HILLS
OAKBROOK VILLAGE
24391 AVENIDA DE LA CARLOTA
TREE PLANTING LAYOUT

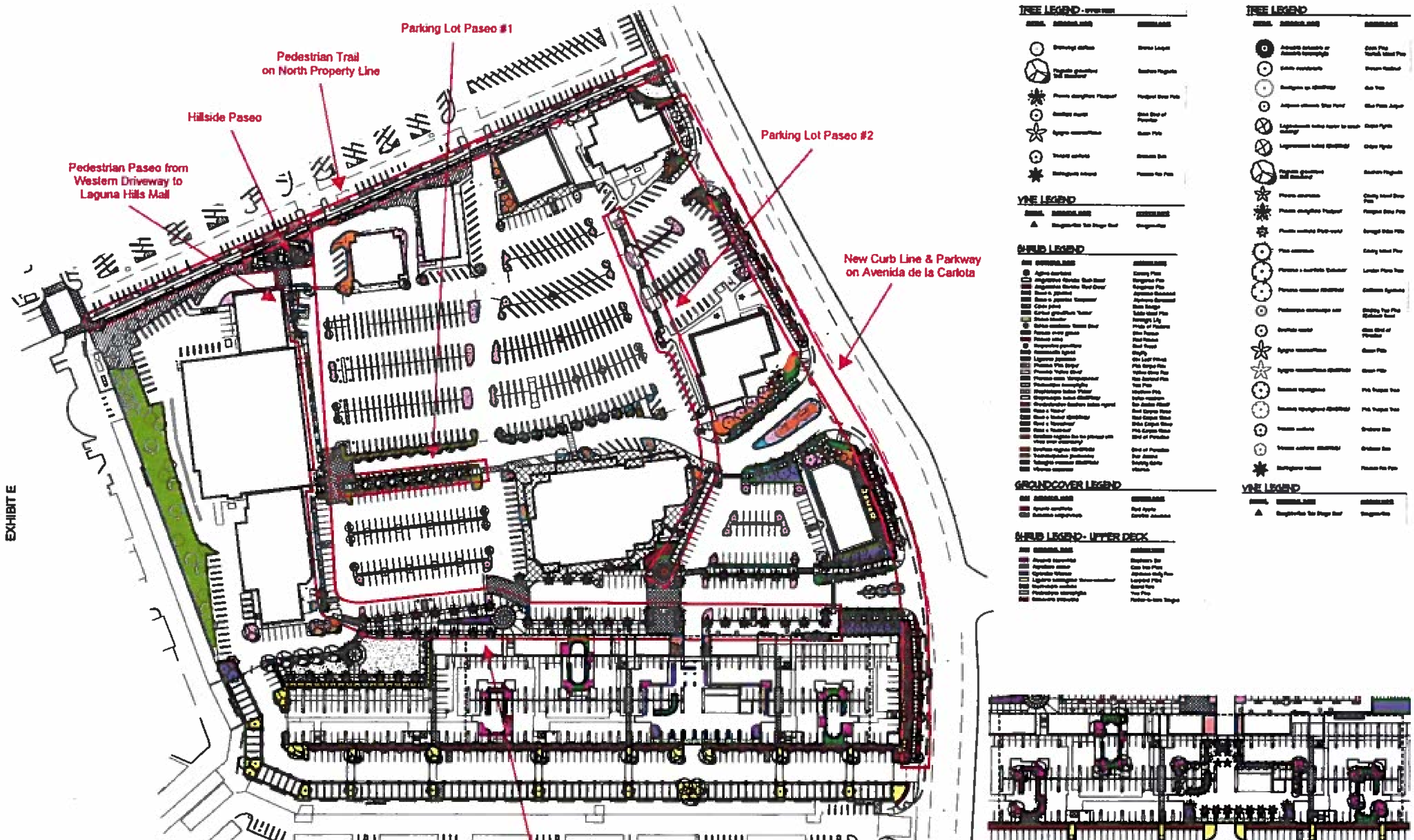
LP-1

3/22/2016 ITEM NO. 3.7

EXHIBIT E

PEDESTRIAN PASEOS DEPICTION

EXHIBIT E



UPPDER DECK TREE LAYOUT

The Pedestrian Paseo's will be designed and constructed in accordance with the Urban Village Specific Plan adopted by the City of Laguna Hills on November 26, 2002, City Council Ordinance No. 2002-8, Section III - Land Use Plan, Pedestrian Pathways.

OVERALL SITE TREE LAYOUT

OAKBROOK VILLAGE
LAGUNA HILLS, CALIFORNIA

FRITZ DUDA COMPANY
3425 Via Lido Suite 250
Newport Beach, California 92663
(949) 723-7100

NORTH

0 25' 50' 100'
SCALE: 1"=50'-0"

EXHIBIT F

ALL REQUIRED PUBLIC IMPROVEMENTS

1. Installation, to the reasonable satisfaction of the City Engineer, of a traffic signal at the intersection of Avenida de la Carlota and the main entrance to the Project, including interconnection to the existing traffic signal at the intersection of Avenida de la Carlota and Los Alisos Boulevard via conduit and hardwire, and construction on the easterly side of Avenida de la Carlota of a public sidewalk connection to the Oakbrook Plaza office development. Said traffic signal shall be constructed to applicable State and City standards and specifications and shall be equipped with video detection and controller equipment as approved by City. The sidewalks and ramps at all corners of the newly signalized intersection and the sidewalk connection to the Oakbrook Plaza office development on the easterly side of Avenida de la Carlota shall be constructed and/or modified to conform to City and Americans With Disabilities Act ("ADA") standards.

2. Dedication of the public right-of-way necessary for, and construction of, a new curb line along the entire Property frontage of Avenida de la Carlota, including a six (6) foot wide landscaped parkway space and a minimum six (6) foot wide sidewalk, to City standards and specifications.

3. Construction of storm drain connections, and inlets, and/or other improvements necessary to eliminate all cross-gutter drainage across both the main and the northerly entrance driveway intersections with Avenida de la Carlota.

4. Installation of debris gates of the type specified by the City Engineer at all catch basin inlets along the Property frontage to Avenida de la Carlota.

5. Realignment of the intersection of the northerly entrance to the Property with Avenida de la Carlota to intersect Avenida de la Carlota at ninety (90) degrees, to the reasonable satisfaction of the City Engineer and as shown on the vesting tentative map approved as part of the Phase 1 Project Approvals.

6. Construction or reconstruction of all curb ramps on Avenida de la Carlota at each entrance to the Property to current ADA standards.

7. Construction of any and all other public improvements required to be constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals.

EXHIBIT G

PHASE 2 RETAIL LOSS IMPACT FEE EXAMPLES

Example 1

Calculation of Amount of Security

ASSUMPTIONS

Retail Square Footage Deficit	46,574	Phase 2 Commencement Date	March 1, 2024
Projected Annual City Sales Tax Revenue (including Use Tax) Per Sq. Ft. (2012 Dollars)	$3.32	Date of Final Certificate of Occupancy for Minimum 125,000 Sq. Ft. Retail	September 1, 2027
Inflation Factor	2.50%	Time Elapsed Between March 1, 2024 and September 1, 2027	3 Years, 184 Days
Present Value Interest Factor	4.00%		

Calendar Year	Projected Annual City Sales Tax Revenue (Per Sq. Ft.)	4% Present Value Interest Factor Table (20 Years)	Discounted Projected Annual City Sales Tax Revenue (Per Sq. Ft.)	5-Year Cash Deposit Amount[a]	Alternative Security Instrument Amount[a]
2013	$3.40				
2014	$3.48				
2015	$3.57				
2016	$3.66				
2017	$3.75				
2018	$3.84				
2019	$3.94				
2020	$4.04				
2021	$4.14				
2022	$4.24				
2023	$4.35				
2024	$4.46	0.9615	$4.29	$199,646.98	
2025	$4.57	0.9246	$4.23	$196,784.65	
2026	$4.68	0.889	$4.16	$193,938.02	
2027	$4.80	0.8548	$4.10	$191,139.11	
2028	$4.92	0.8219	$4.04	$188,377.01	
2029	$5.04	0.7903	$3.99		$185,662.74
2030	$5.17	0.7599	$3.93		$182,983.99
2031	$5.30	0.7307	$3.87		$180,351.44
2032	$5.43	0.7026	$3.82		$177,751.19
2033	$5.57	0.6756	$3.76		$175,193.46
2034	$5.71	0.6496	$3.71		$172,662.54
2035	$5.85	0.6246	$3.65		$170,168.02
2036	$6.00	0.6006	$3.60		$167,720.12
2037	$6.15	0.5775	$3.55		$165,301.08
2038	$6.30	0.5553	$3.50		$162,920.32
2039	$6.46	0.5339	$3.45		$160,557.78
2040	$6.62	0.5134	$3.40		$158,252.71
2041	$6.78	0.4936	$3.35		$155,953.21
2042	$6.95	0.4746	$3.30		$153,698.90
2043	$7.13	0.4564	$3.25		$151,499.97
			Subtotal	**$969,885.76**	**$2,520,677.49**

a. Discounted Projected City Sales Tax Revenue X Retail Square Footage Deficit

Example 1 Continued

Calculation of Phase 2 Retail Loss Impact Fee

ASSUMPTIONS

Retail Square Footage Deficit	46,574	Phase 2 Commencement Date	March 1, 2024
Projected Annual City Sales Tax Revenue (including Use Tax) Per Sq. Ft. (2012 Dollars)	$3.32	Date of Final Certificate of Occupancy for Minimum 125,000 Sq. Ft. Retail	September 1, 2027
Inflation Factor	2.50%	Time Elapsed Between March 1, 2024 and September 1, 2027	3 Years, 184 Days
Present Value Interest Factor	4.00%		

Calendar Year	Discounted Projected Annual City Sales Tax Revenue (Per Sq. Ft.)	5-Year Cash Deposit Amount	Phase 2 Retail Loss Impact Fee	Refund to Owner
2013				
2014				
2015				
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024	$4.29	$199,646.98	$199,646.98	
2025	$4.23	$196,784.65	$196,784.65	
2026	$4.16	$193,938.02	$193,938.02	
2027	$4.10	$191,139.11	$96,355.06[a]	
2028	$4.04	$188,377.01		
	Subtotal	**$969,885.76**	**$ 686,724.70**	**$283,161.06[b]**

a. $191,139.11 x (184 Days ÷ 365 Days) = $96,355.06

b. $969,885.76 – $686.724.70 = $283,161.06

Example 2

Calculation of Amount of Security

ASSUMPTIONS

Retail Square Footage Deficit	46,574	Phase 2 Commencement Date	January 1, 2018
Projected Annual City Sales Tax Revenue (including Use Tax) Per Sq. Ft. (2012 Dollars)	$3.32	Date of Final Certificate of Occupancy for Minimum 125,000 Sq. Ft. Retail	November 1, 2020
Inflation Factor	2.50%	Time Elapsed Between March 1, 2024 and September 1, 2027	2 Years, 304 Days
Present Value Interest Factor	4.00%		

Calendar Year	Projected Annual City Sales Tax Revenue (Per Sq. Ft.)	4% Present Value Interest Factor Table (20 Years)	Discounted Projected Annual City Sales Tax Revenue (Per Sq. Ft.)	5-Year Cash Deposit Amount[a]	Alternative Security Instrument Amount[a]
2013	$3.40				
2014	$3.48				
2015	$3.57				
2016	$3.66				
2017	$3.75				
2018	$3.84	0.9615	$3.70	$172,154.97	
2019	$3.94	0.9246	$3.64	$169,686.78	
2020	$4.04	0.889	$3.59	$167,232.14	
2021	$4.14	0.8548	$3.54	$164,818.66	
2022	$4.24	0.8219	$3.49	$162,436.90	
2023	$4.35	0.7903	$3.44		$160,096.40
2024	$4.46	0.7599	$3.39		$157,786.52
2025	$4.57	0.7307	$3.34		$155,516.48
2026	$4.68	0.7026	$3.29		$153,274.30
2027	$4.80	0.6756	$3.24		$151,068.77
2028	$4.92	0.6496	$3.20		$148,886.37
2029	$5.04	0.6246	$3.15		$146,735.35
2030	$5.17	0.6006	$3.11		$144,624.54
2031	$5.30	0.5775	$3.06		$142,538.60
2032	$5.43	0.5553	$3.02		$140,485.68
2033	$5.57	0.5339	$2.97		$138,448.47
2034	$5.71	0.5134	$2.93		$136,460.82
2035	$5.85	0.4936	$2.89		$134,477.96
2036	$6.00	0.4746	$2.85		$132,534.08
2037	$6.15	0.4564	$2.80		$130,637.95
2038	$6.30				
2039	$6.46				
2040	$6.62				
2041	$6.78				
2042	$6.95				
2043	$7.13				
			Subtotal	**$836,329.46**	**$2,173,572.30**

a. Discounted Projected City Sales Tax Revenue X Retail Square Footage Deficit

Example 2 Continued

Calculation of Retail Loss Impact Fee

ASSUMPTIONS

Retail Square Footage Deficit	46,574	Phase 2 Commencement Date	January 1, 2018
Projected Annual City Sales Tax Revenue (including Use Tax) Per Sq. Ft. (2012 Dollars)	$3.32	Date of Final Certificate of Occupancy for Minimum 125,000 Sq. Ft. Retail	November 1, 2020
Inflation Factor	2.50%	Time Elapsed Between March 1, 2024 and September 1, 2027	2 Years, 304 Days
Present Value Interest Factor	4.00%		

Calendar Year	Discounted Projected Annual City Sales Tax Revenue (Per Sq. Ft.)	5-Year Cash Deposit Amount	Phase 2 Retail Loss Impact Fee	Refund to Owner
2013				
2014				
2015				
2016				
2017				
2018	$3.70	$172,154.97	$172,154.97	
2019	$3.64	$169,686.78	$169,686.78	
2020	$3.59	$167,232.14	$139,283.76[a]	
2021	$3.54	$164,818.66		
2022	$3.49	$162,436.90		
2023	$3.44			
2024	$3.39			
2025	$3.34			
2026	$3.29			
2027	$3.24			
2028	$3.20			
	Subtotal	**$836,329.46**	**$481,125.51**	**$355,203.95[b]**

a. $167,232.14 x (304 Days ÷ 365 Days) = $139,283.76

b. $836,329.46 – $481,125.51 = $355,203.95

Attachment #3
Amendment No. 1

This Document was electronically recorded by
CR uth County C

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

NO FEE
2015000163595 11:38am 03/31/15
105 404 A17 17
0.00 0.00 0.00 0.00 48.00 0.00 0.00 0.00

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

(Space Above Line for Recorder's Use)
Exempt from Recorder's Fees Pursuant to
Government Code §§ 6103 and 27383

AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
(Oakbrook Village Shopping Center Mixed Use Project)

BY AND BETWEEN

THE CITY OF LAGUNA HILLS, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California

AND

LAGUNA HILLS INVESTMENT COMPANY, a Delaware limited partnership

AND

OAKBROOK URBAN VILLAGE I, LLC, a Delaware limited liability company

THIS AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF ITS EFFECTIVE DATE PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

1052779.5

AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAGUNA HILLS
AND
LAGUNA HILLS INVESTMENT COMPANY
AND
OAKBROOK URBAN VILLAGE I, LLC

This Amendment No. 1 to Development Agreement ("Amendment No. 1") is made and entered into this 27th day of March, 2015 ("Effective Date"), by and between the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California ("City"), on the one hand, and Laguna Hills Investment Company, a Delaware limited partnership, and Oakbrook Urban Village I, LLC, a Delaware limited liability company (collectively "Owner"), on the other hand, pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division I of Title 7, Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Statute").

RECITALS

A. City is authorized, pursuant to California Government Code §§65864 through 65869.5 (the "Development Agreement Statute") and Chapter 9-84 of the Laguna Hills Municipal Code (the "Development Agreement Ordinance") to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.

B. City and Laguna Hills Investment Company previously entered into to that certain Development Agreement, which was approved pursuant to City Council Ordinance No. 2012-4 on November 27, 2012, became effective December 28, 2012, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on January 2, 2013, as Document No. 2013000002329 (the "Development Agreement"), pertaining to the redevelopment of the Oakbrook Village Shopping Center property (the "Property"), located at 24231-24391 Avenida de la Carlota in the Urban Village Specific Plan area, which is more particularly described in **Exhibit A** attached hereto, with a multi-phase, mixed-use project consisting of multi-family residential units, renovated and expanded retail uses, public open space, pedestrian pathways, and private and public infrastructure improvements (the "Project").

C. On November 27, 2012, pursuant to the California Environmental Quality Act ("CEQA"), the City Council and Planning Agency determined that the Project is within the scope of the "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 2008081100" ("PEIR"), and that the Project would not result in any new significant effects that were not examined in the PEIR, a substantial increase in the severity of significant effects examined in the PEIR, or require any new mitigation measures or alternatives. The City therefore adopted Addendum to the PEIR for the Project pursuant to Public Resources Code Sections 21166 , 21083.3, and CEQA Guidelines Sections 15168, 15162, 15164, and 15183. The City filed a Notice of Determination on November 28, 2012.

D. Following the approval and execution of the Development Agreement, Laguna Hills Investment Company subsequently assigned an interest in the Development Agreement to Oakbrook Urban Village I, LLC, as described and as set forth in that certain Assignment of Development Agreement dated April 24, 2014, as recorded in the Official Records, Orange County, Clerk Recorder, on April 24, 2014, bearing document number 2014000157001.

E. The Project consists of two phases. Phase 1 of the Project ("Phase 1") generally includes, without limitation: (i) the demolition of approximately 82,730 square feet of the approximately 190,956 square feet of existing retail space on the Property; (ii) the construction of the "Deferred Retail Pads" (as defined in Section 1.4 of the Development Agreement) and approximately 9,000 square feet of additional new retail space, resulting in approximately 132,200 square feet, and no less than a minimum of 124,000 square feet of retail space on the Property; (iii) the renovation of the façades of all remaining retail structures located on the Property other than restaurant Buildings D and E (Lone Star and El Torito); (iv) the construction of a maximum of 289 multi-family residential units; and (v) the construction of the "Phase 1 Public Improvements" (as defined in Section 1.25 of the Development Agreement).

F. The Phase 1 Public Improvements consist of several improvements, including, without limitation: (i) the construction of an approximately 17,000 square foot Village Green; (ii) the construction of an east-west pedestrian paseo; (iii) the construction of an improved north-south pedestrian paseo; (iv) the construction of a hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall; (v) the construction of a pedestrian trail along the north Property line; (vi) the construction of two parking lot paseos; (vii) the construction of various pedestrian connections between all buildings; (viii) the installation of a traffic signal at the intersection of Avenida de la Carlota and the main entrance to the Property, including interconnection to the existing traffic signal at the intersection of Avenida de la Carlota and Los Alisos Boulevard, and construction on the easterly side of Avenida de la Carlota of a public sidewalk connection to the Oakbrook Plaza office development; (ix) dedication of the public right-of-way necessary for, and construction of, a new curb line along the entire Property frontage of Avenida de la Carlota, including a six (6) foot wide landscaped parkway space and a minimum six (6) foot wide sidewalk; (x) construction of storm drain connections, inlets, and/or other improvements necessary to eliminate all cross-gutter drainage across both the main and the northerly entrance driveway intersections with Avenida de la Carlota; (xi) the installation of debris gates at all catch basin inlets along the Property frontage to Avenida de la Carlota; (xii) the realignment of the intersection of the northerly entrance to the Property with Avenida de la Carlota; (xiii) the construction or reconstruction of all curb ramps on Avenida de la Carlota at each entrance to the Property to current Americans with Disability Act ("ADA") standards; and (xiv) construction of any and all other public improvements required to be constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals.

G. Section 5.4.1 of the Development Agreement provides, in part, that, except as otherwise expressly provided in the Development Agreement, Owner (i) shall have obtained all applicable grading, encroachment, building, demolition, and similar permits for Development of all portions of Phase 1 of the Project within two (2) years of the Development Agreement Date (i.e., December 28, 2014), and (ii) shall have completed Development of all portions of Phase 1 of the Project within five (5) years of the Development Agreement Date (i.e., December 28, 2017). Section 5.4.3 of the Development Agreement provides that, notwithstanding Section 5.4.1 of the Development Agreement, Owner shall not be obligated to commence the Phase 1 Public Improvements within two (2) years of the Development Agreement Date; however, with the exception of the Village Green, Owner shall complete the Phase 1 Public Improvements prior to the issuance of the *first* residential certificate of occupancy for Phase 1. Section 5.4.3 further provides that Owner shall complete construction of the Phase 1 Village Green prior to issuance of the *final* residential certificate of occupancy for Phase 1.

H. In accordance with Section 13 of the Development Agreement, Owner has proposed that the Development Agreement be amended to extend the time periods by which Owner is required (i) to obtain all applicable permits for the renovation of the façades of all remaining retail structures located on the Property (other than restaurant Buildings D and E (Lone Star and El Torito), for which façade renovation is not required), and (ii) to complete construction of the improved north-south pedestrian paseo, the hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall, and the pedestrian trail along the north Property line.

I. The remaining retail structures located on the Property to which façade renovations are to be made are described and depicted on **Exhibit B** attached to this Amendment No. 1. The pedestrian paseos and pedestrian trail to be constructed are described and depicted in **Exhibit C** attached to this Amendment No. 1, which shall hereafter replace **Exhibit E** to the Development Agreement.

J. On January 30, 2015, as required by Section 65867 of the Development Agreement Statute, the City caused public notice to be given of the City Council's intention to consider adoption of this Amendment No. 1.

K. On February 10, 2015, as required by Section 65867 of the Development Agreement Statute, the City Council held a public hearing on this Amendment No. 1.

L. The City has determined that no further environmental review is required. The Amendment No. 1 will merely extend the time periods by which Owner is required to obtain all applicable permits for the renovation of the façades of all remaining retail structures located on the Property and to complete construction of three pedestrian paseos, but will not impact the scope of Phase 1. Accordingly, the City has determined that the Amendment No. 1 is within the scope of the Addendum adopted on November 27, 2012, and that none of the circumstances triggering further environmental review have occurred since the adoption of the Addendum: (i) there are no substantial changes in the Project requiring major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the Project is being undertaken which will require major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and (iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR or Addendum was adopted showing that: (a) the Project will have one or more significant effects not discussed in the PEIR or Addendum; (b) significant effects previously examined will be substantially more severe than shown in the PEIR or Addendum; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR or Addendum would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Section 21166 and CEQA Guidelines Sections 15162.)

M. The City Council hereby finds and determines that the Development Agreement, as modified pursuant to this Amendment No. 1: (i) is consistent with the objectives, policies, general land uses, and programs contained City's General Plan and Urban Village Specific Plan; (ii) is compatible with the uses authorized in the Village Commercial land use district; (iii) provides for the orderly development of the Property; and (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute.

N. On February 24, 2015, the City Council adopted an Ordinance approving and authorizing the execution of this Amendment No. 1.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, and pursuant to the Development Agreement Ordinance, and pursuant to the mutual promises and covenants herein contained, the Parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Capitalized Terms. Unless otherwise specified herein, all capitalized terms in this Amendment No. 1 shall have the meaning(s) set forth for the same in the Development Agreement.

3. Amendment Extending Time to Commence Renovation of Façades of Remaining Retail Structures. Notwithstanding the provision of Section 5.4.1 of the Development Agreement requiring that Owner have obtained all applicable grading, encroachment, building, demolition, and similar permits for Development of Phase I of the Project within two (2) years of the Development Agreement Date, the dates by which Owner is required to obtain all applicable permits for the renovation of the façades of the remaining retail structures located on the Property are hereby extended as provided below:

A. Owner shall have obtained all applicable grading, encroachment, building, demolition, and similar permits for the façade renovations required by the Existing Development Approvals for Building H on or before April 15, 2015.

B. Owner shall have obtained all applicable grading, encroachment, building, demolition, and similar permits for the façade renovations required by the Existing Development Approvals for Buildings A, B, C, P and Q on or before September 30, 2015.

4. Amendment to Section 5.4.3 of the Development Agreement, entitled "Phase 1 Public Improvements". Section 5.4.3 of the Development Agreement is hereby amended as follows (additions shown in **bold/underline** text; deletions shown in ~~strikethrough~~ text):

5.4.3 Phase 1 Public Improvements. Notwithstanding Section 5.4.1, Owner shall not be obligated to commence the Phase 1 Public Improvements within two (2) years of the Development Agreement Date. However, with the exception of the **(i)** Village Green, **(ii) the improved north-south pedestrian paseo, (iii) the hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall, and (iv) the pedestrian trail along the north Property line,** Owner shall complete the Phase 1 Public Improvements prior to issuance of the first residential certificate of occupancy for Phase 1. Accordingly, Owner shall not be entitled to the issuance of, and City shall not be obligated to issue, certificates of occupancy for any residential units constructed in Phase 1 of the Project until all Phase 1 Public Improvements, other than the **(i)** Village Green, **(ii) the improved north-south pedestrian paseo, (iii) the hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall, and (iv) the pedestrian trail along the north Property line,** have been completed and accepted by City. Owner shall complete construction of the Phase 1 Village Green **and the north-south pedestrian paseo** prior to issuance of the final residential certificate of occupancy for Phase 1. Accordingly, Owner shall not be entitled to the issuance of, and City shall not be obligated to issue, a certificate of occupancy for the last residential unit (or the building in which the last residential unit is located, if applicable) constructed in Phase 1 of the Project until the Village Green **and the improved north-south pedestrian paseo** for Phase 1 have been completed and approved in writing by the City.

The Parties acknowledge that it is in their mutual interest for the planning and construction of the hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall and the pedestrian trail along the north Property line be coordinated with the owners of the adjacent property occupied by the Laguna Hills Mall. Therefore, completion of these two portions of the Phase 1 Public Improvements shall not be a condition precedent to City's issuance of residential certificates of occupancy for Phase 1. However, in accordance with Section 5.4.1, Owner shall have completed the hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall and the pedestrian trail along the north Property line within five (5) years of the Development Agreement Date (i.e., December 28, 2017). Owner agrees that it shall use best efforts to coordinate with the owner of the property occupied by the Laguna Hills Mall to plan and construct the Phase 1 Public Improvements along Owner's north property line that are adjacent to the Laguna Hills Mall property.

5. Amendment to **Exhibit E**, entitled "Pedestrian Paseos Exhibit," of Development Agreement. Exhibit E to the Development Agreement is hereby replaced in its entirety by the depiction attached as **Exhibit C** to this Amendment No. 1, which is hereby incorporated into the Development Agreement by reference.

6. Full Force and Effect. This modifying Amendment No. 1 is supplemental to the Development Agreement and is by reference made a part of said Development Agreement. All of the terms, conditions, and provisions, thereof, unless specifically modified herein, shall continue in full force and effect. In the event of any conflict or inconsistency between the provisions of this Amendment No. 1 and any provisions of the Agreement, the provision of this Amendment No. 1 shall in all respects govern and control.

7. Binding Effect. This Amendment No. 1 shall be binding on the parties hereto and their respective successors and assigns.

8. Authority to Execute. The person(s) executing this Amendment No. 1 on behalf of Owners represent and warrant that he/she/they has/have the authority to execute this Amendment No. 1 on behalf of his/her/their corporate entity/partnership and represent(s) and warrant(s) that he/she/they has/have the authority to bind Owners to the performance of Owners' obligations hereunder.

9. Counterparts. This Amendment No. 1 may be executed in one or more counterparts, all counterparts shall be valid and binding on the party executing them, and all counterparts shall together constitute one and the same document for all purposes.

10. Recording. The City Clerk shall cause a copy of this Amendment No. 1 to be executed by City and recorded in the Official Records of Orange County no later than ten (10) days after the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Owners have executed this Amendment No. 1 as of the date and year first above written.

"CITY"

CITY OF LAGUNA HILLS, a California municipal corporation

By: ______________________
Bruce E. Channing
City Manager

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

"OWNERS"

LAGUNA HILLS INVESTMENT COMPANY, a Delaware limited partnership

By: FRITZ DUDA COMPANY, a Texas Corporation

Its General Partner

By: ______________________
Fritz L. Duda
President

By: ______________________
Name: ______________________
Title: ______________________

OAKBROOK URBAN VILLAGE I, LLC, a Delaware limited liability company

By: Shea Properties Management Company, Inc., a Delaware corporation, Its Development Manager

By: ______________________
Name: ______________________
Title: ______________________

By: ______________________
Name: ______________________
Title: ______________________

All signatures to be acknowledged by a Public Notary

1052779 5

STATE OF ~~CALIFORNIA~~ Texas)
) ss
COUNTY OF ~~ORANGE~~ Dallas)

On Feb 9, 2015, before me, Sherry Seibert, a Notary Public, personally appeared Fritz L. Duda, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sherry Seibert Notary Public	2/9/2015

SHERRY SEIBERT
Notary Public, State of Texas
My Commission Expires
March 08, 2016

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On ____________, before me, ____________, a Notary Public, personally appeared ____________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

1052779.5

IN WITNESS WHEREOF, City and Owners have executed this Amendment No. 1 as of the date and year first above written.

"CITY"

CITY OF LAGUNA HILLS, a California municipal corporation

By: ______________________
Bruce E. Channing
City Manager

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

"OWNERS"

LAGUNA HILLS INVESTMENT COMPANY, a Delaware limited partnership

By: FRITZ DUDA COMPANY, a Texas Corporation

Its General Partner

By: ______________________
Fritz L. Duda
President

By: ______________________
Name: ______________________
Title: ______________________

OAKBROOK URBAN VILLAGE I, LLC,
a Delaware limited liability company

By: Shea Properties Management Company, Inc.,
a Delaware corporation,
Its Development Manager

By: ______________________
Name: Greg Anderson
Title: Assistant Secretary

By: ______________________
Name: Lori Klasner
Title: Vice President

All signatures to be acknowledged by a Public Notary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

On 2/10/2015 before me, L. Riddle, Notary Public,
Date *Here Insert Name and Title of the Officer*

personally appeared Greg Anderson and Lori Klasner,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/they executed the same in ~~his~~/~~her~~/their authorized capacity(ies), and that by ~~his~~/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

L. RIDDLE
Commission # 2076761
Notary Public - California
Orange County
My Comm. Expires Aug 30, 2018

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature L Riddle
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Amendment No 1 Document Date: 3/27/2015

Number of Pages: 16 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Greg Anderson
☑ Corporate Officer — Title(s): Asst Sec
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other:
Signer Is Representing: Owner

Signer's Name: Lori Klasen
☑ Corporate Officer — Title(s): VP
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other:
Signer Is Representing: Owner

EXHIBIT A

PROPERTY DESCRIPTION

LOT 1-4 OF LLA 2013-01 RECORDED APRIL 24, 2014 AS INSTRUMENT NO. 2014000156993 TOGETHER WITH PARCELS 5-15 AS SHOWN ON PARCEL MAP 80-120 FILED IN BOOK 187, PAGES 42-44 OF PARCEL MAPS, IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, BOTH OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, STATE OF CALIFORNIA.

EXHIBIT B

PHASE 1 REMAINING RETAIL STRUCTURES

Exhibit B - Phase 1 Remaining Retail Structures

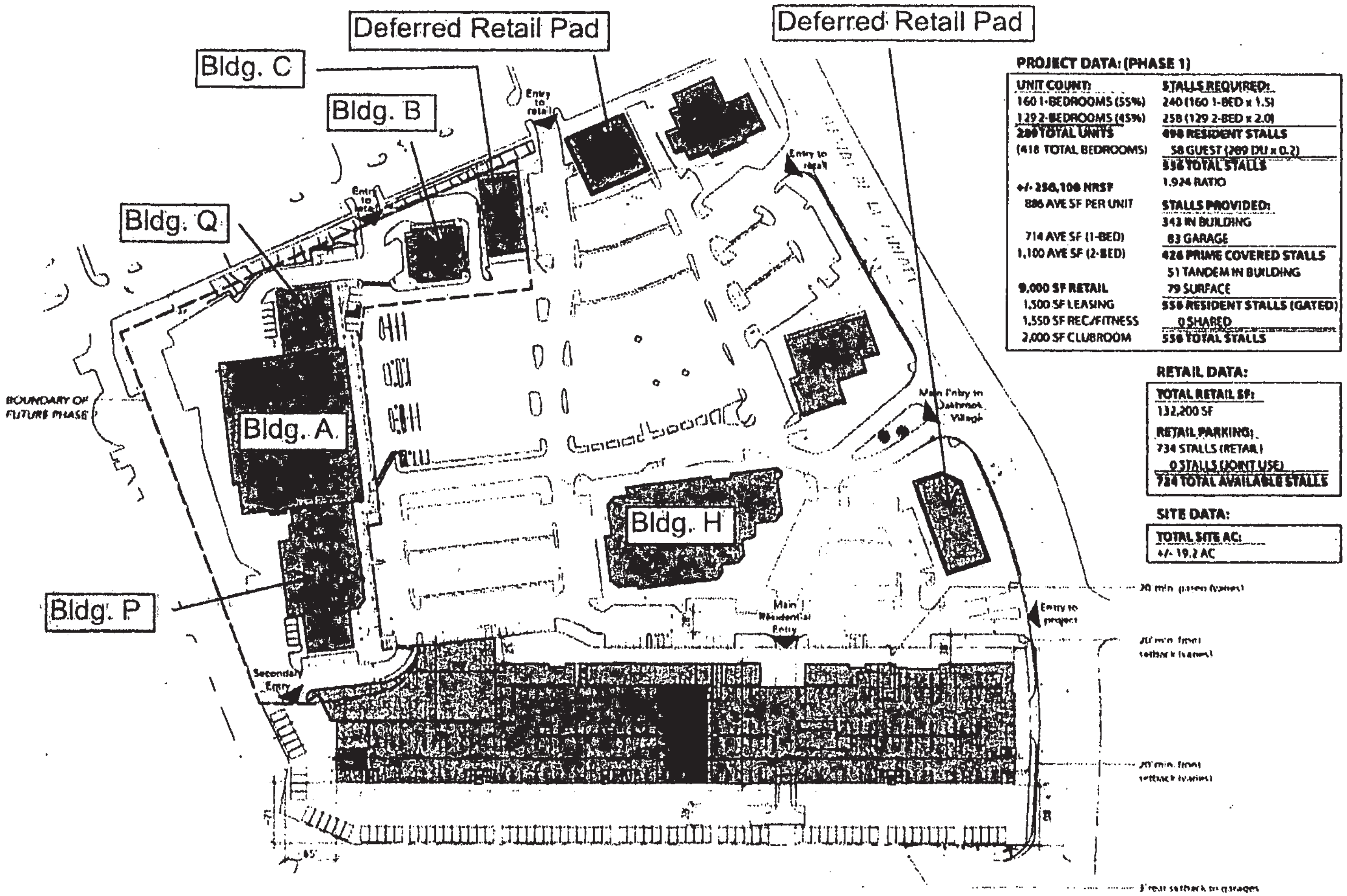
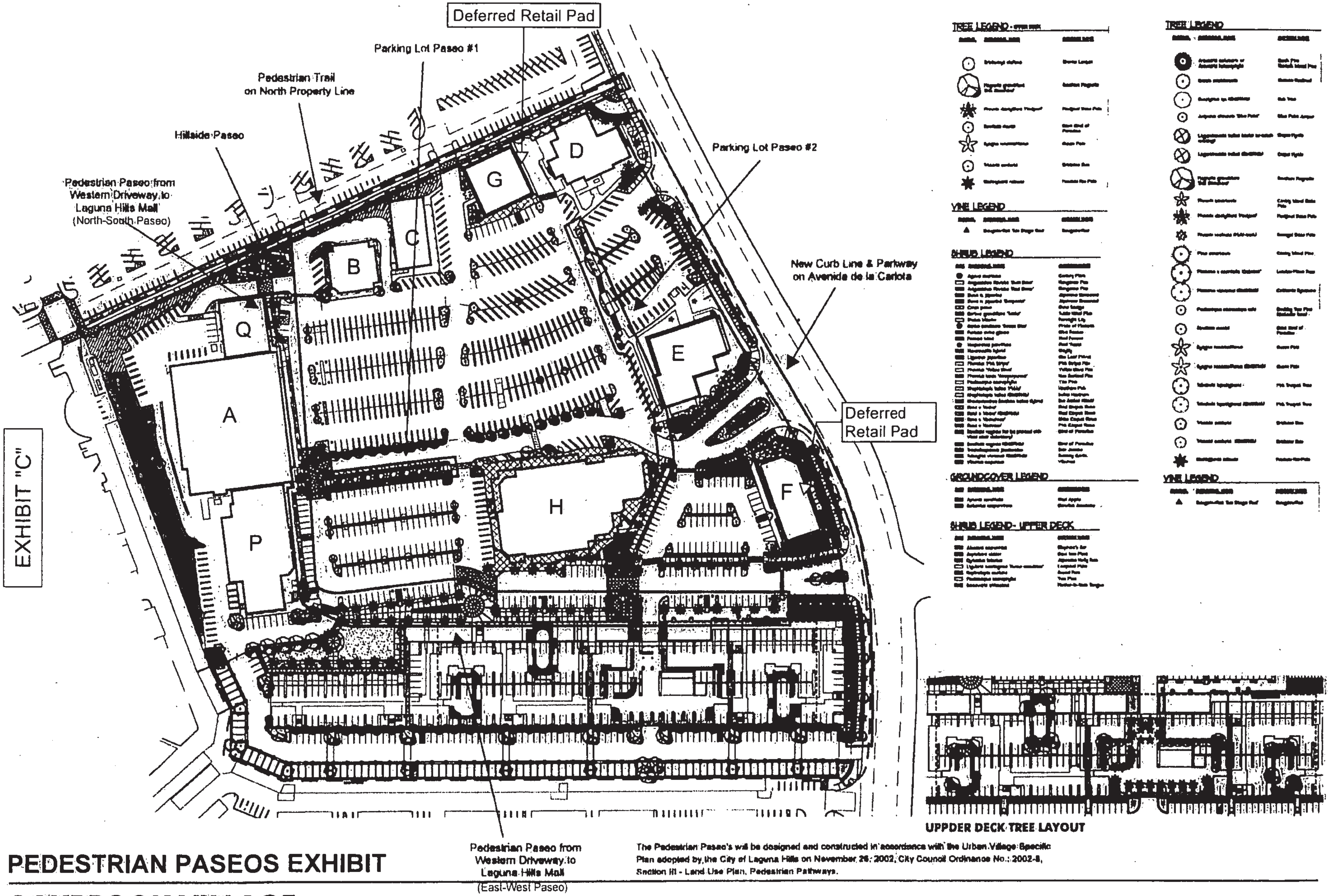


EXHIBIT C

PEDESTRIAN PASEOS DEPICTION

1052779.5



PEDESTRIAN PASEOS EXHIBIT

The Pedestrian Paseo's will be designed and constructed in accordance with the Urban Village Specific Plan adopted by the City of Laguna Hills on November 26, 2002, City Council Ordinance No.: 2002-8, Section III - Land Use Plan, Pedestrian Pathways.

OAKBROOK VILLAGE
LAGUNA HILLS, CALIFORNIA

FRITZ DUDA COMPANY
3425 Via Lido Suite 250
Newport Beach, California 92663
(949) 723-7100

NORTH

SCALE: 1"=50'-0"

3/22/2016 ITEM NO. 3.7

Attachment #4
Proposed Resolution

RESOLUTION NO. PA-2016-03-08-X

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING RESOLUTION NOS. PA2015-02-10-1, PA2014-02-11-2, AND PA2012-11-13-1 TO MODIFY CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT/PARKING USE PERMIT/VESTING TENTATIVE TRACT MAP/PRECISE PLAN/ DEVELOPMENT AGREEMENT NO. 12-11-2137 TO EXTEND THE TIME PERIODS FOR COMPLETION OF CERTAIN PHASE 1 ON-SITE IMPROVEMENTS, A REQUEST BY LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER LOCATED AT 24231-24391 AVENIDA DE LA CARLOTA

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, on November 13, 2012, the Planning Agency adopted Resolution No. PA2012-11-13-1 approving Site Development Permit/ Master Sign Program/ Conditional Use Permit/ Parking Use Permit/ Vesting Tentative Tract Map/ Precise Plan/ Development Agreement (SDPM/MSP/CUP/PUP/TTM/PREC/DEVA) No. 12-11-2137 the redevelopment of Oakbrook Village Shopping Center with a Phase 1 mixed-use project (the "Project"), located at 24231-24391 Avenida de la Carlota, subject to specified conditions of approval (the "Conditions of Approval"); and

WHEREAS, on November 27, 2012, the City Council of the City of Laguna Hills adopted Ordinance No. 2012-4 approving a Development Agreement between the City of Laguna Hills and Laguna Hills Investment Company pertaining to the Project (the "Development Agreement"), which Development Agreement became effective December 28, 2012 and was recorded in the Official Records, Orange County Clerk-Recorder's Office on January 2, 2013, as Document No. 2013000002329; and

WHEREAS, on November 27, 2012, pursuant to the California Environmental Quality Act ("CEQA"), the City Council and Planning Agency determined that the Project is within the scope of the "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100" ("PEIR"), and that the Project would not result in any new significant effects that were not examined in the PEIR, a substantial increase in the severity of significant effects examined in the PEIR, or require any new mitigation measures or alternatives. The City therefore adopted an addendum to the PEIR for the Project pursuant to Public Resources Code Sections 21166, 21083.3, and CEQA Guidelines Sections 15168, 15162, 15164, and 15183. The City filed a Notice of Determination on November 28, 2012; and

WHEREAS, on February 11, 2014, the Planning Agency adopted Resolution No. PA2014-02-11-2 making modifications to certain Conditions of Approval of SDPM/MSP/CUP/PUP/TTM/PREC/DEVA No. 12-11-2137 related to the early issuance of building permits and other project sequencing matters; and

WHEREAS, Laguna Hills Investment Company and Oakbrook Urban Village I, LLC (collectively, the "Owner") subsequently proposed an Amendment No. 1 to the Project Development Agreement to extend the time periods for commencement or completion of certain on-site improvements in Phase 1 of the Project; and

WHEREAS, on February 10, 2015, the Planning Agency adopted Resolution No. PA2015-02-10-1 modifying Condition of Approval No. 47 of SDP/MSP/CUP/PUP/TTM/PREC/DEVA No. 12-11-2137 to extend time frames related to the construction of the pedestrian and parking lot paseos consistent with the proposed Amendment No. 1 to the Project Development Agreement; and

WHEREAS, on February 24, 2015, the City Council of the City of Laguna Hills adopted Ordinance No. 2015-3 approving Amendment No. 1 to Development Agreement, which Amendment No. 1 to Development Agreement became effective March 27, 2015, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on March 31, 2015, as Document No. 2015000163595; and

WHEREAS, the Owner has now requested that the Laguna Hills City Council approve an Amendment No. 2 to Development Agreement to modify the timing, location, and scope of development of certain on-site pedestrian, landscaping, and façade improvements; and

WHEREAS, Condition of Approval No. 47 specifies timeframes pertaining to the construction of the aforementioned pedestrian paseos and the pedestrian trail consistent with those set forth in the amended Development Agreement, some of which would be modified pursuant to Amendment No. 2 to Development Agreement; and

WHEREAS, Condition of Approval No. 54 specifies a timeframe by which the Owner is required to construct secondary entry signs, which the Owner is requesting be extended to correspond with commencement of façade renovation improvements for the remaining retail structures on the site pursuant to Amendment No. 2 to Development Agreement; and

WHEREAS, the Owner has requested that the Planning Agency amend Resolution Nos. PA2015-02-10-1, PA2012-11-13-1 and PA2014-02-11-2 to modify Condition of Approval No. 47 to be consistent with the Development Agreement, as amended by Amendment Nos. 1 and 2 to Development Agreement, and to modify Condition of Approval No. 54 to extend the time period by which Owner is required to construct secondary entry signs; and

WHEREAS, the Planning Agency has considered evidence presented by the Community Development Department, the Owner, and other interested parties with respect to the subject application at a public hearing, which was noticed for February 9, 2016 and duly continued to March 8, 2016.

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. The Planning Agency hereby finds and determines that no further environmental review is required. The modifications to the Conditions of Approval, as set forth herein, will merely make minor modifications to the scope and timing of development of façade renovations and pedestrian, vehicular and landscaping improvements on the Property, and will not affect the size, scope, or timing of development of any structures on the Property. Accordingly, the Planning Agency hereby determines that the modifications to the Conditions of Approval, as set forth herein, are within the scope of the Addendum adopted on November 27, 2012, and that none of the circumstances triggering further environmental review have occurred since the adoption of the Addendum: (i) there are no substantial changes in the Project requiring major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the Project is being undertaken which will require major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and (iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR or Addendum was adopted showing that: (a) the Project will have one or more significant effects not discussed in the PEIR or Addendum; (b) significant effects previously examined will be substantially more severe than shown in the PEIR or Addendum; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR or Addendum would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Section 21166 and CEQA Guidelines Sections 15162).

SECTION 3. The required findings for approval of SDPM/MSP/CUP/PUP/TTM/PREC/DEVA No. 12-11-2137 set forth in Planning Agency Resolution No. 2012-11-13-1 are hereby reaffirmed and incorporated herein by reference as if set forth in full.

SECTION 4. Planning Agency Resolution No.PA2012-11-13-1, as amended by Planning Agency Resolution Nos. PA2014-02-11-2 and PA2015-02-10-1, approving SDPM/MSP/CUP/PUP/TTM/PREC/DEVA No. 12-11-2137 and the related Conditions of Approval are hereby amended to modify Conditions of Approval No. 47 and No. 54 as follows (deleted text is identified by ~~**strike-through/bold**~~ formatting, and added text is indicated by <u>**underlined/bold**</u> formatting):

47a. Prior to their installation and construction, plans for the pedestrian and parking lot paseos shall be reviewed and approved by the Community Development Director. <u>**Until the completion of Phase II as defined by the project Development Agreement (as amended),**</u> ~~**The**~~ design <u>**of the north-south paseo**</u> shall be consistent with <u>**the layout depicted by the "Landscape Construction Drawings For Oakbrook Village" prepared by FORMA dated September 4, 2012. The design and construction of all other pedestrian and parking lot paseos shall be consistent with**</u> Figures 17 and 18 of the Urban Village Specific Plan.

47b. All paseos shall be installed and constructed prior to the issuance of the first residential Certificate of Occupancy, except as otherwise provided in Conditions 47c. through 47d.

47c. The north-south pedestrian paseo shall be installed and constructed ~~**prior to issuance of the final residential Certificate of Occupancy**~~ <u>**by December 31, 2016**</u>.

47d. <u>**Except as otherwise provided below,**</u> the hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall and the pedestrian trail along the north Property line shall be installed and constructed on or before December 28, 2017. <u>**Notwithstanding the foregoing sentence, if the proposed entitlements for the "Five Lagunas" project on the adjacent property occupied by the Laguna Hills Mall (identified as SDPM/MSP/CUP/PUP/VTTM/PREC NO. 2-15-3114) are approved by the City, then the following provisions shall instead apply to construction of the hillside pedestrian paseo and the other improvements along the north property line adjacent to the Five Lagunas property:**</u>

(i) <u>**The hillside paseo shall be installed and constructed on or before (a) the date that is six (6) months after the date the City issues the first certificate of occupancy for residential "Building B" in the Five Lagunas project, or (b) December 28, 2023, whichever occurs first.**</u>

(ii) **The pedestrian trail along the north Property line shall not be constructed. In lieu of construction of the pedestrian trail, the Applicant shall, instead, plan and construct new, enhanced hardscape and landscape improvements and vehicular and pedestrian connections along the north Property line, which create coordinated and compatible linkages between the Property and the Five Lagunas project. The Applicant shall cooperate with, and use best efforts to coordinate with, the owner of the Five Lagunas Property in the planning and construction of said improvements. Construction of these alternative improvements along the north Property line shall be subject to approval of all required land use entitlements, permits and/or approvals by the City. The Applicant shall submit a complete application for all land use entitlements, permits, and/or approvals required to construct such improvements on or before (a) the date that is 90 days after the date on which the City approves land use entitlements for the Five Lagunas project, or (b) March 1, 2017, whichever occurs last. This date may be extended up to an additional 180 days at the discretion of the City Manager. Provided the City approves all land use entitlements, permits, and/or approvals required to construct the new improvements along the north Property line described above, the Applicant shall complete construction of said improvements on or before (a) the date that is six (6) months after the date the City issues the first certificate of occupancy for residential "Building B" in the Five Lagunas project, or (b) December 28, 2023, whichever occurs first.**

54. Prior to the issuance of ~~the last residential certificate of occupancy~~**building permits for the façade renovations on Buildings A, P, Q, and C**, the Applicant shall construct the Secondary Entry Signs depicted by Exhibit G of the Project's proposed Master Sign Program.

SECTION 5. All Conditions of Approval to SDPM/MSP/CUP/PUP/TTM/PREC/DEVA No. 12-11-2137, as modified herein, are set forth for reference purposes only in Exhibit "A" to this Resolution.

SECTION 6. This effectiveness of this Resolution shall be contingent upon the adoption and effectiveness of an Ordinance by the Laguna Hills City Council approving and adopting the proposed Amendment No. 2 to Development Agreement. Should an Ordinance approving and adopting said Amendment No. 2 to Development Agreement not be adopted or take effect, this Resolution shall automatically be deemed null and void.

PASSED, APPROVED, AND ADOPTED this 8^{th} day of March 2016.

BARBARA D. KOGERMAN, CHAIR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. PA2016- adopted by the Planning Agency of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 8^{th} day of March, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MELISSA AU-YEUNG, CITY CLERK

EXHIBIT "A"

CONDITIONS OF APPROVAL
(AS OF FEBRUARY 9, 2016)

General

1. This approval constitutes approval of the proposed Project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the Project regarding any other applicable ordinance, regulation, or requirement.

2. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation and/or termination of the Site Development Permit, the Master Sign Program, the Conditional Use Permit, the Parking Use Permit, the Vesting Tentative Tract Map, and/or the Precise Plan approved in conjunction with the Project (collectively, the "Entitlements").

3. All Conditions of Approval set forth herein shall be binding on and enforceable against each of the following, and whenever used herein, the term "Applicant" shall mean and refer to the Project Applicant, the developer of the Project, the subdivider of the property, the owner(s) and tenant(s) of the property, and/or their successors and assigns, as applicable.

4. As a condition of issuance of the Entitlements granted herein, the Applicant hereby agrees, at its sole cost and expense and to the fullest extent permitted by law, to defend (with legal counsel approved or selected by City), indemnify, and hold harmless the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third party against the City, its officers, employees, agents, and consultants, which seeks to attack, challenge, set aside, void, or annul an approval of the City Council, Planning Agency, or other decision-making body, or staff action concerning this Project. The City agrees to promptly notify the Applicant of any such claim filed against the City and to fully cooperate in the defense of any such action. The City may, but is not obligated to, at its sole cost and expense, elect to participate in the defense of any such action under this condition.

5. The Applicant shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.

6. The Applicant shall reimburse the City for any outstanding staff time spent on processing SDPM/MSP/CUP/PUP/TTM/PREC/DEVA No. 12-11-2137 within 60 days of the Planning Agency's approval.

7. The Entitlements shall become effective only upon the adoption and effective date of an Ordinance approving the Development Agreement for the "Oakbrook Village Shopping Center Mixed Use Project" between the City of Laguna Hills and the Applicant.

8. Within 30 days from the date of approval, the Applicant shall reimburse the City for fees associated with filing the Notice of Determination, including posting fees and Department of Fish and Game fees, if applicable.

Building

9. The Applicant shall obtain applicable building permits, as required by Section 105 of the 2010 California Building Code, prior to commencement of any work for which a permit is required.

10. Any required documents submitted for the purpose of building permit issuance shall be accurately labeled and reflect all work, as required by Section 107 of the 2010 California Building Code.

11. For building permit purposes only, the Applicant shall secure any required approvals from the Orange County Fire Authority, El Toro Water District, and City Planning and Engineering Departments prior to issuance of any required building permit.

12. At time of building permit issuance, the Applicant shall submit Construction and Demolition Waste Recycling Program documentation, if applicable, as required by the City of Laguna Hills Ordinance No. 2003-9 and to comply with mandates of the California Integrated Waste Management Board (CIWMB).

13. The Applicant shall comply with all applicable general construction Water Quality Ordinances, as required by the City of Laguna Hills and Ordinance No. 2003-12.

14. The Applicant shall secure any required approvals from Orange County Health Department as required.

15. The Applicant shall ensure compliance with the California Disabled Accessibility requirements, as required by Chapter 11 of the California Building Code.

16. The Applicant shall comply with all California Energy Code requirements, as required by the California Energy Commission.

17. All construction shall comply with applicable building codes including the 2010 California Building, Plumbing, Mechanical, Electrical, and Green Building Codes in regards to applicable occupancy types.

18. The California Green Building Code shall apply to all newly constructed buildings (from the ground up).

19. The Applicant shall comply with the City of Laguna Hills Water Efficient Landscape Ordinance.

<u>OCFA</u>

20. Prior to issuance of building permits, the Applicant shall submit to Orange County Fire Authority for review and approval a fire master plan (Service Code PR 145). A detailed fire master plan will be required demonstrating access to all rescue windows throughout the project. Fire hydrants and fire lanes shall be indicated on this plan.

21. Prior to issuance of building permits, the Applicant shall submit to Orange County Fire Authority for review and approval architectural plans (Service Code PR 200- PR 285), when required by the OCFA "Plan Submittal Criteria Form."

22. Prior to issuance of building permits, the Applicant shall submit to Orange County Fire Authority for review and approval plans for underground piping for private hydrants and fire sprinkler systems (Service Code PR 470- PR 475).

23. Prior to issuance of building permits, the Applicant shall submit to Orange County Fire Authority for review and approval a fire sprinkler system plan (Service Code PR 400- PR 465).

24. Prior to concealing interior construction, the Applicant shall submit to Orange County Fire Authority for review and approval plans for a sprinkler monitoring system plan (Service Code PR 500).

25. Prior to concealing interior construction, the Applicant shall submit to Orange County Fire Authority for review and approval plans for a fire alarm system plan (Service Code PR 500 – PR 520).

26. Specific submittal requirements to Orange County Fire Authority may vary from conditions numbered 22-27 listed above depending on actual project conditions identified or present during design development, review, construction, inspection, or occupancy. The Applicant shall comply with all submittal requirements of the Orange County Fire Authority.

27. Prior to commencement of construction, the Applicant or its agent shall attend a pre-construction meeting with an Orange County Fire Authority inspector. Call OCFA Inspection Scheduling at 714-573-6150 at least two days in advance to schedule and pay for the pre-construction meeting.

28. After installation of required fire access roadways and hydrants, the Applicant shall receive clearance from the OCFA prior to bringing combustible building materials on-site. Call OCFA Inspection Scheduling at 714-573-6150 with the Service Request number of the approved fire master plan at least two days in advance to schedule the lumber drop inspection.

Planning

29. Outdoor security and other lighting, including illuminated signs, shall be designed and maintained so as not to illuminate beyond the project boundary. All exterior lights shall be focused inward and away from surrounding uses and adjacent residential properties.

30. All noise generated by the Project, including construction noise, delivery noise, and other operational noise shall at all times meet noise requirements pursuant to LHMC section 5-24 (Noise Control).

31. If future activity or expansion at the subject site results in a change of use (switches to a different land use category), the Shared Parking model must be recalculated in its entirety. The resultant parking demand identified from a singular Shared Parking calculation must never be automatically used as a "baseline" value to debit or credit another (or future) project's incremental parking requirements.

32. If at any time in the future the Community Development Director determines, in his or her sole discretion, that a parking and circulation study is necessary to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., change in tenant mix) in the shopping center, the Applicant shall, at its sole cost and expense, be responsible for the cost of

parking and circulation study prepared by a licensed consultant selected by the City. The Applicant shall, at its sole cost and expense, be responsible for implementation costs of any reasonable mitigation measures deemed appropriate by the Community Development Director related to such impacts based on the findings of such study.

33. Mechanical equipment, storage, trash areas, and utilities shall be architecturally screened by a solid material from public view to the reasonable satisfaction of the Community Development Director. The method of screening shall be architecturally compatible in terms of materials, color, shape, and size. The screening design shall blend with the building design and include landscaping when on the ground.

34. No building permits for any dwelling unit construction shall be issued until final map approval by the City Council and evidence of final map recordation has been provided to the City, and other applicable conditions have been met. Notwithstanding the foregoing, subject to the authority of the Building Official, building permits may be issued for the construction of dwelling units prior to final map approval upon the following conditions, which the Applicant expressly agrees to in consideration of this accommodation:

    - Issuance of any such building permit(s) does not confer upon Applicant any vested right or entitlement to issuance of Certificates of Occupancy for such dwelling units. In no case, shall any Certificates of Occupancy be issued until and unless all dedications and/or irrevocable offers of dedication shown on the Vesting Tentative Map or otherwise required by these Conditions of Approval have been made, CC&Rs have been approved by the City in accordance with Condition of Approval No. 37, all other applicable Conditions of Approval have been satisfied, the City Council has approved the final map, and evidence of final map recordation has been provided to the City.

35. (Intentionally Omitted)

36. Prior to the commencement of any work, the Applicant shall provide a contact number for the public to call concerning dust or noise complaints. The information shall also be posted on site in a manner approved by the Community Development Director.

37. The Applicant shall prepare Covenants, Conditions, and Restrictions, or another appropriate recordable document(s) or agreement(s) acceptable to the City that runs with the land and

binds future owners (collectively, "CC&Rs") for review and approval by the City Attorney's office and Community Development Department. The approved CC&Rs shall be recorded concurrently with the final subdivision map, and the Applicant shall provide a recorded copy of the CC&Rs prior to the issuance of certificates of occupancy. The CC&Rs shall provide for the establishment of a homeowners association and/or property owners' association, as applicable; shall address, to the satisfaction of the City, responsibilities for all common areas, utilities, drainage devices, ingress and egress, property maintenance, and building architecture; shall require that residents of the residential component of the Project to make their required garage parking available for the parking of automobiles at all times; shall include provisions identifying a property owner's association or other entity responsible for ongoing implementation and funding of the Operations and Maintenance (O&M) Plan associated with the WQMP for the Project and compliance with the City's Stormwater Quality Ordinance and other applicable National Pollutant Discharge Elimination System (NPDES) regulations; shall provide that those provisions of the CC&Rs benefitting the City may not be substantively amended or terminated without City approval; and shall provide that the City may, but shall not be obligated to, enforce the CC&Rs. The CC&Rs shall be submitted to the City Attorney for review and approval and shall be recorded concurrently with the final map. The Applicant shall provide a recorded copy if the CC&Rs prior to the issuance of occupancy. The Applicant shall reimburse the City for all legal costs associated with this condition.

38. A final landscape and irrigation plan for all Project landscaping shall be submitted to the City for review and approval prior to the issuance of a building permit. Trees installed shall be a minimum one-inch caliper. Final landscape and irrigation plans shall include information on minimum spacing between all plant materials except for trees which shall be planted as indicted on the preliminary landscape plan at a minimum. The Community Development Department shall inspect Applicant-installed landscaping to ensure full coverage of all landscaped areas. The Applicant shall provide additional material as required. Approved landscape and irrigation improvements shall be installed prior to the issuance of any occupancy, except for the Village Green area. Village Green landscape and irrigation improvements shall be installed prior to the issuance of the last residential occupancy.

39. Prior to the issuance of any building permit, the Applicant shall provide final details and specifications identifying the amenities of all

outdoor landscaped courtyards and pool courtyard to the Community Development Department for review and approval. The plan shall label the location of jacuzzis, cabanas, barbeques, fire pits, wet bars, and seating areas as depicted on Sheets A1.3a and A1.3b of the project architectural plans submitted to the City in support of the Entitlements.

40. The Applicant shall submit a final project photometric study to the Community Development Department for review and approval prior to the issuance of any building permits. Pedestrian and parking lot lighting poles and fixture types shall be consistent with the types depicted in the Urban Village Specific Plan.

41. Prior to the recordation of the Final Map or the issuance of building permits, whichever occurs first, sewer improvement plans to serve the project shall be designed to the satisfaction of the El Toro Water District.

42. Prior to the issuance of any certificates of occupancy, all sewer improvements shall be constructed to the satisfaction of the El Toro Water District.

43. Prior to the recordation of the Final Map, or the issuance of building permits, whichever occurs first, water improvement plans to serve the Project shall be designed to the satisfaction of the El Toro Water District. At a minimum, water lines shall be sized to accommodate the total domestic requirements and fire-flow requirements of OCFA.

44. Prior to the issuance of any occupancy, all water improvements shall be constructed to the satisfaction of the El Toro Water District.

45. Prior to the recordation of the Final Map, or the issuance of building permits, whichever occurs first, existing water line easements on the site shall be relocated to the satisfaction of the El Toro Water District.

46. No overhead utilities shall be installed.

47. 47a. Prior to their installation and construction, plans for the pedestrian and parking lot paseos shall be reviewed and approved by the Community Development Director. Until the completion of Phase II as defined by the project Development Agreement (as amended), design of the north-south paseo shall be consistent with the layout depicted by the "Landscape Construction Drawings For Oakbrook Village" prepared by FORMA dated September 4, 2012. All other pedestrian and parking lot paseos shall be consistent with

Figures 17 and 18 of the Urban Village Specific Plan.

47b. All paseos shall be installed and constructed prior to the issuance of the first residential Certificate of Occupancy, except as otherwise provided in Conditions 47.c. ad 47.d.

47c. The north-south pedestrian paseo shall be installed and constructed by December 31, 2016.

47d. Except as otherwise provided below, the hillside pedestrian paseo connecting the north-south pedestrian paseo with the adjacent property occupied by the Laguna Hills Mall and the pedestrian trail along the north Property line shall be installed and constructed on or before December 28, 2017. Notwithstanding the foregoing sentence, if the proposed entitlements for the "Five Lagunas" project on the adjacent property occupied by the Laguna Hills Mall (identified as SDPM/MSP/CUP/PUP/VTTM/PREC NO. 2-15-3114) are approved by the City, then the following provisions shall instead apply to construction of the hillside pedestrian paseo and the other improvements along the north property line adjacent to the Five Lagunas property:

(i) The hillside paseo shall be installed and constructed on or before (a) the date that is six (6) months after the date the City issues the first certificate of occupancy for residential "Building B" in the Five Lagunas project, or (b) December 28, 2023, whichever occurs first.

(ii) The pedestrian trail along the north Property line shall not be constructed. In lieu of construction of the pedestrian trail, the Applicant shall, instead, plan and construct new, enhanced hardscape and landscape improvements and vehicular and pedestrian connections along the north Property line, which create coordinated and compatible linkages between the Property and the Five Lagunas project. The Applicant shall cooperate with, and use best efforts to coordinate with, the owner of the Five Lagunas Property in the planning and construction of said improvements. Construction of these alternative improvements along the north Property line shall be subject to approval of all required land use entitlements, permits and/or approvals by the City. The Applicant shall submit a complete application for all land use entitlements, permits, and/or approvals required to construct such improvements on or before (a) the date that is 90 days after the date on which the City approves land use entitlements for the Five Lagunas project, or (b) March 1, 2017, whichever occurs last. This date may be extended up to an additional 180 days at the discretion of the City Manager. Provided the City approves all land use entitlements, permits, and/or approvals required to construct the new improvements along the north Property line described above, the Applicant shall complete construction of said improvements on or before (a) the date that is six (6) months after the date the City issues the first certificate of occupancy for residential "Building B" in the Five Lagunas project, or (b) December 28, 2023, whichever occurs first.

48. All vehicle and pedestrian gates shall be reviewed and approved by OCFA and OCSD for conformance with the respective agencies' requirements for limited access devices.

49. Prior to the issuance of grading permits for the Project, the southwest gated parking entrance shall be redesigned to avoid interfering with vehicles backing out of garage spaces.

50. The conditions of Project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d), these conditions constitute written notice of the amount of such fees. The Applicant is hereby notified that the 90-day protest period, commencing from the date of approval of the Project, has begun.

51. Prior to the issuance of any building permits for the project, the Applicant shall submit plans and specifications for the construction/ fabrication and installation of public art required by the Urban Village Specific Plan. The proposed art work and its location shall be reviewed and approved by the Planning Agency along with conformance of the requirements and goals of the City's Public Art Program, which review and approval shall be completed prior to the issuance of any building permits for the project in accordance with the Urban Village Specific Plan. The public art shall be created and installed, or the required public art in lieu fee paid, prior to the issuance of the first residential certificate of occupancy for the project. Sequencing and phasing of the installation of public art within the Village Green area may be considered through an operating memoranda pursuant to the Development Agreement.

52. As indicated on the vesting tentative map, portions of the site required for public improvements shall be irrevocably offered for dedication prior to the recordation of the final map. Dedications shall be in fee or as an easement at the discretion of City. At the City's discretion, all such irrevocable offers of dedication shall either be made on the final map or by separate recorded instrument approved by the City Attorney. The City may accept the Owner's offer of dedication upon Owner's completion and acceptance by City of the associated improvements in compliance with the specifications as approved by City. In no event shall any Certificate of Occupancy be issued until all required public improvements have been constructed and completed and the above-referenced irrevocable offers of dedication and associated improvements have been accepted by the City.

53. Prior to the City Council's approval of the final map, the Applicant shall pay the public park in-lieu fee of Seven Thousand Three Hundred Ninety Two Dollars ($7,392.00) for each residential unit constructed as part of the Project. Consistent with Development Agreement No. 12-11-2137, if building permits are issued prior to the City Council's approval of the final map, then said fee shall be paid on a per unit basis prior to issuance of a building permit for each residential unit.

54. Prior to the issuance of building permits for the façade renovations on Buildings A, P, Q, and C, the Applicant shall construct the Secondary Entry Signs depicted by Exhibit G of the Project's proposed Master Sign Program.

55. Prior to the issuance of a building permit, the Applicant shall revise the Project's proposed Master Sign Program to the satisfaction of the Community Development Director to include the following:
    a. General Specification No. 28 for Primary and Secondary Signs shall be revised to refer to the City of Laguna Hills Community Development Director.
    b. Design Specifications for Primary Signs shall be revised to refer to the appropriate exhibit depicting the wood beam detail.
    c. The height of stacked signs for In-Line Shop Buildings and Multi-Tenant Pads shall not exceed 12 inches.
    d. (Intentionally omitted)
    e. Unreadable text pertaining to sign locations on Exhibit A shall be revised.
    f. Exhibit D shall be revised to show a readable canopy detail.
    g. The maximum sign area for individual wall signs for In-Line Shop Buildings and Multi-Tenant Pads shall not exceed 150 square feet.

h. The maximum wall sign area for Major Anchor Retailer tenants shall be 150 square feet.
i. (Intentionally omitted)
j. (Intentionally omitted)
k. The description of the "Center Identification" provisions shall be revised to preclude the installation of a Perimeter Entry Sign facing the Laguna Hills Mall until the installation of an adjoining street between Oakbrook Village and the mall.
l. Secondary Entry Features shall not exceed a sign area of 15 square feet for the display of the shopping center name.
m. Directional signage specifications shall be revised to a maximum height of 8 feet and a width of 4 feet and a maximum letter height of 3 inches.

Public Services

56. Project improvement plans and related documents shall be reviewed and approved by the City Engineer; said plans shall be prepared by a State of California Registered Civil Engineer and shall conform to City standards.

57. No work shall be performed within the public right-of-way, by the Applicant or his or her agents until a public property encroachment permit is issued by the City Engineer and applicable fees have been paid.

58. Construction traffic shall not access or depart the site during morning or evening peak periods, which are 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday. The Applicant shall provide a construction vehicle routing plan for approval by the City Engineer prior to any demolition or construction work. The City Engineer may approve requests for alternative access, routing, and hours of access under special circumstances.

59. It shall be the Applicant's responsibility to protect-in-place existing public improvements. Applicant shall repair or replace, to the satisfaction of the City Engineer, any public improvements that are damaged as a result of the proposed construction.

60. All public improvements shall be constructed and completed to the satisfaction of the City Engineer prior to the recordation of a Final Map, or the Applicant shall enter into a Subdivision Improvement Agreement to include the posting of securities to guarantee the completion of the public improvements as approved by the City Attorney. In no event shall any Certificate of Occupancy be issued until and unless all required public improvements have been constructed and completed and accepted by the City.

61. The Subdivision Map shall be prepared in accordance with City, County, and State requirements and standards. The Applicant shall submit the Final Map for plan check to both the City Engineer and County Surveyor and pay all applicable plan check fees. The Applicant shall submit a current Title Report, supporting documents, and traverse closure calculations.

62. Any existing monumentation disturbed during construction shall be restored by a California Licensed Land Surveyor, and Corner Records shall be filed with the City Engineer and County Surveyor.

63. The Applicant shall submit a final grading plan and erosion control plan on 24"x 36" sheets to the City Engineer. A separate hydrology report shall also be provided. All plans shall be prepared by a registered Civil Engineer. The grading plan shall show street, sewer, water, storm drain facilities, and all proposed grading. The plans shall show the extent of topography of the grading plan and shall be sufficient to determine drainage impacts to the surrounding area. All grading shall be designed and constructed in accordance with the City's Grading and Excavation Code. The final grading plan shall be approved by the City Engineer prior to the issuance of a building permit. No concentrated drainage shall be allowed onto driveways or sidewalks and shall be conveyed to the street via a storm drain pipeline or culvert, as applicable.

64. A separate Grading Plan with related documents shall be required for each phase of development. Prior to the recordation of a final map, the Grading Plan for Phase One shall be submitted for review and approval by the City Engineer.

65. The Applicant shall submit a geotechnical report prepared by a Registered Engineering Geologist for approval by the City Engineer. The report shall include evaluation of onsite soils and provide recommendations on pavement sections, building foundations, and a discussion of the functionality of the water quality features.

66. All parking lots and drives shall be constructed of asphalt concrete over crushed aggregate base over subgrade, or equal, and compacted to a relative compaction of 95% or equivalent. The structural pavement thickness shall be no less than 4" AC over 6" AB, or more, for drive aisles, and 4" AC over 4" AB for all other areas, or more, as required by the project soils engineer and approved by the City Engineer.

67. Prior to issuance of a grading permit, the Applicant shall pay a traffic impact mitigation fee in accordance with Chapter 9-102 of Laguna Hills Municipal Code in the amount of Three Thousand Nine Hundred Fourteen Dollars ($3,914.00) per each new PM peak hour trip generated as a result of the Project, as determined by the City Engineer based upon a traffic study.

68. Prior to the issuance of grading, building, encroachment, or other permits, as applicable, the Applicant shall pay, or provide City with evidence of payment of, all fees required by public agencies other than the City, whether or not collected by the City, including, but not limited to, the fees imposed pursuant to the County of Orange's CARITS program, the fees imposed pursuant to the County of Orange's major thoroughfare and bridge fee programs for the Moulton Parkway/Laguna Niguel area, fees imposed by the San Joaquin Hills Transportation Corridor Agency, and school district fees.

69. Prior to issuance of any grading or building permits, the Applicant shall submit for approval by the Community Development Department and Public Services Department a water quality management plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used on-site to control predictable pollutant run-off. This WQMP shall identify Low Impact Development (LID) BMPs and routine structural and non-structural measures specified in the current Orange County Drainage Area Management Plan (DAMP) and the San Diego Regional Water Quality Control Board requirements. This WQMP must also:

    a. Address site design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, conserving natural areas, preserving trees, and retaining existing site hydrology to the maximum extent practicable;

    b. Include a design goal to maintain or replicate the pre-development hydrologic functions through site preservation, infiltration, retention, detention, evapotranspiration, and filtration treatment systems.

    c. Incorporate applicable routine source control BMPs as defined in the DAMP and provide a detailed description of their implementation;

d. Incorporate applicable treatment control BMPs as defined in the DAMP to the approval of the City Engineer;

e. Implement Low Impact Development (LID) BMPs to reduce runoff to the maximum extent practicable.

f. Include an Operation and Maintenance (O&M) plan that identifies the mechanism(s) by which long-term O&M of all post construction BMPs will be provided and funded.

70. Prior to issuance of grading permits, the Applicant shall submit a copy of the Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the Public Services Department. Projects subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the project site and be available for City review on request. In addition, the Applicant shall include notes on the grading plans indicating that the project will be implemented in compliance with the Statewide Permit for General Construction Activities.

71. The Applicant shall comply with and/or implement all hydromodification criteria, hydrologic control measures, performance measures, management measures, and other requirements of the Hydromodification Management Plan or Interim Hydromodification Criteria, as applicable, developed in accordance with Section F.1.h of Order No. R9-2009-0002 (NPDES Permit No. CAS0108740), or any subsequent Order adopted by the California Regional Water Quality Control Board, San Diego Region, and shall provide all necessary related calculations in the grading plans.

72. Prior to issuance of the first residential certificate of occupancy, the Applicant shall install, to the reasonable satisfaction of the City Engineer, a traffic signal at the intersection of Avenida de la Carlota and the main entrance to the Property, including interconnection to the existing traffic signal at the intersection of Avenida de la Carlota and Los Alisos Boulevard via conduit and hardwire, and construction on the easterly side of Avenida de la Carlota of a public sidewalk connection to the Oakbrook Plaza office development. Said traffic signal shall be constructed to applicable State and City standards and specifications and shall be equipped with video detection and controller equipment as approved by City. The sidewalks and ramps

at all corners of the newly signalized intersection and the sidewalk connection to the Oakbrook Plaza office development on the easterly side of Avenida De La Carlota shall be constructed and/or modified to conform to City and Americans With Disabilities Act ("ADA") standards. Prior to construction of said improvements, the Applicant shall prepare, and the City Engineer shall approve, a Traffic Signal Improvement Plan and a Striping Plan for the proposed traffic signal, including a traffic signal interconnection plan to interconnect the new traffic signal with the existing traffic signal at the intersection of Avenida de la Carlota at Los Alisos Boulevard.

73. The Applicant shall design and construct, to the satisfaction of the City Engineer, storm drain connections, inlets, and/or other improvements necessary to eliminate all cross-gutter drainage across both the main and the northerly entrance driveway intersections with Avenida De La Carlota. No cross-gutters shall be used at the above-described intersections.

74. Debris gates of the type specified by the City Engineer shall be installed at all catch basin inlets along the Property frontage to Avenida De La Carlota.

75. The northerly entrance intersection with Avenida De La Carlota shall be realigned to intersect Avenida De La Carlota at 90 degrees to the reasonable satisfaction of the City Engineer and as shown on the Vesting Tentative Map.

76. Prior to issuance of the first residential certificate of occupancy, the Applicant shall dedicate and transfer to City the public right-of-way necessary for, and shall construct and create, a new curb line along the entire Property frontage of Avenida de la Carlota, including a six (6) foot wide landscaped parkway space and a minimum six (6) foot wide sidewalk to City standards and specifications. Such improvements shall not interfere with existing vehicular lane configurations or result in modifications that have the effect of reducing any on-site parking for the Project. Required parkway improvements shall be as shown on the approved landscape plans, shall be consistent with the Urban Village Specific Plan, and shall include all irrigation and drainage facilities and improvements deemed necessary by the City Engineer.

77. All of the curb ramps on Avenida De La Carlota at each entrance to Oakbrook Village shall be reconstructed to current ADA standards to the satisfaction of the City Engineer with detectable warning surface by Armor Tile, cast in place, and blue in color.

78. The Applicant shall provide an Americans with Disabilities Act (ADA) site review of existing pathways, sidewalks and access ramps for both on-site access and adjacent to the site access along the accessible pathways. The accessible pathway shall not include a path within any drive aisle, except as necessary to cross a drive aisle at 90° to the drive aisle. The report shall be prepared by a professional whose expertise lies in the field and shall include an implementation plan to correct all deficiencies noted as approved by the City Engineer. Any sidewalk or pathway not in compliance with ADA standards shall be reconstructed.

79. The Applicant shall demonstrate that all on-site access routes are capable to accommodate truck access and truck turning radii.

80. Prior to the grading permit close out (which may occur after the issuance of building permits) or the issuance of a certificate of use and occupancy, the Applicant shall demonstrate compliance with the WQMP in a manner meeting the satisfaction of the City Engineer, including:

    a. Demonstrates that all structural BMPs described in the Project WQMP have been implemented, constructed, and installed in conformance with approved plans and specifications;

    b. Demonstrates that the Applicant has complied with and/or is prepared to implement all non-structural BMPs described in the Project WQMP;

    c. Demonstrates that an adequate number of copies of the project's approved Project WQMP are available for the future occupants;

    d. Demonstrates that the Applicant has agreed to and recorded CC&R's, an agreement, or another legal instrument approved by the City Attorney that shall require the property owner, successors, tenants (if applicable), and assigns to fund, operate and maintain in perpetuity the post-construction BMPs described in the Project WQMP.

    e. The Community Development Department and Public Services Department shall determine whether any proposed change in use requires an amendment to an approved Project WQMP and/or recorded document or agreement.

81. Trash/recycling enclosures shall be provided on-site and shall be constructed per the City of Laguna Hills Covered Trash Enclosure

Detail and City standards, including a solid roof and sewer drain connection.

82. The Applicant shall install "Smart" landscape irrigation controllers, low precipitation-rate sprinkler heads, and water efficient landscaping throughout the property in conformance with Municipal Code Chapter 9-47.

Additional Mitigation Measures / Conditions

The following mitigation measures/conditions relate to air quality impacts:

83. During grading activities, all rubber-tired dozers and scrapers (≥ 50 horsepower) shall be CARB Tier 3 Certified or better. Additionally, the maximum (actively graded) disturbance area shall not exceed four acres per day.

84. The Applicant shall apply the following measures, as applicable, during construction of the Project to reduce the amount of fugitive dust in accordance with SCAQMD Rule 403:

•Dust suppression at construction sites using vegetation, surfactants, and other chemical stabilizers

• Wheel washers for construction equipment

•Watering down of all construction areas

•Limit speeds at construction sites to 15 miles per hour

•Covering of aggregate or similar material during transportation of material

85. The Applicant shall implement the following measures, as applicable, during construction of the Project to reduce exhaust emissions from construction equipment:

- On-site equipment shall not be left idling when not in use.

- The hours of operation of heavy-duty equipment and/or the amount of equipment in use at any one time shall be limited.

- Staging areas for heavy-duty construction equipment shall be located as far as possible from sensitive receptors.

- Before construction contracts are issued, the project Applicant shall perform a review of new technology, in consultation with the SCAQMD, as it relates to heavy-duty equipment, to determine what (if any) advances in emissions reductions are available for use and are economically feasible. Construction contract and bid specifications shall require contractors to utilize the best available and economically feasible technology on an established percentage of the equipment fleet. It is anticipated that in the near future, both NOx and PM10 control equipment will be available.

86. Activities involving idling trucks shall be oriented as far away from and downwind of existing or proposed sensitive receptors as feasible. Strategies shall be incorporated to reduce the idling time of main propulsion engines though alternative technologies such as IdleAire, electrification of truck parking, and alternative energy sources for transport refrigeration units (TRUs) to allow diesel engines to be completely turned off.

87. The Applicant shall develop a Construction Traffic Emission Management Plan for the proposed project. The Plan shall include measures to minimize emissions from vehicles including: scheduling truck deliveries to avoid peak hour traffic, consolidating truck deliveries, and prohibiting truck idling in excess of five minutes. Other measures include: use electricity or alternate fuels for on-site mobile equipment instead of diesel equipment to the extent feasible; maintain construction equipment by conducting regular tune ups and retard diesel engine timing; use electric welders where electricity is available; use on-site electricity rather than temporary power generators where electricity is available; evaluate the feasibility of retrofitting the large off-road construction equipment; use alternative diesel fuels, if commercially available; and suspend the use of all construction activities during first stage smog alerts.

<u>The following mitigation measures/conditions relate to both air quality and greenhouse gas emissions impacts:</u>

88. Prior to building permit final, the Applicant shall provide bike support facilities (e.g., bicycle racks) to encourage bicycle riding as a transportation mode. Prior to installation, a plan for such amenities shall be submitted to the Community Development Director for his or her review and approval.

89. At a minimum, the Applicant shall implement the following "green" building practices:

- The apartment units shall feature dual pane low E vinyl windows, low flow toilets, low flow showerheads, low flow faucets, Energy Star appliances, energy efficient lighting, reflective white PVC "cool" roof membrane, programmable thermostats, and high efficiency HVAC condensing units.

- Project irrigation shall utilize Smart irrigation technology.

- The "green" 2010 Cal Green Building Code shall be implemented into building design.

- Individual identification of gas, electricity, and water consumption shall be available to give resident awareness of consumption.

The following mitigation measures/conditions relate to hazardous building materials impacts:

90. All demolition activities shall comply with the SCAQMD's Rule 1403, which requires that buildings undergoing demolition or renovation be surveyed for asbestos-containing materials (ACM) prior to any demolition or renovation activities.

The following mitigation measures/conditions relate to noise impacts:

91. Delivery or service hours for stores and businesses with loading areas, docks, or trash bins that gain access on driveways next to residential and other noise sensitive areas shall take place between the hours of 7:00 a.m. and 10:00 p.m. No use that is immediately adjacent to a residential use shall produce loading or unloading of materials, products, and or supplies at the site between the hours of 8:00 p.m. and 7:00 a.m. The City shall only approve exceptions if full compliance with the nighttime limits of the noise regulations is achieved.

92. Trucks associated with construction activities shall follow designated truck routes, where appropriate.

93. Noise sources associated with construction, repair, remodeling, or grading of any real property, shall not take place between the hours of 8:00 p.m. and 7:00 a.m. on weekdays, 8:00 p.m. and 8:00 a.m. on Saturday, or at any time on Sunday or a federal holiday.

94. Heating ventilation and air conditioning (HVAC) units shall be installed in compliance with the provisions of Chapter 5-24 (Noise Control) of the City's Municipal Code.

95. Prior to the issuance of building permits, the Applicant shall submit a final acoustical report prepared to the Satisfaction of the Community Development Director indicating compliance with the state's interior noise standard of 45 dB CNEL for multiple-family residential land use. The Applicant shall increase the recommended STC ratings of windows/ doors, exterior wall and/or roof assemblies for the project as recommended by the final acoustic report and include any such requirements in project building plans.

The following mitigation measures/conditions relate to utilities and service systems impacts:

96. The project shall comply with all federal, state, and local statutes and regulations related to solid waste. The project shall comply with the City's established reduction, reuse, and recycling programs.

97. The project shall be connected to the public sewer.

(The remainder of this page intentionally left blank)

Attachment #5
Proposed Ordinance &
Amendment No. 2

ORDINANCE NO. 2016-x

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, FOR THE OAKBROOK VILLAGE SHOPPING CENTER REDEVELOPMENT PROJECT

WHEREAS, the City of Laguna Hills (the "City") and Laguna Hills Investment Company previously entered into to that certain Development Agreement, which was approved pursuant to City Council Ordinance No. 2012-4 on November 27, 2012, became effective December 28, 2012, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on January 2, 2013, as Document No. 2013000002329 (the "Development Agreement"), pertaining to the redevelopment of the Oakbrook Village Shopping Center property (the "Property"), located at 24231-24391 Avenida de la Carlota in the Urban Village Specific Plan area with a multi-phase, mixed-use project consisting of multi-family residential units, renovated and expanded retail uses, public open space, pedestrian pathways, and private and public infrastructure improvements within the Village Commercial District of the Urban Village Specific Plan area, generally located south of the Laguna Hills Mall along Avenida de la Carlota to the East, north of Los Alisos Boulevard (the "Project"). A copy of the Development Agreement is on file in the office of the City Clerk of the City of Laguna Hills; and

WHEREAS, on November 27, 2012, pursuant to the California Environmental Quality Act ("CEQA"), the City Council and Planning Agency determined that the Project is within the scope of the "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100" ("PEIR"), and that the Project would not result in any new significant effects that were not examined in the PEIR, a substantial increase in the severity of significant effects examined in the PEIR, or require any new mitigation measures or alternatives. The City therefore adopted Addendum to the PEIR for the Project pursuant to Public Resources Code Sections 21166 , 21083.3, and CEQA Guidelines Sections 15168, 15162, 15164, and 15183. The City filed a Notice of Determination on November 28, 2012; and

WHEREAS, following the approval and execution of the Development Agreement, Laguna Hills Investment Company subsequently assigned an interest in the Development Agreement to Oakbrook Urban Village I, LLC, as described and as set forth in that certain Assignment of Development Agreement dated April 24, 2014, as recorded in the Official Records, Orange County, Clerk Recorder, on April 24, 2014, bearing document number 2014000157001; and

WHEREAS, Laguna Hills Investment Company and Oakbrook Urban Village I, LLC are collectively referred to herein as the "Owner"; and

WHEREAS, on February 24, 2015, the City Council of the City of Laguna Hills adopted Ordinance No. 2015-3 approving Amendment No. 1 to Development Agreement between the City and the Owner, which Amendment No. 1 to Development Agreement became effective March 27, 2015, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on March 31, 2015, as Document No. 2015000163595; and

WHEREAS, the Development Agreement establishes specified time periods by which the Owner is required to commence and complete the various components of Phase 1 of the Project, including, without limitation, the renovation of the façades of all remaining retail structures located on the Property and various pedestrian paseos and trails; and

WHEREAS, in accordance with Section 13 of the Development Agreement, the Owner has proposed that the Development Agreement be amended again to modify the timing, location, and scope of development of certain on-site pedestrian, landscaping, and building façade improvements; and

WHEREAS, the City Council serves as, and is, the Planning Agency of the City pursuant to Government Code Section 65100; and

WHEREAS, on January 29, 2016 as required by Government Code Section 65867, the City caused public notice to be given of the City Council's intention to consider adoption of the Amendment No. 2 to Development Agreement for the Project (the "Amendment No. 2"), and on February 9, 2016, and March 8, 2016, as required by Government Code Section 65867, the City Council held a public hearing on adoption of the Amendment No. 2, and introduction and first reading of this ordinance; and

WHEREAS, on March 22, 2016, the City Council considered the adoption of this ordinance approving and authorizing the execution of the Amendment No. 2; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

<u>SECTION 1</u>. The City hereby determines that no further environmental review is required. The Amendment No. 2 will merely make minor modifications to the scope and timing of development of façade renovations and pedestrian, vehicular and landscaping improvements on the Property, and will not affect the size, scope, or timing of development of any structures on the Property. Accordingly, the City hereby determines that the Amendment No. 2 is within the scope of the Addendum adopted on November 27, 2012, and that none of the circumstances triggering further environmental review have occurred since the adoption of the Addendum: (i) there are

no substantial changes in the Project requiring major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the Project is being undertaken which will require major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and (iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR or Addendum was adopted showing that: (a) the Project will have one or more significant effects not discussed in the PEIR or Addendum; (b) significant effects previously examined will be substantially more severe than shown in the PEIR or Addendum; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR or Addendum would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Section 21166 and CEQA Guidelines Sections 15162.)

SECTION 2. The Amendment No. 2 to Development Agreement with the Owner for the Project attached hereto as Exhibit "A" is hereby APPROVED based on the following statement of findings:

A. The findings set forth in City Council Ordinance No. 2012-4, adopted on November 27, 2012, supporting the adoption and approval of the Development Agreement, are hereby incorporated by reference as if set forth in full herein.

B. The Amendment No. 2 has been properly requested pursuant to Section13 of the Development Agreement.

C. The Development Agreement, as amended by the Amendment No. 2, and the Project remain consistent with the objectives, policies, general land uses, and programs of the Laguna Hills General Plan and the Urban Village Specific Plan encouraging an urban village identity to include a variety of high quality public, regional commercial, recreational, and high density residential uses working in concert to create an "urban village" with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas. The Amendment No. 2 merely modifies the timing of development of façade renovations and the scope and timing of the development of on-site pedestrian, vehicular and landscaping improvements required by the Development Agreement in order to enhance linkages with future adjacent residential and commercial uses, but will not affect the size, scope, or timing of development of any structures or village greens on the Property.

D. The Development Agreement, as amended by the Amendment No. 2, and the Project remain consistent with the densities and uses authorized for the Project site specified in the Laguna Hills General Plan, the Urban Village Specific Plan, and the Zoning and Development Code of the City.

E. The Development Agreement, as amended by the Amendment No. 2, continues to provide for the orderly development of the Project property. The Development Agreement, as amended by the Amendment No. 2, continues to identify the different phases and timing for construction of the Project and public improvements.

F. The Development Agreement, as amended by this Amendment No. 2, and the Project remain consistent with the Zoning and Development Code of the City, compatible with the present and future logical growth of the proposed project area (as envisioned in the Laguna Hills General Plan and Urban Village Specific Plan), and designed to protect and promote the public health, safety and welfare.

SECTION 3. The City Council finds that the above recitations are true and correct and constitute the findings of the City Council and Planning Agency in this case.

SECTION 4. The City Manager is hereby directed and authorized to take all necessary actions to implement this ordinance, including but not limited to, updating the legal description of the Property described in the Amendment No. 2 to Development Agreement attached hereto as Exhibit "A", if necessary, and executing the Amendment No. 2 and other related documents.

SECTION 5. A fully executed copy of the Amendment No. 2 to Development Agreement attached hereto as Exhibit "A" between the City and the Owner shall be filed and maintained in the office of the City Clerk.

SECTION 6. The City Clerk shall record a copy of the Amendment No. 2 to Development Agreement within 10 days of the effective date of this ordinance, on or before May 2, 2016.

SECTION 7. This ordinance shall become effective 30 days after its adoption, on April 22, 2016.

SECTION 8. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

SECTION 9. The City Clerk shall certify to the adoption of this ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this ordinance and a certified copy of the text of this ordinance shall be posted in the office of the City Clerk five days prior to the date of adoption of this ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this ordinance, together with the vote for and against the same, in the office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this ___ day of ___________, 2016.

BARBARA D. KOGERMAN, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing Ordinance No. ________ was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the ____ day of __________, 2016, and that thereafter, said ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the ____ day of __________, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

EXHIBIT A

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

(Space Above Line for Recorder's Use)
Exempt from Recorder's Fees Pursuant to
Government Code §§ 6103 and 27383

AMENDMENT NO. 2 TO DEVELOPMENT AGREEMENT
(Oakbrook Village Shopping Center Mixed Use Project)

BY AND BETWEEN

THE CITY OF LAGUNA HILLS, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California

AND

LAGUNA HILLS INVESTMENT COMPANY, a Delaware limited partnership

AND

OAKBROOK URBAN VILLAGE I, LLC, a Delaware limited liability company

THIS AMENDMENT NO. 2 TO DEVELOPMENT AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF ITS EFFECTIVE DATE PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

AMENDMENT NO. 2 TO DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAGUNA HILLS
AND
LAGUNA HILLS INVESTMENT COMPANY
AND
OAKBROOK URBAN VILLAGE I, LLC

This Amendment No. 2 to Development Agreement ("Amendment No. 2") is made and entered into this 22nd day of April, 2016 ("Effective Date"), by and between the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California ("City"), on the one hand, and Laguna Hills Investment Company, a Delaware limited partnership, and Oakbrook Urban Village I, LLC, a Delaware limited liability company (collectively "Owner"), on the other hand, pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division I of Title 7, Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Statute").

RECITALS

A. City is authorized, pursuant to California Government Code §§65864 through 65869.5 (the "Development Agreement Statute") and Chapter 9-84 of the Laguna Hills Municipal Code (the "Development Agreement Ordinance") to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.

B. City and Laguna Hills Investment Company previously entered into to that certain Development Agreement, which was approved pursuant to City Council Ordinance No. 2012-4 on November 27, 2012, became effective December 28, 2012, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on January 2, 2013, as Document No. 2013000002329 (the "Original Development Agreement"), pertaining to the redevelopment of the Oakbrook Village Shopping Center property (the "Property"), located at 24231-24391 Avenida de la Carlota in the Urban Village Specific Plan area, which is more particularly described in **Exhibit A-1 and Exhibit A-2** attached hereto, with a multi-phase, mixed-use project consisting of multi-family residential units, renovated and expanded retail uses, public open space, pedestrian pathways, and private and public infrastructure improvements (the "Project").

C. The Project consists of two phases. Phase 1 of the Project ("Phase 1") generally includes, without limitation: (i) the demolition of approximately 82,730 square feet of the approximately 190,956 square feet of existing retail space on the Property; (ii) the construction of the "Deferred Retail Pads" (as defined in Section 1.4 of the Development Agreement) and approximately 9,000 square feet of additional new retail space, resulting in approximately 132,200 square feet, and no less than a minimum of 124,000 square feet of retail space on the Property; (iii) the renovation of the façades of all remaining retail structures located on the Property other than restaurant Buildings D and E (Lone Star and El Torito); (iv) the construction of a maximum of 289 multi-family residential units; and (v) the construction of the "Phase 1

Public Improvements" (as defined in Section 1.25 of the Development Agreement). Phase 2 of the Project ("Phase 2") generally includes, without limitation, the Development or Redevelopment of the Property in accordance with the Subsequent Development Approvals and in a manner that shall result in: (i) the construction of a maximum of 200 additional multi-family residential units; (ii) the required construction of additional new retail space; and (iii) the required construction of an approximately 7,000 square foot secondary Village Green area. The Owner may, but is not required, to pursue the Development of Phase 2.

D. On November 27, 2012, pursuant to the California Environmental Quality Act ("CEQA"), the City Council and Planning Agency determined that the Project is within the scope of the "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100" ("PEIR"), and that the Project would not result in any new significant effects that were not examined in the PEIR, a substantial increase in the severity of significant effects examined in the PEIR, or require any new mitigation measures or alternatives. The City therefore adopted Addendum to the PEIR for the Project pursuant to Public Resources Code Sections 21166 , 21083.3, and CEQA Guidelines Sections 15168, 15162, 15164, and 15183. The City filed a Notice of Determination on November 28, 2012.

E. Following the approval and execution of the Development Agreement, Laguna Hills Investment Company subsequently assigned an interest in the Development Agreement to Oakbrook Urban Village I, LLC, as described and as set forth in that certain Assignment of Development Agreement dated April 24, 2014, as recorded in the Official Records, Orange County, Clerk Recorder, on April 24, 2014, bearing document number 2014000157001.

F. City and Owner also previously entered into that certain Amendment No. 1 to Development Agreement ("Amendment No. 1"), which was approved by City Council Ordinance No. 2015-3 on February 24, 2015, became effective March 27, 2015, and was recorded in the Official Records, Orange County Clerk-Recorder's Office on March 31, 2015, as Document No. 2015000163595. Amendment No. 1 extended the time periods by which Owner (i) is required to commence renovation of the façades of the remaining retail structures located on the Property, and (ii) to complete Development of certain Phase 1 Public Improvements. The Original Development Agreement and Amendment No. 1 are referred to collectively herein as the "Development Agreement."

G. Pursuant to the Development Agreement, Owner is required to make certain façade renovations to the remaining retail structures on the Property in Phase 1 (other than restaurant Buildings D and E, for which façade renovation is not required). The existing remaining retail structures located on the Property are described and depicted on **Exhibit B** attached to this Amendment No. 2. Section 5.4.1 of the Development Agreement and Section 3 of Amendment No. 1 govern the timing for commencement and completion of the required façade renovations to the remaining retail structures on the Property. As of the Effective Date of this Amendment No. 2, all required façade renovations to the existing retail structures on the Property have been completed, with the exception of the façade renovations required for Buildings P, A, Q and C. Pursuant to this Amendment No. 2, the Parties desire to modify the dates by which the façade renovations for Buildings P, A, Q and C must be commenced and completed.

H. Pursuant to the Development Agreement, Owner is required to construct certain Phase 1 Public Improvements that include, in part, various pedestrian paseos and pathways on the Property. The pedestrian paseos and pathways required to be constructed are described in Sections 1.25 and 7.4 of the Development Agreement and described and depicted in Exhibit E to the Development Agreement, as amended pursuant to Exhibit C to Amendment No. 1. For reference, the approximate locations of such pedestrian paseos are also described and depicted on **Exhibit C** attached to this Amendment No. 2. Sections 5.4.1 and 5.4.3 of the Development Agreement and Section 4 of Amendment No. 1 govern the timing of Development of the Phase 1 Public Improvements, including the pedestrian paseos and pathways. Pursuant to this Amendment No. 2, the Parties desire to modify the timing of Development of certain of the pedestrian paseos and pathways (but not other Phase 1 Public Improvements) required to be constructed on the Property pursuant to the Development Agreement.

I. The property currently occupied by the Laguna Hills Mall (the "Five Lagunas Property") is situated adjacent to and immediately north of the Property. It is the Parties' mutual understanding that the owner of the Five Lagunas Property is contemplating a proposed redevelopment project on the Five Lagunas Property in the near future, which may include, in part, the proposed construction of two new buildings near the Property in the approximate locations identified as "Building A" and "Building B" on **Exhibit D** to this Amendment No. 2. The Parties do not anticipate that the proposed redevelopment of the Five Lagunas Property will be completed within five (5) years of the Development Agreement Date (i.e., December 28, 2017). The Parties acknowledge that it is in their mutual interest that the planning and construction of paseos and other improvements on the Property immediately adjacent to, and/or intended to connect with, the Five Lagunas Property be coordinated with the anticipated redevelopment of the Five Lagunas Property. Accordingly, pursuant to this Amendment No. 2, the Parties desire to provide a framework for the Development of such improvements in the event Five Lagunas Property is redeveloped as anticipated.

J. Pursuant to Section 5.4.2 of the Development Agreement, subject to all applicable Subsequent Development Approvals, in lieu of Development of either or both of the Deferred Retail Pads at the locations specified in the Phase 1 Project Approvals, Owner may proceed with Development or Redevelopment of an equivalent or greater amount of new retail space on the Property. Owner has advised City that, in lieu of Development of one of the Deferred Retail Pads, it is contemplating submitting an application for Subsequent Development Approvals for the development of two new retail structures at the locations depicted as Buildings "A1" and "A2" on **Exhibit E** to this Amendment No. 2. Pursuant to this Amendment No. 2, the Parties desire to set forth their mutual understanding regarding the Development of additional and relocated pedestrian paseos on the Property that may be required as a condition of City's approval of any such Subsequent Development Approvals.

K. Phase 2 includes, in part, the construction of additional new retail space on the Property. Section 5.4.4 of the Development Agreement sets forth certain rights and obligations of the Parties pertaining to the Development of Phase 2. Owner has advised City that, as part of Phase 2, it is contemplating the proposed development of two new retail structures to replace existing Buildings B and C at the approximate locations depicted as Buildings "B1" and "B2" on **Exhibit E** to this Amendment No. 2. Pursuant this Amendment No. 2, the Parties desire to set forth their mutual understanding regarding the Development of certain pedestrian paseos and lighting improvements that may be required as conditions of City's approval of Subsequent Development Approvals for Phase 2.

L. In accordance with Section 13 of the Development Agreement, Owner has proposed that the Development Agreement be further amended as provided herein.

M. On January 29, 2016, as required by Section 65867 of the Development Agreement Statute, the City caused public notice to be given of the City Council's intention to consider adoption of this Amendment No. 2.

N. On February 9, 2016 and March 8. 2016, as required by Section 65867 of the Development Agreement Statute, the City Council held a public hearing on this Amendment No. 2.

O. The City has determined that no further environmental review is required. This Amendment No. 2 will merely make minor modifications to the scope and timing of development of façade renovations and pedestrian, vehicular and landscaping improvements on the Property, and will not affect the size, scope, or timing of development of any structures on the Property. Accordingly, the City has determined that the Amendment No. 1 is within the scope of the Addendum adopted on November 27, 2012, and that none of the circumstances triggering further environmental review have occurred since the adoption of the Addendum: (i) there are no substantial changes in the Project requiring major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the Project is being undertaken which will require major revisions of the PEIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and (iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR or Addendum was adopted showing that: (a) the Project will have one or more significant effects not discussed in the PEIR or Addendum; (b) significant effects previously examined will be substantially more severe than shown in the PEIR or Addendum; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR or Addendum would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Section 21166 and CEQA Guidelines Sections 15162.)

P. The City Council hereby finds and determines that the Development Agreement, as modified pursuant to this Amendment No. 2: (i) is consistent with the objectives, policies, general land uses, and programs contained City's General Plan and Urban Village Specific Plan; (ii) is compatible with the uses authorized in the Village Commercial land use district; (iii) provides for the orderly development of the Property; and (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute.

Q. On March 22, 2016, the City Council adopted an Ordinance approving and authorizing the execution of this Amendment No. 2.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, and pursuant to the Development Agreement Ordinance, and pursuant to the mutual promises and covenants herein contained, the Parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Capitalized Terms. Unless otherwise specified herein, all capitalized terms in this Amendment No. 2 shall have the meaning(s) set forth for the same in the Development Agreement.

3. Amendment Pertaining to Phase 1 Façade Improvements For Buildings P, A, Q and C. The Parties hereby agree that, notwithstanding the deadlines set forth in Section 5.4.1 of the Development Agreement and Section 3 of Amendment No. 1, the following provisions shall apply to the façade renovations required to be made to existing Buildings P, A, Q and C on the Property in Phase 1:

A. Owner shall have obtained all applicable building, demolition, and similar permits for Development of the required façade renovations for each of Buildings P, A, Q, and C on or before August 31, 2016.

B. The design and construction of the façades of Buildings P, A and Q shall be reasonably consistent with the concept elevations depicted in **Exhibit F** attached to this Amendment No. 2, as determined by City in its reasonable discretion.

C. The design and construction of the façade of Building C shall be reasonably consistent with the concept elevations depicted in **Exhibit G** attached to this Amendment No. 2, as determined by City in its reasonable discretion.

D. Owner shall have completed Development of the required façade renovations for each Buildings P, A, Q, and C on or before December 31, 2016.

E. The Parties expressly acknowledge and agree that, pursuant to, as set forth in, and in accordance with, Section 5.4.1 of the Development Agreement, the City Council may unilaterally terminate the Development Agreement if, following notice and a public hearing in accordance with applicable law, the City Council finds that Owner has failed to commence or complete the required façade renovations for Buildings P, A, Q, and/or C in accordance with this Section 3 of Amendment No. 2.

4. Amendments Pertaining to Phase 1 Public Improvements.

A. North-South Pedestrian Paseo. Notwithstanding anything to the contrary in Sections 5.4.1 and 5.4.3 of the Development Agreement, the following provisions shall apply to Owner's construction of the improved north-south pedestrian paseo adjacent to Buildings P, A and Q:

(i) Owner's completion of the north-south pedestrian paseo shall not be a condition precedent to City's issuance of any residential certificates of occupancy for Phase 1.

(ii) Owner shall complete Development of the improved north-south pedestrian paseo on or before December 31, 2016. The design and construction of the improved north-south pedestrian paseo shall be reasonably consistent with the concept plans depicted in **Exhibit H**, as determined by the City's City Manager or designee, in his or her reasonable discretion.

B. Hillside Pedestrian Paseo. Notwithstanding anything to the contrary in Sections 5.4.1 and 5.4.3 of the Development Agreement, the following provisions shall apply to Owner's construction of the hillside pedestrian paseo connecting the north-south pedestrian paseo with the Five Lagunas Property:

(i) Owner shall complete Development of the hillside pedestrian paseo on or before (a) the date that is six (6) months after the date the City issues the first certificate of occupancy for a new building on the Five Lagunas Property in the approximate location identified as "Building B" on **Exhibit D** to this Amendment No. 2, or (b) December 28, 2023, whichever occurs first. If the City issues a certificate of occupancy for "Building B" on the Five Lagunas Property as contemplated in the preceding sentence, City agrees to notify Owner within ten (10) days of its issuance.

C. Improvements Along North Property Line Other than Hillside Pedestrian Paseo. Notwithstanding anything to the contrary in the Development Agreement, the following provisions shall apply to Owner's construction of improvements (other than the hillside paseo) along the north Property line adjacent to the Five Lagunas Property:

(i) Owner shall not construct the pedestrian trail along the north Property line. In lieu of construction of the pedestrian trail, subject to approval of required Subsequent Development Approvals by the City, Owner shall, instead, plan and construct new, enhanced landscape improvements and vehicular and pedestrian connections at the north Property line, which create coordinated and compatible linkages at the north Property boundary line between the Property and the Five Lagunas Property. Owner agrees to cooperate with, and use commercially reasonable efforts to coordinate with, the owner of the Five Lagunas Property in the planning and construction of said improvements.

(ii) Owner shall submit a complete application for all Subsequent Development Approvals required to construct the new improvements along the north Property line described in subsection 4.C(i), above, on or before (a) the date that is 180 days after the date on which the City approves entitlements for redevelopment of the Five Lagunas Property that includes proposed construction of a new building near the Property in the approximate location identified as "Building A" on **Exhibit D** to this Amendment No. 2, or (b) March 1, 2017, whichever occurs last. This date may be extended up to an additional 90 days at the discretion of the City Manager of the City. If the City approves entitlements for a redevelopment of the Five Lagunas Property that includes proposed construction of a "Building A" on the Five Lagunas Property as contemplated in this subsection, City agrees to notify Owner within ten (10) days of its approval.

(iii) Provided the City approves all Subsequent Development Approvals required to construct the new improvements along the north Property line described in subsection C(i), above, Owner shall complete construction of said improvements on or before (a) the date that is six (6) months after the date the City issues the first certificate of occupancy for a new building on the Five Lagunas Property in the approximate location identified as "Building A" on **Exhibit D** to this Amendment No. 2, or (b) December 28, 2023, whichever occurs first. If the City issues a certificate of occupancy for "Building A" on the Five Lagunas Property as contemplated in the preceding sentence, City agrees to notify Owner within ten (10) days of its issuance.

D. <u>Parking Lot Paseo #2</u>. Notwithstanding anything to the contrary in Sections 5.4.1 and 5.4.3 of the Development Agreement, the following provisions shall apply to Owner's construction of the parking lot paseo identified as "Parking Lot Paseo #2" on **Exhibit C** to this Amendment No. 2:

(i) Owner's completion of Parking Lot Paseo #2 shall not be a condition precedent to City's issuance of any residential certificates of occupancy for Phase 1.

(ii) Except as otherwise provided in Section 5 below, Owner shall complete Development of Parking Lot Paseo #2 at the location depicted on **Exhibit C** to this Amendment No. 2 on or before December 28, 2018.

E. The Parties expressly acknowledge and agree that, pursuant to, as set forth in, and in accordance with, Section 5.4.1 of the Development Agreement, the City Council may unilaterally terminate the Development Agreement if, following notice and a public hearing in accordance with applicable law, the City Council finds that Owner has failed to commence or complete the required Phase 1 Improvements in accordance with this Section 4 of Amendment No. 2.

F. Owner acknowledges and agrees that the north-south pedestrian paseo described in subsections 4.A, the hillside pedestrian paseo described in subsection 4.B, the vehicular, pedestrian and landscaping improvements described in subsection 4.C, and the parking lot paseo described in subsection 4.D shall, upon completion, constitute "Public Improvements" within the meaning of Section 1 of that certain Covenant and Agreement executed on or about February 3, 2016 by Laguna Hills Investment Company, L.P. in favor of the City, which was recorded in the Official Records, Orange County Clerk-Recorder's Office on February 8, 2016, as Document No. 2016000053060 (the "Covenant and Agreement").

5. Amendment Pertaining to Owner's Construction of Additional Retail Space in Lieu of Deferred Retail Pads. If, in lieu of Development of one of the Deferred Retail Pads as a stand-alone building, Owner applies for, and City approves, Subsequent Development Approvals for the development of the two new retail structures at the approximate locations depicted as Buildings "A1" and "A2" on **Exhibit E** to this Amendment No. 2, the following provisions shall apply:

A. Owner shall apply simultaneously for all Subsequent Development Approvals required for Development of new retail structures at the approximate locations depicted as Buildings "A1" and "A2" on **Exhibit E** to this Amendment No. 2.

B. Relocated Parking Lot Paseo #2. In lieu of constructing Parking Lot Paseo #2 at the location depicted on **Exhibit C** to this Amendment No. 2, Owner shall, instead, construct a parking lot paseo at the approximate location identified as "Parking Lot Paseo #2" on **Exhibit E** to this Amendment No. 2, which results in a direct connection between the retail structures identified on **Exhibit E** as Buildings "H" and "A2." Such relocated Parking Lot Paseo #2 shall conform to the requirements and development standards for parking lot paseos set forth in the Specific Plan (including, without limitation, those depicted in Figure 18 of the Specific Plan). Owner shall have completed construction of such relocated Parking Lot Paseo #2 prior to issuance of a certificate of occupancy for any portion of Building "A2," and City shall not be obligated to issue a certificate of occupancy for any portion of Building "A2" if Owner has not completed construction of relocated Parking Lot Paseo #2. Owner understands and agrees that its Development of the relocated Parking Lot Paseo #2 in accordance with this paragraph will be a condition of City's approval of any Subsequent Development Approvals for the Development of Buildings "A1" and/or "A2" and hereby waives any and all rights Owner may have to challenge such a condition of approval.

C. New East-West Pedestrian Paseo 2A. Owner shall construct a new east-west pedestrian paseo that is situated immediately south of new Buildings "A1" and "A2" at the approximate location depicted on **Exhibit E** to this Amendment No. 2 as "Paseo 2A" and that connects with relocated Parking Lot Paseo #2. Such new East-West Pedestrian Paseo 2A shall conform to the requirements and development standards for pedestrian paseos set forth in the Specific Plan (including, without limitation, those depicted in Figure 17 of the Specific Plan). Owner shall have completed construction of such new East-West Pedestrian Paseo 2A prior to issuance of a certificate of occupancy for any portion of either of Buildings "A1" or "A2," and City shall not be obligated to issue a certificate of occupancy for any portion of either of Buildings "A1" or "A2" if Owner has not completed construction of such new East-West Pedestrian Paseo 2A. Owner understands and agrees that Owner's Development of the new East-West Pedestrian Paseo 2A in accordance with this paragraph will be a condition of City's approval of any Subsequent Development Approvals for the Development of Buildings "A1" and/or "A2" and hereby waives any and all rights Owner may have to challenge such a condition of approval.

D. Owner acknowledges and agrees that the relocated Parking Lot Paseo #2 described in subsection 5.B and new east-west pedestrian paseo described in subsection 5.C, if constructed, shall, upon completion, constitute "Public Improvements" within the meaning of Section 1 of the Covenant and Agreement.

6. Amendments Pertaining to Phase 2.

A. Reconstructed North-South Pedestrian Paseo. Owner understands and agrees that, in the event Owner proceeds with Development of Phase 2, as a condition of City's approval of the Phase 2 Project Approvals, City may require Owner to demolish the existing north-south pedestrian paseo constructed and improved pursuant to subsection 4.A, above, and to construct a new north-south pedestrian paseo conforming to the requirements and development standards for pedestrian paseos set forth in the Specific Plan (including, without limitation, those depicted in Figure 17 of the Specific Plan). Owner hereby waives any and all rights Owner may have to challenge such a condition of approval. In the event Owner does not proceed with Phase 2, the existing north-south pedestrian paseo constructed and improved pursuant to subsection 4.A. shall not be required to be modified or demolished and rebuilt as described in this Subsection 6.A.

B. New East-West Pedestrian Paseo 2B. Owner understands and agrees that, in the event Owner proceeds with Development of Phase 2 and proposes as a part thereof the development of a retail structure or structures at the approximate locations depicted as Buildings "B1" and "B2" on **Exhibit E** to this Amendment No. 2, as a condition of City's approval of the Phase 2 Project Approvals, City may require Owner to construct a new east-west pedestrian paseo that is situated immediately south of such retail structures at the approximate location depicted on **Exhibit E** to this Amendment No. 2 as "Paseo 2B" and that forms a connection between the north-south pedestrian paseo and the new East-West Pedestrian Paseo 2A (if it is constructed). The approximate location of this new east-west pedestrian paseo is depicted on **Exhibit E** to this Amendment No. 2 as "Paseo 2B." Such new East-West Pedestrian Paseo 2B shall conform to the requirements and development standards for pedestrian paseos set forth in the Specific Plan (including, without limitation, those depicted in Figure 17 of the Specific Plan) and shall be completed prior to the issuance of certificates of occupancy for any new retail structures at the approximate locations depicted as Buildings "B1" and "B2" on **Exhibit E** to this Amendment No. 2. Owner understands and agrees that its Development of the new East-West Pedestrian Paseo B2 in accordance with this paragraph will be a condition of City's approval of any Phase 2 Project Approvals and hereby waives any and all rights Owner may have to challenge such a condition of approval.

C. New Light Poles. Owner understands and agrees that, in the event Owner proceeds with Development of Phase 2, as a condition of City's approval of the Phase 2 Project Approvals, Owner will be required to replace all existing light poles located on that portion of the Property described in **Exhibit A-1** to this Amendment No. 2, which have not previously been replaced during the term of the Development Agreement, with new light poles of a type and design approved by the City.

D. Owner acknowledges and agrees that the relocated north-south pedestrian paseo described in subsection 6.A, new east-west pedestrian paseo B2 described in subsection 6.B, and the new light poles described in subsection 6.C., if constructed, shall, upon completion, constitute "Public Improvements" within the meaning of Section 1 of the Covenant and Agreement.

7. Amendment Pertaining to Drive-Thru Restaurant Uses. No drive-thru restaurants shall be constructed on the Property during the term of the Development Agreement.

8. Allocation of Owner's Obligations. With respect to the obligations under this Amendment No. 2 for Owner to install or renovate improvements on the Property, each such obligation to install or renovate an improvement shall be the sole obligation of the party that owns that portion of the Property upon which such improvement is or will be located.

9. Full Force and Effect. This modifying Amendment No. 2 is supplemental to the Development Agreement and is by reference made a part of said Development Agreement. All of the terms, conditions, and provisions, thereof, unless specifically modified herein, shall continue in full force and effect. In the event of any conflict or inconsistency between the provisions of this Amendment No. 2 and any provisions of the Agreement, the provision of this Amendment No. 2 shall in all respects govern and control.

10. Binding Effect. This Amendment No. 2 shall be binding on the parties hereto and their respective successors and assigns.

11. Authority to Execute. The person(s) executing this Amendment No. 2 on behalf of Owners represent and warrant that he/she/they has/have the authority to execute this Amendment No. 2 on behalf of his/her/their corporate entity/partnership and represent(s) and warrant(s) that he/she/they has/have the authority to bind Owners to the performance of Owners' obligations hereunder.

12. Counterparts. This Amendment No. 2 may be executed in one or more counterparts, all counterparts shall be valid and binding on the party executing them, and all counterparts shall together constitute one and the same document for all purposes.

13. Recording. The City Clerk shall cause a copy of this Amendment No. 2 to be executed by City and recorded in the Official Records of Orange County no later than ten (10) days after the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Owners have executed this Amendment No. 2 as of the date and year first above written.

"CITY"

CITY OF LAGUNA HILLS, a California municipal corporation

By: ______________________________
Bruce E. Channing
City Manager

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

"OWNERS"

LAGUNA HILLS INVESTMENT COMPANY, a Delaware limited partnership

By: FRITZ DUDA COMPANY, a Texas Corporation

Its General Partner

By: ______________________________
Fritz L. Duda
President

By: ______________________________
Name:____________________________
Title:_____________________________

OAKBROOK URBAN VILLAGE I, LLC,
a Delaware limited liability company

By: Shea Properties Management Company, Inc., a Delaware corporation,
Its Development Manager

By: ______________________________
Name:____________________________
Title:_____________________________

By: ______________________________
Name:____________________________
Title:_____________________________

All signatures to be acknowledged by a Public Notary

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On ____________________, before me, ____________________________, a Notary Public, personally appeared _______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public	

EXHIBIT A-1

PROPERTY DESCRIPTION
LAGUNA HILLS INVESTMENT COMPANY PROPERTY

That certain real property in Laguna Hills, California described as follows:

LOT 4 DEPICTED ON EXHIBIT B OF CITY OF LAGUNA HILLS LOT LINE ADJUSTMENT APPLICATION LLA 2013-01, RECORDED ON APRIL 24, 2014, AS INSTRUMENT NO. 2014000156992 IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, AND DESCRIBED AS LOT 4 ON CERTIFICATE OF COMPLAINCE LLA-2013-01 RECORDED ON APRIL 24, 2014, AS INSTRUMENT NO. 2014000156993 IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH PARCELS 5-15 AS SHOWN ON PARCEL MAP 80-120 FILED IN BOOK 187, PAGES 42-44 OF PARCEL MAPS IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT A-2

PROPERTY DESCRIPTION
OAKBROOK URBAN VILLAGE I, LLCPROPERTY

That certain real property in Laguna Hills, California described as follows:

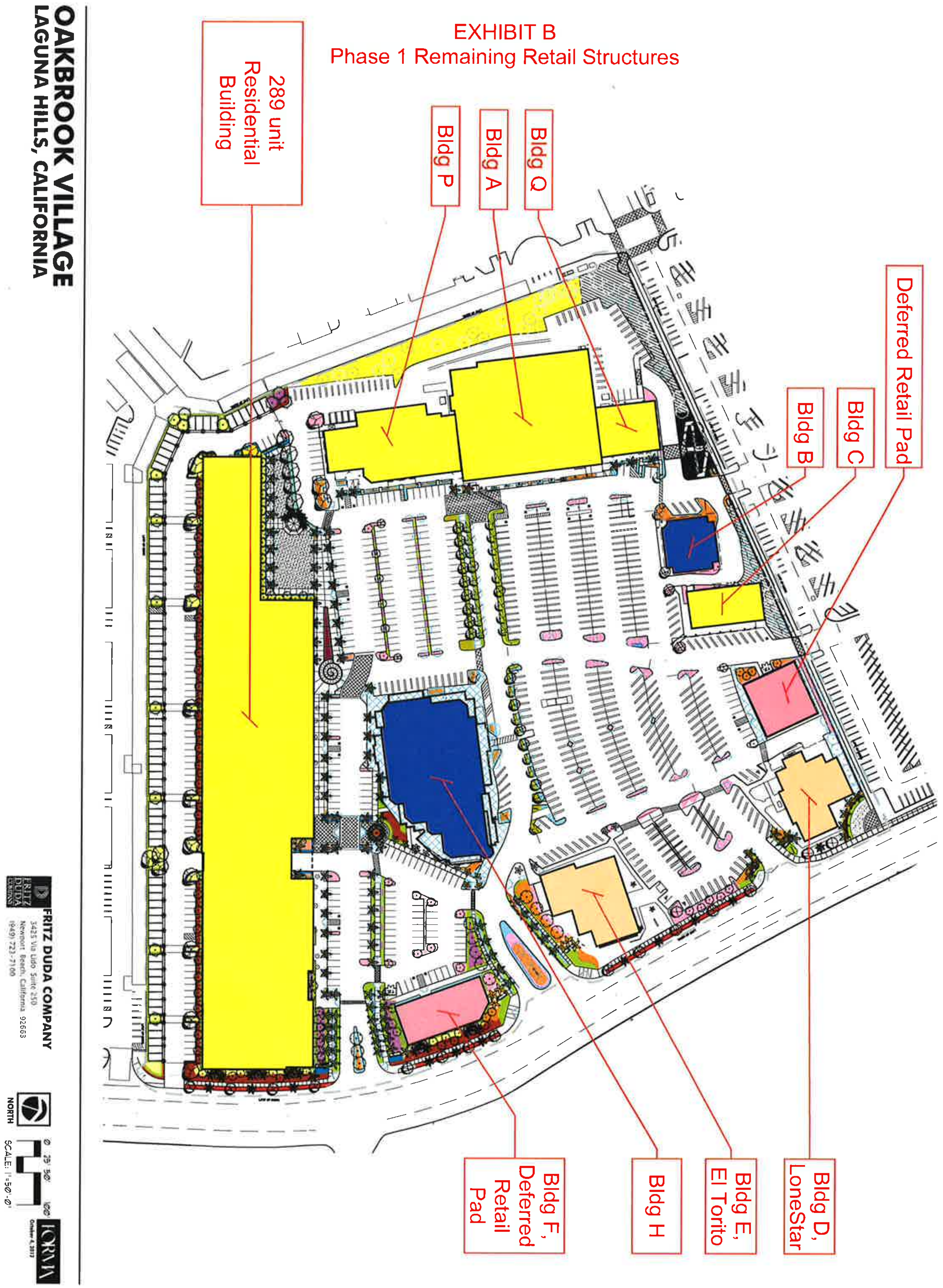
LOT 1 OF TRACT 17460 IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORED IN BOOK 951, PAGES 44 THROUGH 48, INCLUSIVE, OF MISCELLANEOUS MAPS, IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH LOTS 1 AND 2 DEPICTED ON EXHIBIT B OF CITY OF LAGUNA HILLS LOT LINE ADJUSTMENT APPLICATION LLA 2013-01, RECORDED ON APRIL 24, 2014, AS INSTRUMENT NO. 2014000156992 IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, AND DESCRIBED AS LOTS 1 AND 2 ON CERTIFICATE OF COMPLAINCE LLA-2013-01 RECORDED ON APRIL 24, 2014, AS INSTRUMENT NO. 2014000156993 IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

[NOTE: EXHIBITS A-1 AND A-2 MAY BE REVISED AND REPLACED ADMINISTRATIVELY BY THE PARTIES, AS NEEDED, TO REFLECT ANY NECESSARY CHANGES TO CURRENT THE LEGAL DESCRIPTION OF THE PROPERTY OCCURING PRIOR TO THE EFFECTIVE DATE.]

EXHIBIT B

PHASE 1 REMAINING RETAIL STRUCTURES

EXHIBIT B
Phase 1 Remaining Retail Structures



3/22/2016 ITEM NO. 3.7

EXHIBIT C

PEDESTRIAN PASEOS DEPICTION

EXHIBIT C

3/22/2016 ITEM NO. 3.7

EXHIBIT D

DEPICTION OF PROPOSED NEW BUILDINGS ON FIVE LAGUNAS PROPERTY

Exhibit D— Proposed New Buildings on Five Lagunas Property

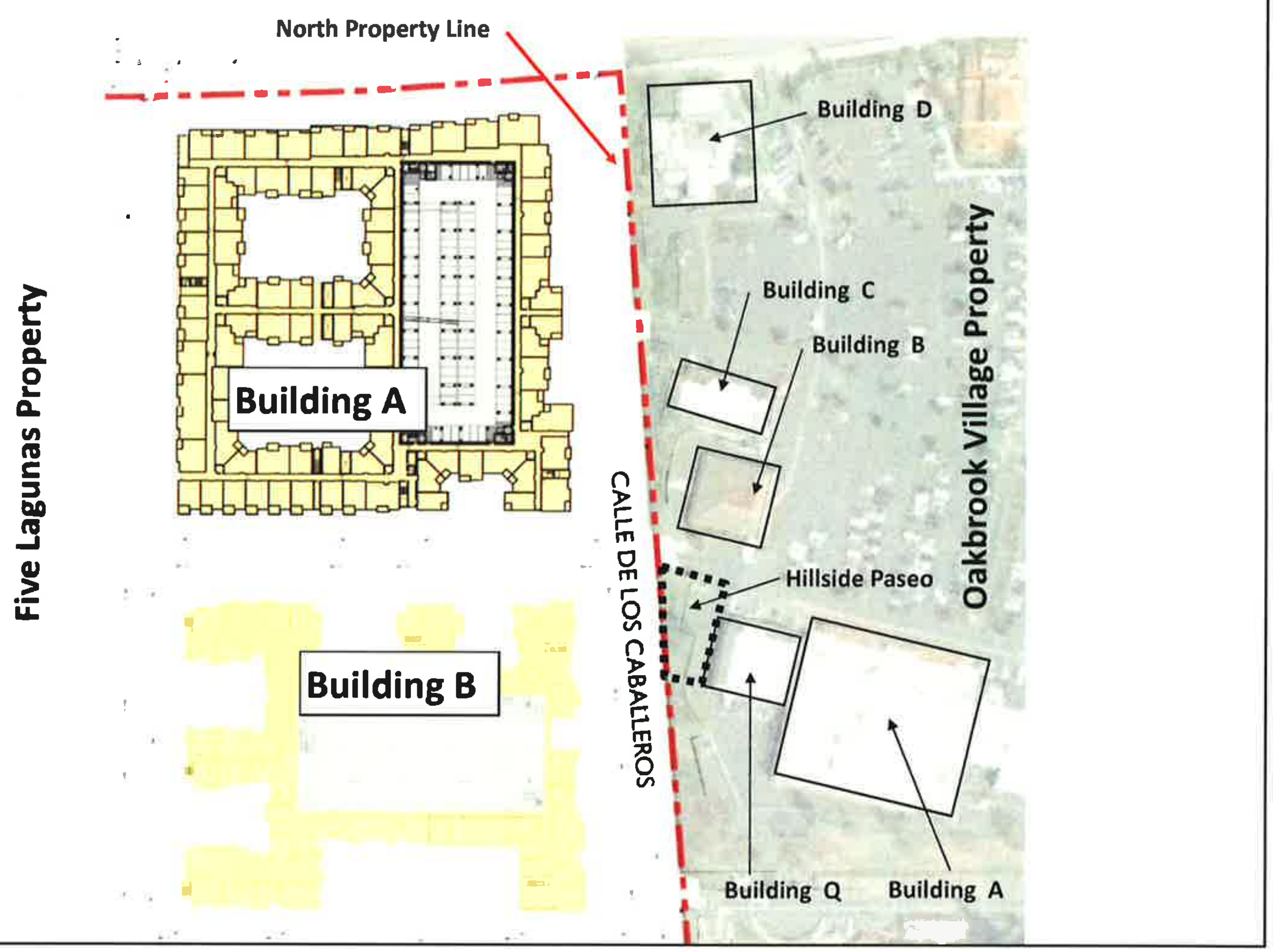
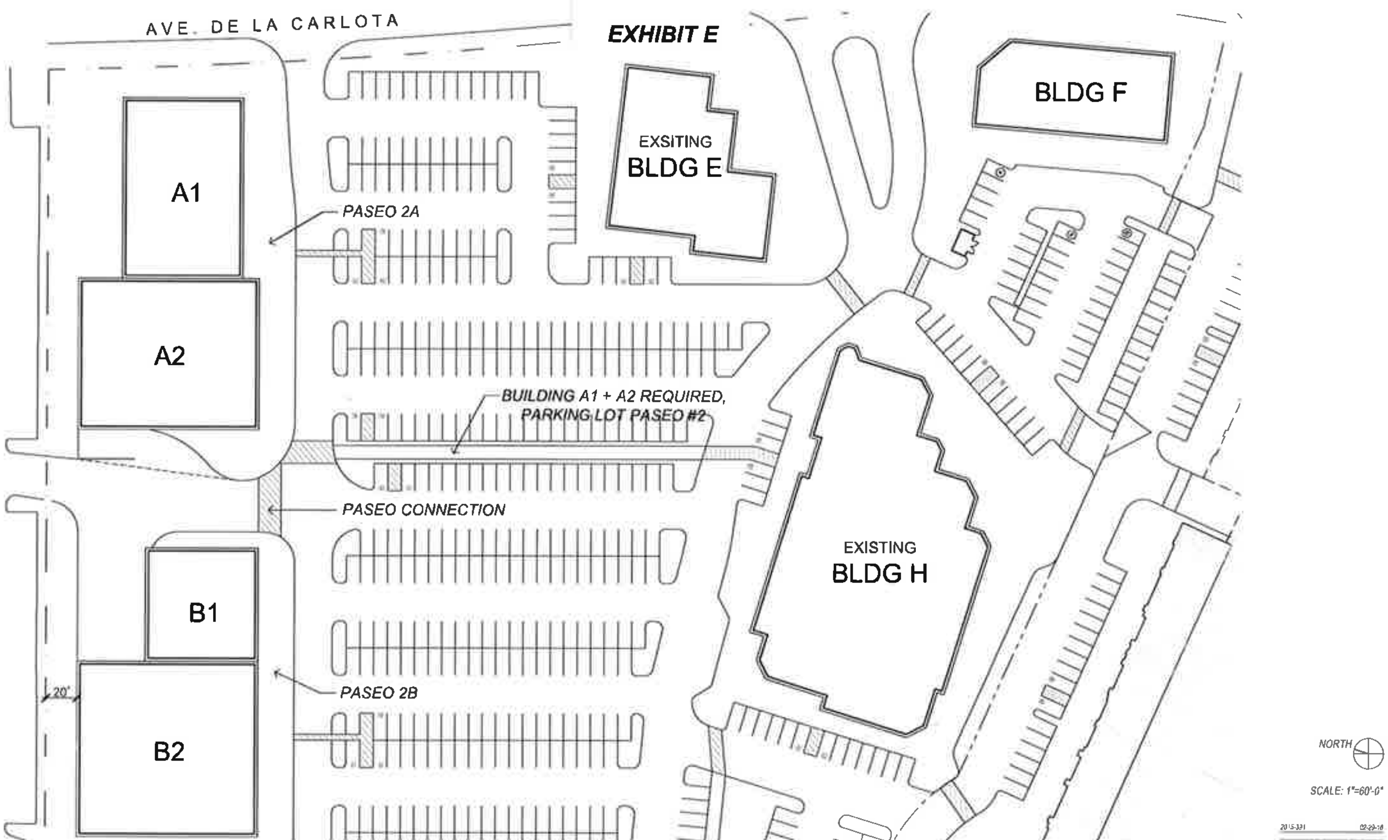


EXHIBIT E

POTENTIAL NEW ADDITIONAL RETAIL STRUCTURES AND PASEOS DEPICTION



OAKBROOK VILLAGE LAGUNA HILLS, CA

PARTIAL SITE PLAN

FRITZ DUDA CO.

ARCHITECTS ORANGE

144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92866 (714) 639-9860

<u>EXHIBIT F</u>

CONCEPT ELEVATIONS FOR BUILDINGS P, A AND Q

EXHIBIT F

SOUTH ELEVATION BLDG. P
SCALE 1/32"=1'-0"

NORTH ELEVATION BLDG. Q
SCALE 1/32"=1'-0"

EAST ELEVATION
SCALE 1/32"=1'-0"

OAKBROOK VILLAGE LAGUNA HILLS, CA

FRITZ DUDA CO.

BLDGS. P, A & Q - CONCEPT ELEVATIONS

ARCHITECTS ORANGE

EXHIBIT G

CONCEPT ELEVATIONS FOR BUILDING C

EXHIBIT G

SOUTH ELEVATION BLDG. C
SCALE 1/16"=1'-0"

EAST ELEVATION BLDG. C
SCALE 1/16"=1'-0"

OAKBROOK VILLAGE LAGUNA HILLS, CA

BLDG. C - CONCEPT ELEVATIONS

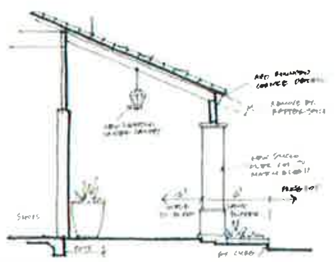
FRITZ DUDA CO.

ARCHITECTS ORANGE

EXHIBIT H

CONCEPT PLANS FOR NORTH-SOUTH PEDESTRIAN PASEO

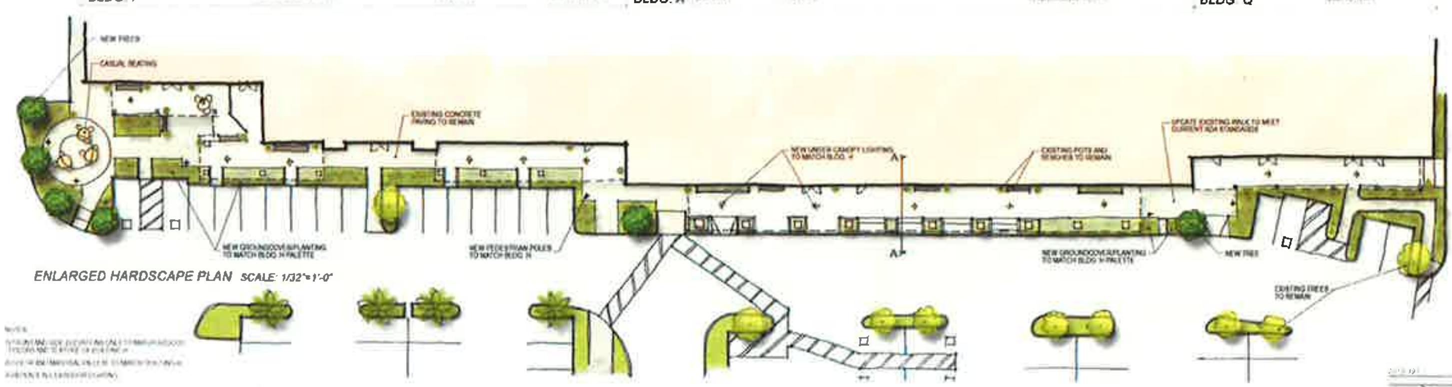
EXHIBIT H



SECTION A-A SCALE 1/8"=1'-0"

BUILDING H PLANT PALETTE

EAST ELEVATION SCALE 1/32"=1'-0"



ENLARGED HARDSCAPE PLAN SCALE: 1/32"=1'-0"

OAKBROOK VILLAGE LAGUNA HILLS, CA

FRITZ DUDA CO.

BLDGS. P, A & Q - CONCEPT HARDSCAPE

ARCHITECTS ORANGE

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: MELISSA AU-YEUNG
ASSISTANT TO THE CITY MANAGER

ISSUE: SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING AND RESTATING CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES."

SUMMARY:

As part of the 2009-2011 Biennial Budget work programs, the City Council adopted an Ordinance amending and restating Chapter 3-08 of the Laguna Hills Municipal Code in February 2011, which was a complete overhaul of the City's purchasing policies and procedures. This Ordinance is now five years old and minor adjustments are necessary to ensure that the code requirements properly address its practical application in the procurement process. The proposed Ordinance will amend the City's purchasing Ordinance and allow for minor adjustments to Chapter 3-08, with the intent of clarifying, consolidating, correcting, and further streamlining the procurement process.

A copy of the proposed Ordinance and the staff report for the introduction of the Ordinance, including attachments, are included as attachments to this report. The City Council introduced the Ordinance by a vote of 5-0. It is in order to adopt the Ordinance.

ATTACHMENTS:

- Proposed Ordinance
- March 8, 2016 Introduction of Ordinance Staff Report and Attachments

ORDINANCE NO. 2016-3

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES

WHEREAS, the City's Purchasing System, set forth in Chapter 3-08 of the Laguna Hills Municipal Code, establishes regulations concerning the process and procedures for the purchase of materials, supplies, and equipment; and,

WHEREAS, Section 2-08.160 of the Laguna Hills Municipal Code delegates the authority to contract on behalf of the City for materials, supplies, equipment, and services (excluding construction services) up to and including fifty thousand dollars to the City Manager; and,

WHEREAS, State law requires general law cities to adopt policies and procedures for the acquisition of supplies and equipment, and it is considered a best practice to require competitive bids for goods and supplies, equipment, materials, and non-professional services contracts in excess of certain designated dollar amounts; and,

WHEREAS, pursuant to Government Code sections 54202 and 54203 (contracting for supplies and equipment) and Government Code section 4526 (contracting with private architects, engineering, land surveying, and construction management firms), the City now desires to update and consolidate its regulations, policies, and procedures concerning the procurement of goods and supplies, equipment, materials, and services on behalf of the City through the adoption of an amended and restated purchasing ordinance.

THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3-08 of the Laguna Hills Municipal Code, entitled "Purchasing," is hereby amended and restated in its entirety to read as follows:

Chapter 3-08
PURCHASING

Sections:

3-08.010 Adoption of purchasing system.

This purchasing system is adopted in order to:

A. Establish efficient regulations, policies, and procedures for the purchase of goods and supplies, equipment, materials, and services;

B. Secure on behalf of the city goods and supplies, equipment, materials, and services at the lowest possible cost commensurate with quality needed;

C. Exercise positive financial control over purchases;

D. Clearly define authority for the purchasing function;

E. Assure the quality, suitability, and fitness of purchases;

F. Ensure that the city obtains the highest quality of supplies and equipment and level of service at a fair and reasonable cost.

3-08.020 Scope of purchasing policies and procedures; authority and responsibility

Except as otherwise provided herein, the procurement regulations, policies, and procedures set forth in this chapter shall apply only to the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services, and shall not apply to public works construction projects. Procedures and processes for the procurement of public works construction contracts are subject to the California Public Contract Code. The authority and responsibility for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services is vested in the City Manager and City Council. The Purchasing Officer shall be the City Manager or the City Manager's designee. The Purchasing Officer may promulgate additional administrative rules, procedures and orders necessary to implement the policies and procedures established by this chapter with regard to the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services on behalf of the City. Each City department head is responsible for administering and implementing for that department the purchasing policies and procedures set forth in this chapter.

3-08.030 Definitions.

As used in this chapter, the following terms shall have the meanings indicated, which are applicable to both the singular and plural thereof:

"City department head" means the person who is designated by the City Manager as being responsible for each particular city department, including, but not limited to, Administration, Community Development, City Attorney, City Clerk, Community Services, Finance, Police Services, and Public Services, Public Works, and City Engineering.

"Estimated value" means the estimated total value as determined by the Purchasing Officer at the beginning of the procurement process for the proposed acquisition of goods and supplies, equipment, materials, and nonprofessional services. When making this initial threshold determination, the Purchasing Officer shall make reasonable use of all available market data and pricing information to estimate the total cost to the city, inclusive of taxes, licenses, freight charges, installation charges, fees, and other consideration, for the proposed procurement. The Purchasing Officer shall not use the value of any anticipated exchange or trade-in amount to reduce the estimated value of the proposed procurement.

"Goods and supplies, equipment, and materials" means fixed, movable, disposable, and/or reusable products, commodities, or items used by the city, including but not limited to office supplies, program supplies, subscriptions, vehicles, fuel and vehicle supplies, tools, computers, computer hardware and software, computer-related equipment and copiers, office furniture, and fixtures.

"Nonprofessional services" means those services not constituting professional services or public works projects.

"Professional services" means those services provided by any specially trained and experienced person, company, corporation, or firm in areas including but not limited to private architectural, landscape architectural, engineering, environmental, land surveying, construction project management, management and administration, financial, accounting, auditing, actuarial, economic and/or development and planning, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise, training, or unique skills gained by formal studies or experience.

3-08.040 Purchasing Officer.

There is hereby created the position of Purchasing Officer. The Purchasing Officer shall be responsible for, and have general supervision of, the following purchasing functions as implemented by various departments throughout the city pursuant to this chapter and any implementing administrative orders established by the Purchasing Officer. The Purchasing Officer shall be the City Manager or the City Manager's designee. Pursuant to the regulations, policies, and procedures established in this chapter, the Purchasing Officer shall have the authority to:

A. Purchase or contract for goods and supplies, equipment, materials, and professional and nonprofessional services;

B. Negotiate, approve, and execute, as well as recommend approval and execution of, orders and contracts for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services;

C. Act to procure on behalf of the city the needed quality in goods and supplies, equipment, materials, and services at the least expense to the city;

D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;

E. Prepare administrative rules, procedures, and orders necessary to implement the policies and procedures established by this chapter with regard to the purchase of goods and supplies, equipment, materials, and services on behalf of the city;

F. Keep informed of current developments in the field of municipal purchasing, pricing, market conditions, new technologies, and new products and services;

G. Prescribe and maintain such forms and other rules and regulations as reasonably necessary for the proper implementation of the policies and procedures established in this chapter;

H. Coordinate the inspection of all goods and supplies, equipment, materials, and services purchased on behalf of the city to ensure conformance with specifications;

I. Recommend the transfer of underutilized, surplus, or unused goods and supplies, equipment, and materials between departments as needed and the sale of such goods and supplies, equipment, and materials which cannot reasonably be used by any department or which become unsuitable or obsolete for city use;

J. Maintain and update periodically a vendor master file or list necessary for the efficient operation of purchasing functions;

K. Consider and encourage the purchase of recycled and recyclable materials and environmentally friendly products, whenever practicable and cost effective or efficient; and

L. Except as otherwise required by law, where other factors are equal, consider the procurement of goods and supplies, equipment, and materials from businesses located within the city.

3-08.050 Inspection and testing.

The Purchasing Officer or requesting department shall inspect goods and supplies, equipment, and materials delivered, as well as contract services performed, to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer or requesting department shall have the right to waive any defect, irregularity, or informality. The Purchasing Officer or requesting department shall have the authority to require demonstrative testing of samples submitted with bids and samples of deliverables which are necessary to determine their quality, fitness for a particular use, and conformance with specifications.

3-08.060 Appropriation of purchasing funds.

The City Council is responsible for and shall appropriate such funds as are necessary to carry out the provisions of this chapter. Except in cases of emergency, or as otherwise provided in this chapter, the City Manager shall not issue any purchase order or contract for goods and supplies, equipment, materials or services unless there exists an unencumbered appropriation in adopted budget against which such purchase may be charged. The City Manager has the authority to transfer unencumbered funds between and among City departments as necessary for the procurement of goods and supplies, equipment, materials, and services as necessary to implement the provisions of this chapter.

3-08.070 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Up to and including twenty-five thousand dollars ($25,000.00) – Open market.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of up to and including twenty-five thousand dollars ($25,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, may be made by the Purchasing Officer in the open market without observing the procedures set forth in Section 3-08.080 and Section 3-08.090. At least three informal quotes should be obtained, when practicable.

3-08.080 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Greater than twenty-five thousand dollars (>$25,000.00) up to and including fifty thousand dollars ($50,000.00) – Informal procedures.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of greater than twenty-five thousand dollars (>$25,000.00) up to and including fifty thousand dollars ($50,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the informal procedures set forth in this section.

A. The requesting department shall solicit informal proposals by telephone or written request to prospective vendors.

B. Except as otherwise provided in this chapter, purchases shall be based on at least three informal proposals.

C. Informal proposals shall be submitted by prospective vendors to the requesting department. The City Clerk shall retain a record of all informal proposals for a period of two years following completion of the informal procedures established in this section, which shall be made available for public review and inspection upon request.

D. The order or contract shall be awarded by the Purchasing Officer to the lowest proposer consistent with the best qualified vendor selection criteria set forth in Section 3-08.100.

3-08.090 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Greater than fifty thousand dollars ($50,000.00) – Formal procedures.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of greater than fifty thousand dollars ($50,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the formal procedures set forth in this section.

A. Notice Inviting Bids. Notices inviting formal bids or proposals from prospective vendors shall be publicly noticed no later than ten calendar days before the submission date for formal bids. The notices shall describe the requested goods or supplies, equipment, materials, or nonprofessional services in general terms, how to obtain more detailed information concerning the procurement, and state the time, place, and deadline for submission of sealed bids or proposals.

B. Public Notice. The notice inviting formal bids or proposals shall be publicly noticed in any generally accepted manner, which includes on the city's official website. In addition, such notice may also include trade publications when practicable.

C. Bid Opening Procedure. Sealed bids or proposals shall be submitted to the office of the City Clerk or requesting city department and shall be identified as formal competitive bids or proposals on the outside of the sealed envelope. The City Clerk or requesting city department head shall store all sealed bids in a secure location until opening. The City Clerk or requesting city department head shall open all bids or proposals in public at the time and place stated in the notice inviting bids. A tabulation of all bids or proposals received shall be open for public review and inspection in the office of the City Clerk or requesting city department during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

D. Rejection of Bids. The City Council or the Purchasing Officer shall have the discretion to reject any and all bids or proposals for any reason or for no reason, and may suspend, delay, or otherwise cancel the procurement, or may order the re-advertisement of the request for bids. If all formal bids or proposals are rejected and the City Council resolves by a recorded majority vote of the total membership of the City Council that the procurement can be performed more economically by force account, by informal procedures, or through open market purchases, then it may dispense with further formal competitive public bidding.

E. Tie Bids. If two or more formal bids or proposals received are the same and are the lowest, the City Council may accept the one it chooses.

F. Award of Contracts. Contracts or purchase orders shall be awarded by the City Council to the lowest bidder or proposer consistent with the best qualified vendor selection criteria set forth in Section 3-08.100, except as otherwise provided herein. The decision of the City Council shall be final. The City Council may authorize that such purchase orders or contracts be executed by either the Mayor or the City Manager, or the City Council may otherwise delegate such signature authority.

G. No Bids Received. If no bids or proposals are received, the purchase may be let in the open market or by the informal procedures set forth in Section 3-08.080, subject to City Council approval.

H. Performance Bonds. The Purchasing Officer shall have authority to recommend that a performance bond or other form of security or guarantee be required before entering into a contract in such amount as may be reasonably necessary to protect the best interests of the city. If a performance bond or other form of security or guarantee is required, the form and amount of the bond, security or guarantee shall be described in the notice inviting bids, and the performance bond, security or guarantee shall be in a form approved by the City Attorney.

I. Defects, Irregularities, and Informalities. The City Council may, in its sole discretion, waive any defect, irregularity, or informality in the formal bids or proposals or in the competitive procedures established in this section, and no such defect, irregularity, or informality shall void any contract entered into by the city.

3-08.100 Best qualified vendor.

In determining the best qualified vendor, consideration is to be given to price, quality, and performance of the goods and supplies, equipment, or materials to be purchased or nonprofessional services to be provided by the vendor. Criteria for determining the best qualified vendor shall include but not be limited to the following:

A. The cost and quality of the goods and supplies, equipment, materials, or nonprofessional services;

B. The ability, capacity, and skill of the vendor to perform the contract and to provide the goods and supplies, equipment, materials, or nonprofessional services requested;

C. The ability of the vendor to provide the goods and supplies, equipment, materials, or nonprofessional services requested promptly or within the time specified, without delay, interference, or service interruption;

D. The ability of the vendor to demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform;

E. The character, integrity, reputation, judgment, references, experience, and efficiency of the vendor;

F. The quality of vendor's performance history and record on previous purchases or contracts with the city;

G. The ability of the vendor to provide future maintenance, repair parts, and services for the use of the goods and supplies, equipment, or materials purchased; and,

H. The ability of the vendor to demonstrate its prior, current, and continued compliance during the contract term with all applicable federal, state, and local laws, statutes, ordinances and all lawful orders, rules, and regulations promulgated thereunder.

3-08.110 Exceptions to purchasing requirements.

The procurement policies and procedures set forth in 3-08.070, 3-08.080, 3-08.090 and 3-08.150 need not be followed, may be dispensed with, and are not applicable, irrespective of their estimated value, when the City Council or Purchasing Officer find and determine that the following situations, purchases, procurements or contracts apply, but are otherwise subject to the purchasing limitations set forth in this code:

A. When goods and supplies, equipment, materials, or contract services are of a unique, sole source nature because of their quality, durability, availability, or fitness for a particular use and are available only from one source. A sole source procurement is a procurement where only one source is practicably available for the type of procurement required;

B. When the goods and supplies, equipment, materials, or nonprofessional services are proprietary. A proprietary procurement is a procurement where the desired good or service must be restricted to one manufacturer because the good or service is compatible with or is an integral component of existing equipment or products, is necessary to support a specific need of a program, is covered by patent or copyright, must yield absolute continuity of results, or is one with which a user has extensive experience and the use of any other similar good or service would require considerable reorientation and training. Under such circumstances, an equitable evaluation of comparable goods or services should be made showing that rejection of other goods or services is based solely on their failure to meet that need;

C. When after a reasonable attempt has been made to obtain informal bids or proposals, and it has been determined by the Purchasing Officer that three bids or proposals cannot be obtained;

D. When emergency conditions require the immediate purchase of goods and supplies, equipment, materials, or services. For purposes of this section, emergency purchases are those procurements that are required to prevent immediate interruption or cessation of necessary city services or to safeguard life, property, or the public health and welfare. The Purchasing Officer shall file promptly with the City Council a report showing such conditions and the necessity for such action, together with an itemized account of all expenditures;

E. When formal bidding is not likely to result in the lowest price. However, under such circumstances compliance with the informal procedures set forth in Section 3-08.080 should be considered;

F. When a specific make, model, or brand is necessary to match existing city equipment or to facilitate the continuity of effective maintenance and support;

G. When the goods and supplies, equipment, materials, or nonprofessional services are available from a vendor who has been selected as the lowest bidder through a procurement with another local public agency or government entity using competitive bidding procedures substantially the same as or similar to those normally utilized by the city for the acquisition of such goods and supplies, equipment, materials, or services, and when the price offered to the city is substantially equivalent to that offered to the other public agency or government entity;

H. When the goods and supplies, equipment, materials, or nonprofessional services are available from suppliers who have been awarded contracts by the State of California for the purchase of goods and supplies, information technology, and services where State procurement is made in the form of master agreements, price schedules, or multiple award schedules that allow the State to take advantage of leveraged pricing that can be obtained through the State's buying power and where the State has determined that such vendor pricing is deemed to be reasonable, fair, and competitive. Pursuant to such State multiple award programs, the Purchasing Officer or City Council may make these purchases directly from the vendors without competitive bidding, or the State may provide assistance to the City in making such purchases;

I. When an unusual or unique situation exists, in that due to experience, specialized qualifications, particular expertise, performance history, and/or reputation, a particular company, vendor, consultant, or contractor is uniquely qualified for a particular task or project, which makes application of the requirements for competitive solicitation under this chapter contrary to either the intended purpose of the project or the public interest;

J. When in the opinion of the City Council, it is determined that compliance with the procurement policies, procedures and/or requirements is not in the best interest of the City.

K. When goods and supplies, equipment, or nonprofessional services are for information technology or computer hardware, software, programming, or related equipment and devices, such procurements shall be subject to the informal procedures set forth in Section 3-08.080.

L. When goods and supplies, equipment, materials, and nonprofessional or professional services are for any of the following:

(1) Contracts for professional or other expert witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the city is or may become a party, including contracts for special investigative services;

(2) Contracts to commission original works of art, and for fine art or any form of public art;

(3) The purchase of miscellaneous books, magazines, newspapers, subscriptions, on-line library reference services, film, videos, and assorted materials;

(4) Intergovernmental payments, purchases, and agreements, including but not limited to contracts for the procurement of law enforcement or other public safety services;

(5) Contracts for government affairs, public relations, and legislative advocacy or affairs;

(6) Contracts for economic development services;

(7) Specialized seminar, training, and educational classes;

(8) Contracts for election services;

(9) Contracts for appraisal services;

(10) Contracts for entertainment services;

(11) Contracts for community support and/or recreation services;

(12) Contracts for printing and/or graphical design services.

3-08.120 Amendments and change orders.

Following the award of a procurement contract for goods and supplies, equipment, materials, or nonprofessional services pursuant to Sections 3-08.070, 3-08.080, and 3-08.090, the contract may be amended by the issuance of a change order or amendment, provided the change which is the subject of the change order or amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiating of the proposed change(s) and the Finance Director will confirm the availability of funds for the proposed change in the event that the change order increases the contract cost. Any change order or amendment which results in a total contract amount of fifty thousand dollars ($50,000.00) or less may be approved by the Purchasing Officer. Any change order or amendment which results in a total contract amount of greater than fifty thousand dollars ($50,000.00) shall be approved by the City Council.

3-08.130 Vehicle purchases.

Any vehicle(s) with an estimated value greater than twenty thousand dollars ($20,000.00) to be purchased or leased by the city shall be approved in advance by the City Council prior to commencement of the procurement process.

3-08.140 Trade-ins.

The Purchasing Officer is authorized to exchange for or trade in goods and supplies, equipment, and materials for the purpose of exchanging or trading in such supplies and equipment for like-kind replacement, for other commodities, products, equipment, or property, or for rebate, down payment, or credit toward the purchase of other similar goods and supplies, equipment, or materials. The Purchasing Officer shall not consider the trade-in value amount in calculating the procurement authority dollar thresholds established in Sections 3-08.070, 3-08.080, and 3-08.090.

3-08.150 Professional services contracts.

A. The informal and formal bidding procedures contained in this chapter shall not apply to contracts for professional services. Rather, to secure professional services, the city shall utilize a request for proposals procedure, the method and details of which shall be promulgated by the City Manager in the form of administrative regulations. The City Manager may award any contract for professional services when the total not to exceed contract amount of such services is fifty thousand dollars ($50,000.00) or less. Any contract for professional services having a total contract amount of greater than fifty thousand dollars (>$50,000.00) shall be awarded by the City Council.

B. In the event of a vacant city employee position previously approved by the City Council, the City Manager shall have the authority to award any and all contracts for the same or substantially similar services to independent contractors or consultants when the cost of such contract does not exceed the salary, benefits, and other related costs of the vacant position.

C. Notwithstanding any provision in this chapter to the contrary, selection by the city for professional services in areas including but not limited to private architectural, landscape architectural, engineering, environmental, land surveying, construction project management, management and administration, financial, accounting, auditing, actuarial, economics, and/or development and planning, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise, training, or unique skills gained by formal studies or experience, shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and shall not be awarded solely on the basis of cost. In order to implement this method of selection, the City Manager shall promulgate administrative regulations concerning contracting for professional services to ensure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the city. In accordance with state law, the city shall consider price after the city is satisfied that the would-be person, company, corporation, contractor, consultant, or firm has demonstrated the competence and professional qualifications necessary for the satisfactory performance of the services required.

3-08.160 Amendments to professional services contracts.

Contracts for professional services pursuant to Section 3-08.150 may be amended by the issuance of a written amendment provided the change which is the subject of the amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiating of the proposed change(s), and the Finance Director will confirm the availability of funds for the proposed change in the event that the amendment increases the contract cost. Any amendment which results in a total contract amount of fifty thousand dollars ($50,000.00) or less may be approved by the City Manager. Any amendment which results in a total contract amount of greater than fifty thousand dollars ($50,000.00) shall be approved by the City Council.

3-08.170 Exemptions to provisions of this chapter.

The provisions of this chapter are not applicable to the following procurements, which may be approved by the City Council and are otherwise subject to the requirements of this code: contracts for banking and/or investment services; franchise agreements; and contracts for procuring and maintaining insurance policies for the benefit of the city.

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 22nd day of March 2016.

BARBARA D. KOGERMAN, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 2016-3 was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 8th day of March 2016, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the 22nd day of March 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

AFFIDAVIT OF POSTING
AND PUBLICATION

MELISSA AU-YEUNG, being first duly sworn, deposes and says:

That she is the duly appointed and qualified City Clerk of the City of Laguna Hills;

That in compliance with State Laws of the State of California, ORDINANCE NO. 2016-3, being:

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES

on the 1st day of April 2016, was published in the Saddleback Valley News; and was, in compliance with City Resolution No. 2004-05-25-2, on the 1st day of April 2016, caused to be posted in three places in the City of Laguna Hills, to wit:

Laguna Hills City Hall
Laguna Hills Community Center
Courtyard at La Paz Center

MELISSA AU-YEUNG, CITY CLERK
Laguna Hills, California

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 8, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: AMENDED AND RESTATED PURCHASING ORDINANCE

RECOMMENDATION: THAT THE CITY COUNCIL INTRODUCE AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES."

SUMMARY:

In February 2011, the City Council adopted an Ordinance amending and restating Chapter 3-08 of the Laguna Hills Municipal Code, which was a complete overhaul of the City's purchasing policies and procedures. This Purchasing Ordinance is five years old and minor adjustments are necessary to ensure that the code requirements properly address its practical application in the procurement process. Staff has prepared an initial amended and restated Purchasing Ordinance intended to clarify, consolidate, correct, and further streamline the procurement process. Staff is recommending approval of the amended and restated Purchasing Ordinance.

BACKGROUND:

A work program to revise and update the City's purchasing policies and procedures was included as part of the 2009-2011 Biennial Budget. At the February 22, 2011, City Council meeting, the City Council adopted an Ordinance amending and restating in its entirety Chapter 3-08 of the Laguna Hills Municipal Code, which was a complete overhaul of the City's purchasing policies and procedures. As is common in major code revisions, minor adjustments become apparent to ensure that the code requirements are properly addressing its practical application.

In conjunction with the City Attorney's Office, staff has prepared an initial amended and restated Purchasing Ordinance, provided herewith as attached. The overall intent of the recommended changes is to clarify, consolidate, correct, and further streamline the procurement process.

Also attached to this report is a draft of the restated Purchasing Ordinance showing track changes. The following are the more notable changes to the Purchasing Ordinance:

- Establish the scope of authority and responsibility of the Purchasing Officer (Section 3-08.020).
- Increase the upper limit that may be purchased using open market procurement. An item that may be obtained through open market procedures with an estimated value of up to and including $15,000 has been increased to up to and including $25,000 (Section 3-08.070).
- Bring up-to-date the manner of notice inviting formal bids (Section 3-08.090, Paragraph A & B).
- Allow the requesting City department to receive, store, and tabulate formal bids. (Section 3-08.090, Paragraph C).
- Allow the Purchasing Officer the discretion to reject formal bids or proposals (Section 3-08.090, Paragraph D).
- Specify that City Council may authorize signatory authority to execute contracts awarded by City Council to the Mayor, City Manager, or otherwise. (Section 3-08.090, Paragraph F).
- Provide a more comprehensive list that further specifies particular procurements that are not applicable to the purchasing requirements set forth in this chapter and integrate many of those previously classified as exempt under Section 3-08.170 (Section 3-08.110).
- Designate procurements exempt to provisions of this chapter as only: contracts for banking and/or investment services; franchise agreements; and contracts for procuring and maintaining insurance policies for the benefit of the City (Section 3-08-170).

Staff is recommending approval of the amended and restated Purchasing Ordinance.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of this Ordinance.

ATTACHMENTS:

- Amended and Restated Purchasing Ordinance
- Draft of the Restated Purchasing Ordinance showing track changes

ORDINANCE NO. 2016-X

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 3-08 OF THE LAGUNA HILLS MUNICIPAL CODE REGARDING THE PURCHASING OF GOODS AND SUPPLIES, EQUIPMENT, MATERIALS, AND SERVICES

WHEREAS, the City's Purchasing System, set forth in Chapter 3-08 of the Laguna Hills Municipal Code, establishes regulations concerning the process and procedures for the purchase of materials, supplies, and equipment; and,

WHEREAS, Section 2-08.160 of the Laguna Hills Municipal Code delegates the authority to contract on behalf of the City for materials, supplies, equipment, and services (excluding construction services) up to and including fifty thousand dollars to the City Manager; and,

WHEREAS, State law requires general law cities to adopt policies and procedures for the acquisition of supplies and equipment, and it is considered a best practice to require competitive bids for goods and supplies, equipment, materials, and non-professional services contracts in excess of certain designated dollar amounts; and,

WHEREAS, pursuant to Government Code sections 54202 and 54203 (contracting for supplies and equipment) and Government Code section 4526 (contracting with private architects, engineering, land surveying, and construction management firms), the City now desires to update and consolidate its regulations, policies, and procedures concerning the procurement of goods and supplies, equipment, materials, and services on behalf of the City through the adoption of an amended and restated purchasing ordinance.

THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3-08 of the Laguna Hills Municipal Code, entitled "Purchasing," is hereby amended and restated in its entirety to read as follows:

Chapter 3-08
PURCHASING

Sections:

3-08.010 Adoption of purchasing system.

This purchasing system is adopted in order to:

A. Establish efficient regulations, policies, and procedures for the purchase of goods and supplies, equipment, materials, and services;

B. Secure on behalf of the city goods and supplies, equipment, materials, and services at the lowest possible cost commensurate with quality needed;

C. Exercise positive financial control over purchases;

D. Clearly define authority for the purchasing function;

E. Assure the quality, suitability, and fitness of purchases;

F. Ensure that the city obtains the highest quality of supplies and equipment and level of service at a fair and reasonable cost.

3-08.020 Scope of purchasing policies and procedures; authority and responsibility

Except as otherwise provided herein, the procurement regulations, policies, and procedures set forth in this chapter shall apply only to the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services, and shall not apply to public works construction projects. Procedures and processes for the procurement of public works construction contracts are subject to the California Public Contract Code. The authority and responsibility for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services is vested in the City Manager and City Council. The Purchasing Officer shall be the City Manager or the City Manager's designee. The Purchasing Officer may promulgate additional administrative rules, procedures and orders necessary to implement the policies and procedures established by this chapter with regard to the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services on behalf of the City. Each City department head is responsible for administering and implementing for that department the purchasing policies and procedures set forth in this chapter.

3-08.030 Definitions.

As used in this chapter, the following terms shall have the meanings indicated, which are applicable to both the singular and plural thereof:

"City department head" means the person who is designated by the City Manager as being responsible for each particular city department, including, but not limited to, Administration, Community Development, City Attorney, City Clerk, Community Services, Finance, Police Services, and Public Services, Public Works, and City Engineering.

"Estimated value" means the estimated total value as determined by the Purchasing Officer at the beginning of the procurement process for the proposed acquisition of goods and supplies, equipment, materials, and nonprofessional services. When making this initial threshold determination, the Purchasing Officer shall make reasonable use of all available market data and pricing information to estimate the total cost to the city, inclusive of taxes, licenses, freight charges, installation charges, fees, and other consideration, for the proposed procurement. The Purchasing Officer shall not use the value of any anticipated exchange or trade-in amount to reduce the estimated value of the proposed procurement.

"Goods and supplies, equipment, and materials" means fixed, movable, disposable, and/or reusable products, commodities, or items used by the city, including but not limited to office supplies, program supplies, subscriptions, vehicles, fuel and vehicle supplies, tools, computers, computer hardware and software, computer-related equipment and copiers, office furniture, and fixtures.

"Nonprofessional services" means those services not constituting professional services or public works projects.

"Professional services" means those services provided by any specially trained and experienced person, company, corporation, or firm in areas including but not limited to private architectural, landscape architectural, engineering, environmental, land surveying, construction project management, management and administration, financial, accounting, auditing, actuarial, economic and/or development and planning, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise, training, or unique skills gained by formal studies or experience.

3-08.040 Purchasing Officer.

There is hereby created the position of Purchasing Officer. The Purchasing Officer shall be responsible for, and have general supervision of, the following purchasing functions as implemented by various departments throughout the city pursuant to this chapter and any implementing administrative orders established by the Purchasing Officer. The Purchasing Officer shall be the City Manager or the City Manager's designee. Pursuant to the regulations, policies, and procedures established in this chapter, the Purchasing Officer shall have the authority to:

A. Purchase or contract for goods and supplies, equipment, materials, and professional and nonprofessional services;

B. Negotiate, approve, and execute, as well as recommend approval and execution of, orders and contracts for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services;

C. Act to procure on behalf of the city the needed quality in goods and supplies, equipment, materials, and services at the least expense to the city;

D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;

E. Prepare administrative rules, procedures, and orders necessary to implement the policies and procedures established by this chapter with regard to the purchase of goods and supplies, equipment, materials, and services on behalf of the city;

F. Keep informed of current developments in the field of municipal purchasing, pricing, market conditions, new technologies, and new products and services;

G. Prescribe and maintain such forms and other rules and regulations as reasonably necessary for the proper implementation of the policies and procedures established in this chapter;

H. Coordinate the inspection of all goods and supplies, equipment, materials, and services purchased on behalf of the city to ensure conformance with specifications;

I. Recommend the transfer of underutilized, surplus, or unused goods and supplies, equipment, and materials between departments as needed and the sale of such goods and supplies, equipment, and materials which cannot reasonably be used by any department or which become unsuitable or obsolete for city use;

J. Maintain and update periodically a vendor master file or list necessary for the efficient operation of purchasing functions;

K. Consider and encourage the purchase of recycled and recyclable materials and environmentally friendly products, whenever practicable and cost effective or efficient; and

L. Except as otherwise required by law, where other factors are equal, consider the procurement of goods and supplies, equipment, and materials from businesses located within the city.

3-08.050 Inspection and testing.

The Purchasing Officer or requesting department shall inspect goods and supplies, equipment, and materials delivered, as well as contract services performed, to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer or requesting department shall have the right to waive any defect, irregularity, or informality. The Purchasing Officer or requesting department shall have the authority to require demonstrative testing of samples submitted with bids and samples of deliverables which are necessary to determine their quality, fitness for a particular use, and conformance with specifications.

3-08.060 Appropriation of purchasing funds.

The City Council is responsible for and shall appropriate such funds as are necessary to carry out the provisions of this chapter. Except in cases of emergency, or as otherwise provided in this chapter, the City Manager shall not issue any purchase order or contract for goods and supplies, equipment, materials or services unless there exists an unencumbered appropriation in adopted budget against which such purchase may be charged. The City Manager has the authority to transfer unencumbered funds between and among City departments as necessary for the procurement of goods and supplies, equipment, materials, and services as necessary to implement the provisions of this chapter.

3-08.070 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Up to and including twenty-five thousand dollars ($25,000.00) – Open market.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of up to and including twenty-five thousand dollars ($25,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, may be made by the Purchasing Officer in the open market without observing the procedures set forth in Section 3-08.080 and Section 3-08.090. At least three informal quotes should be obtained, when practicable.

3-08.080 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Greater than twenty-five thousand dollars (>$25,000.00) up to and including fifty thousand dollars ($50,000.00) – Informal procedures.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of greater than twenty-five thousand dollars (>$25,000.00) up to and including fifty thousand dollars ($50,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the informal procedures set forth in this section.

A. The requesting department shall solicit informal proposals by telephone or written request to prospective vendors.

B. Except as otherwise provided in this chapter, purchases shall be based on at least three informal proposals.

C. Informal proposals shall be submitted by prospective vendors to the requesting department. The City Clerk shall retain a record of all informal proposals for a period of two years following completion of the informal procedures established in this section, which shall be made available for public review and inspection upon request.

D. The order or contract shall be awarded by the Purchasing Officer to the lowest proposer consistent with the best qualified vendor selection criteria set forth in Section 3-08.100.

3-08.090 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Greater than fifty thousand dollars ($50,000.00) – Formal procedures.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of greater than fifty thousand dollars ($50,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the formal procedures set forth in this section.

A. Notice Inviting Bids. Notices inviting formal bids or proposals from prospective vendors shall be publicly noticed no later than ten calendar days before the submission date for formal bids. The notices shall describe the requested goods or supplies, equipment, materials, or nonprofessional services in general terms, how to obtain more detailed information concerning the procurement, and state the time, place, and deadline for submission of sealed bids or proposals.

B. Public Notice. The notice inviting formal bids or proposals shall be publicly noticed in any generally accepted manner, which includes on the city's official website. In addition, such notice may also include trade publications when practicable.

C. Bid Opening Procedure. Sealed bids or proposals shall be submitted to the office of the City Clerk or requesting city department and shall be identified as formal competitive bids or proposals on the outside of the sealed envelope. The City Clerk or requesting city department head shall store all sealed bids in a secure location until opening. The City Clerk or requesting city department head shall open all bids or proposals in public at the time and place stated in the notice inviting bids. A tabulation of all bids or proposals received shall be open for public review and inspection in the office of the City Clerk or requesting city department during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

D. Rejection of Bids. The City Council or the Purchasing Officer shall have the discretion to reject any and all bids or proposals for any reason or for no reason, and may suspend, delay, or otherwise cancel the procurement, or may order the re-advertisement of the request for bids. If all formal bids or proposals are rejected and the City Council resolves by a recorded majority vote of the total membership of the City Council that the procurement can be performed more economically by force account, by informal procedures, or through open market purchases, then it may dispense with further formal competitive public bidding.

E. Tie Bids. If two or more formal bids or proposals received are the same and are the lowest, the City Council may accept the one it chooses.

F. Award of Contracts. Contracts or purchase orders shall be awarded by the City Council to the lowest bidder or proposer consistent with the best qualified vendor selection criteria set forth in Section 3-08.100, except as otherwise provided herein. The decision of the City Council shall be final. The City Council may authorize that such purchase orders or contracts be executed by either the Mayor or the City Manager, or the City Council may otherwise delegate such signature authority.

G. No Bids Received. If no bids or proposals are received, the purchase may be let in the open market or by the informal procedures set forth in Section 3-08.080, subject to City Council approval.

H. Performance Bonds. The Purchasing Officer shall have authority to recommend that a performance bond or other form of security or guarantee be required before entering into a contract in such amount as may be reasonably necessary to protect the best interests of the city. If a performance bond or other form of security or guarantee is required, the form and amount of the bond, security or guarantee shall be described in the notice inviting bids, and the performance bond, security or guarantee shall be in a form approved by the City Attorney.

I. Defects, Irregularities, and Informalities. The City Council may, in its sole discretion, waive any defect, irregularity, or informality in the formal bids or proposals or in the competitive procedures established in this section, and no such defect, irregularity, or informality shall void any contract entered into by the city.

3-08.100 Best qualified vendor.

In determining the best qualified vendor, consideration is to be given to price, quality, and performance of the goods and supplies, equipment, or materials to be purchased or nonprofessional services to be provided by the vendor. Criteria for determining the best qualified vendor shall include but not be limited to the following:

A. The cost and quality of the goods and supplies, equipment, materials, or nonprofessional services;

B. The ability, capacity, and skill of the vendor to perform the contract and to provide the goods and supplies, equipment, materials, or nonprofessional services requested;

C. The ability of the vendor to provide the goods and supplies, equipment, materials, or nonprofessional services requested promptly or within the time specified, without delay, interference, or service interruption;

D. The ability of the vendor to demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform;

E. The character, integrity, reputation, judgment, references, experience, and efficiency of the vendor;

F. The quality of vendor's performance history and record on previous purchases or contracts with the city;

G. The ability of the vendor to provide future maintenance, repair parts, and services for the use of the goods and supplies, equipment, or materials purchased; and,

H. The ability of the vendor to demonstrate its prior, current, and continued compliance during the contract term with all applicable federal, state, and local laws, statutes, ordinances and all lawful orders, rules, and regulations promulgated thereunder.

3-08.110 Exceptions to purchasing requirements.

The procurement policies and procedures set forth in 3-08.070, 3-08.080, 3-08.090 and 3-08.150 need not be followed, may be dispensed with, and are not applicable, irrespective of their estimated value, when the City Council or Purchasing Officer find and determine that the following situations, purchases, procurements or contracts apply, but are otherwise subject to the purchasing limitations set forth in this code:

A. When goods and supplies, equipment, materials, or contract services are of a unique, sole source nature because of their quality, durability, availability, or fitness for a particular use and are available only from one source. A sole source procurement is a procurement where only one source is practicably available for the type of procurement required;

B. When the goods and supplies, equipment, materials, or nonprofessional services are proprietary. A proprietary procurement is a procurement where the desired good or service must be restricted to one manufacturer because the good or service is compatible with or is an integral component of existing equipment or products, is necessary to support a specific need of a program, is covered by patent or copyright, must yield absolute continuity of results, or is one with which a user has extensive experience and the use of any other similar good or service would require considerable reorientation and training. Under such circumstances, an equitable evaluation of comparable goods or services should be made showing that rejection of other goods or services is based solely on their failure to meet that need;

C. When after a reasonable attempt has been made to obtain informal bids or proposals, and it has been determined by the Purchasing Officer that three bids or proposals cannot be obtained;

D. When emergency conditions require the immediate purchase of goods and supplies, equipment, materials, or services. For purposes of this section, emergency purchases are those procurements that are required to prevent immediate interruption or cessation of necessary city services or to safeguard life, property, or the public health and welfare. The Purchasing Officer shall file promptly with the City Council a report showing such conditions and the necessity for such action, together with an itemized account of all expenditures;

E. When formal bidding is not likely to result in the lowest price. However, under such circumstances compliance with the informal procedures set forth in Section 3-08.080 should be considered;

F. When a specific make, model, or brand is necessary to match existing city equipment or to facilitate the continuity of effective maintenance and support;

G. When the goods and supplies, equipment, materials, or nonprofessional services are available from a vendor who has been selected as the lowest bidder through a procurement with another local public agency or government entity using competitive bidding procedures substantially the same as or similar to those normally utilized by the city for the acquisition of such goods and supplies, equipment, materials, or services, and when the price offered to the city is substantially equivalent to that offered to the other public agency or government entity;

H. When the goods and supplies, equipment, materials, or nonprofessional services are available from suppliers who have been awarded contracts by the State of California for the purchase of goods and supplies, information technology, and services where State procurement is made in the form of master agreements, price schedules, or multiple award schedules that allow the State to take advantage of leveraged pricing that can be obtained through the State's buying power and where the State has determined that such vendor pricing is deemed to be reasonable, fair, and competitive. Pursuant to such State multiple award programs, the Purchasing Officer or City Council may make these purchases directly from the vendors without competitive bidding, or the State may provide assistance to the City in making such purchases;

I. When an unusual or unique situation exists, in that due to experience, specialized qualifications, particular expertise, performance history, and/or reputation, a particular company, vendor, consultant, or contractor is uniquely qualified for a particular task or project, which makes application of the requirements for competitive solicitation under this chapter contrary to either the intended purpose of the project or the public interest;

J. When in the opinion of the City Council, it is determined that compliance with the procurement policies, procedures and/or requirements is not in the best interest of the City.

K. When goods and supplies, equipment, or nonprofessional services are for information technology or computer hardware, software, programming, or related equipment and devices, such procurements shall be subject to the informal procedures set forth in Section 3-08.080.

L. When goods and supplies, equipment, materials, and nonprofessional or professional services are for any of the following:

(1) Contracts for professional or other expert witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the city is or may become a party, including contracts for special investigative services;

(2) Contracts to commission original works of art, and for fine art or any form of public art;

(3) The purchase of miscellaneous books, magazines, newspapers, subscriptions, on-line library reference services, film, videos, and assorted materials;

(4) Intergovernmental payments, purchases, and agreements, including but not limited to contracts for the procurement of law enforcement or other public safety services;

(5) Contracts for government affairs, public relations, and legislative advocacy or affairs;

(6) Contracts for economic development services;

(7) Specialized seminar, training, and educational classes;

(8) Contracts for election services;

(9) Contracts for appraisal services;

(10) Contracts for entertainment services;

(11) Contracts for community support and/or recreation services;

(12) Contracts for printing and/or graphical design services.

3-08.120 Amendments and change orders.

Following the award of a procurement contract for goods and supplies, equipment, materials, or nonprofessional services pursuant to Sections 3-08.070, 3-08.080, and 3-08.090, the contract may be amended by the issuance of a change order or amendment, provided the change which is the subject of the change order or amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiating of the proposed change(s) and the Finance Director will confirm the availability of funds for the proposed change in the event that the change order increases the contract cost. Any change order or amendment which results in a total contract amount of fifty thousand dollars ($50,000.00) or less may be approved by the Purchasing Officer. Any change order or amendment which results in a total contract amount of greater than fifty thousand dollars ($50,000.00) shall be approved by the City Council.

3-08.130 Vehicle purchases.

Any vehicle(s) with an estimated value greater than twenty thousand dollars ($20,000.00) to be purchased or leased by the city shall be approved in advance by the City Council prior to commencement of the procurement process.

3-08.140 Trade-ins.

The Purchasing Officer is authorized to exchange for or trade in goods and supplies, equipment, and materials for the purpose of exchanging or trading in such supplies and equipment for like-kind replacement, for other commodities, products, equipment, or property, or for rebate, down payment, or credit toward the purchase of other similar goods and supplies, equipment, or materials. The Purchasing Officer shall not consider the trade-in value amount in calculating the procurement authority dollar thresholds established in Sections 3-08.070, 3-08.080, and 3-08.090.

3-08.150 Professional services contracts.

A. The informal and formal bidding procedures contained in this chapter shall not apply to contracts for professional services. Rather, to secure professional services, the city shall utilize a request for proposals procedure, the method and details of which shall be promulgated by the City Manager in the form of administrative regulations. The City Manager may award any contract for professional services when the total not to exceed contract amount of such services is fifty thousand dollars ($50,000.00) or less. Any contract for professional services having a total contract amount of greater than fifty thousand dollars (>$50,000.00) shall be awarded by the City Council.

B. In the event of a vacant city employee position previously approved by the City Council, the City Manager shall have the authority to award any and all contracts for the same or substantially similar services to independent contractors or consultants when the cost of such contract does not exceed the salary, benefits, and other related costs of the vacant position.

C. Notwithstanding any provision in this chapter to the contrary, selection by the city for professional services in areas including but not limited to private architectural, landscape architectural, engineering, environmental, land surveying, construction project management, management and administration, financial, accounting, auditing, actuarial, economics, and/or development and planning, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise, training, or unique skills gained by formal studies or experience, shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and shall not be awarded solely on the basis of cost. In order to implement this method of selection, the City Manager shall promulgate administrative regulations concerning contracting for professional services to ensure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the city. In accordance with state law, the city shall consider price after the city is satisfied that the would-be person, company, corporation, contractor, consultant, or firm has demonstrated the competence and professional qualifications necessary for the satisfactory performance of the services required.

3-08.160 Amendments to professional services contracts.

Contracts for professional services pursuant to Section 3-08.150 may be amended by the issuance of a written amendment provided the change which is the subject of the amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiating of the proposed change(s), and the Finance Director will confirm the availability of funds for the proposed change in the event that the amendment increases the contract cost. Any amendment which results in a total contract amount of fifty thousand dollars ($50,000.00) or less may be approved by the City Manager. Any amendment which results in a total contract amount of greater than fifty thousand dollars ($50,000.00) shall be approved by the City Council.

3-08.170 Exemptions to provisions of this chapter.

The provisions of this chapter are not applicable to the following procurements, which may be approved by the City Council and are otherwise subject to the requirements of this code: contracts for banking and/or investment services; franchise agreements; and contracts for procuring and maintaining insurance policies for the benefit of the city.

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this _______ day of ______________ 2016.

____
BARBARA KOGERMAN, MAYOR

ATTEST:

____
MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing Ordinance No. __________ was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the _________ day of ____________________ 2016, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the _________ day of _____________________ 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

____
MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)

COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

AFFIDAVIT OF POSTING
AND PUBLICATION

MELISSA AU-YEUNG, being first duly sworn, deposes and says:

That she is the duly appointed and qualified City Clerk of the City of Laguna Hills;

That in compliance with State Laws of the State of California, ORDINANCE NO. ___________, being:

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, X

on the __________ day of _________________ 2016, was published in the Saddleback Valley News; and was, in compliance with City Resolution No. 2004-05-25-2, on the ___________ day of ______________________ 2016, caused to be posted in three places in the City of Laguna Hills, to wit:

Laguna Hills City Hall
Laguna Hills Community Center
Courtyard at La Paz Center

____
MELISSA AU-YEUNG, CITY CLERK
Laguna Hills, California

(Proposed Modifications Shown in Track-Change Format)

Chapter 3-08
PURCHASING

Sections:

3-08.010 Adoption of purchasing system.

This purchasing system is adopted in order to:

A. ~~e~~Establish efficient regulations, policies, and procedures for the purchase of goods and supplies, equipment, materials, and services~~,~~;

B. ~~to s~~Secure on behalf of the city goods and supplies, equipment, materials, and services at the lowest possible cost commensurate with quality needed;~~, to~~

C. ~~e~~Exercise positive financial control over purchases~~,~~; ~~to~~

D. ~~c~~Clearly define authority for the purchasing function; ~~, to~~

E. ~~a~~Assure the quality, suitability, and fitness of purchases; ~~, and to~~

F. ~~e~~Ensure that the city obtains the highest quality of supplies and equipment and level of service at a fair and reasonable cost.

3-08.020 ~~-~~Scope of purchasing policies and procedures; authority and responsibility

Except as otherwise provided herein, the procurement regulations, policies, and procedures set forth in this chapter shall apply only to the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services, and shall not apply to public works construction projects. Procedures and processes for the procurement of public works construction contracts are subject to the California Public Contract Code. The authority and responsibility for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services is vested in the City Manager and City Council. The Purchasing Officer shall be the City Manager or the City Manager's designee. The Purchasing Officer may promulgate additional administrative rules, procedures and orders necessary to implement the policies and procedures established by this chapter with regard to the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services on behalf of the City. Each City department head is responsible for administering and implementing for that department the purchasing policies and procedures set forth in this chapter.

3-08.030 Definitions.

As used in this chapter, the following terms shall have the meanings indicated, which are applicable to both the singular and plural thereof:

"City department head" means the person who is designated by the City Manager as being responsible for each particular city department, including, but not limited to, Administration, Community Development, City Attorney, City Clerk, Community Services, Finance, Police Services, and Public Services, Public Works, and City Engineering.

"Estimated value" means the estimated total value as determined by the Purchasing Officer at the beginning of the procurement process for the proposed acquisition of goods and supplies, equipment, materials, and nonprofessional services. When making this initial threshold determination, the Purchasing Officer shall make reasonable use of all available market data and pricing information to estimate the total cost to the city, inclusive of taxes, licenses, freight charges, installation charges, fees, and other consideration, for the proposed procurement. The Purchasing Officer shall not use the value of any anticipated exchange or trade-in amount to reduce the estimated value of the proposed procurement.

"Goods and supplies, equipment, and materials" means fixed, movable, disposable, and/or reusable products, commodities, or items used by the city, including but not limited to office supplies, program supplies, subscriptions, vehicles, fuel and vehicle supplies, tools, computers, computer hardware and software, computer-related equipment and copiers, office furniture, and fixtures.

"Nonprofessional services" means those services not constituting professional services or public works projects~~construction services for public works projects or those services not constituting professional services~~.

"Professional services" means those services provided by any specially trained and experienced person, company, corporation, or firm in areas including but not limited to private architectural, landscape architectural, engineering, environmental, land surveying, construction project management, management and administration, financial, accounting, auditing, actuarial, economic and/or development and planning, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise, training, or unique skills gained by formal studies or experience~~, other than public works construction services~~.

3-08.040 Purchasing Officer.

There is hereby created the position of Purchasing Officer. The Purchasing Officer shall be responsible for, and have general supervision of, the following purchasing functions as implemented by various departments throughout the city pursuant to this chapter and any implementing administrative orders established by the Purchasing Officer. The Purchasing Officer shall be the City Manager or ~~his or her~~ the City Manager's designee. Pursuant to the regulations, policies, and procedures established in this chapter, the Purchasing Officer shall have the authority to:

A. Purchase or contract for goods and supplies, equipment, materials, and professional and nonprofessional services;

B. Negotiate, approve, and execute, as well as recommend approval and execution of, orders and contracts for the purchase of goods and supplies, equipment, materials, and professional and nonprofessional services;

C. Act to procure on behalf of the city the needed quality in goods and supplies, equipment, materials, and services at the least expense to the city;

D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;

E. Prepare administrative rules, procedures, and orders necessary to implement the policies and procedures established by this chapter with regard to the purchase of goods and supplies, equipment, materials, and services on behalf of the city;

F. Keep informed of current developments in the field of municipal purchasing, pricing, market conditions, new technologies, and new products and services;

G. Prescribe and maintain such forms and other rules and regulations as reasonably necessary for the proper implementation of the policies and procedures established in this chapter;

H. Coordinate the inspection of all goods and supplies, equipment, materials, and services purchased on behalf of the city to ensure conformance with specifications;

I. Recommend the transfer of underutilized, surplus, or unused goods and supplies, equipment, and materials between departments as needed and the sale of such goods and supplies, equipment, and materials which cannot reasonably be used by any department or which become unsuitable or obsolete for city use;

J. Maintain and update periodically a vendor master file or list necessary for the efficient operation of purchasing functions;

K. Consider and encourage the purchase of recycled and recyclable materials and environmentally friendly products, whenever practicable and cost effective or efficient; and

L. Except as otherwise required by law, ~~W~~where other factors are equal, consider the procurement of goods and supplies, equipment, and materials~~, and services~~ from ~~local business enterprises~~businesses located within the city.

3-08.050 Inspection and testing.

The Purchasing Officer or requesting department shall inspect goods and supplies, equipment, and materials delivered, as well as contract services performed, to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer or requesting department shall have the right to waive any defect, irregularity, or informality. The Purchasing Officer or requesting department shall have the authority to require demonstrative testing of samples submitted with bids and samples of deliverables which are necessary to determine their quality, fitness for a particular use, and conformance with specifications.

3-08.060 Appropriation of purchasing funds.

The City Council is responsible for and shall appropriate such funds as are necessary to carry out the provisions of this chapter. ~~Unless otherwise provided in this chapter, the Purchasing Officer shall not issue any order or contract for goods and supplies, equipment, materials, or services unless there exists an unencumbered appropriation in the adopted budget against which such purchase may be charged.~~Except in cases of emergency, or as otherwise provided in this chapter, the City Manager shall not issue any purchase order or contract for goods and supplies, equipment, materials or services unless there exists an unencumbered appropriation in adopted budget against which such purchase may be charged. The City Manager has the authority to transfer unencumbered funds between and among City departments as necessary for the procurement of goods and supplies, equipment, materials, and services as necessary to implement the provisions of this chapter.

3-08.070 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Up to and including ~~fifteen~~ twenty-five thousand dollars ($~~15~~25,000.00) – Open market.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of up to and including ~~fifteen~~twenty-five thousand dollars ($~~15~~25,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, may be made by the Purchasing Officer in the open market without observing the procedures set forth in Section 3-08.080 and Section 3-08.090. At least three informal quotes ~~may~~should be obtained, when practicable.

3-08.080 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Greater than ~~fifteen~~twenty-five thousand dollars (>$~~15~~25,000.00) up to and including fifty thousand dollars ($50,000.00) – Informal procedures.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of greater than ~~fifteen~~twenty-five thousand dollars (>$~~15~~25,000.00) up to and including fifty thousand dollars ($50,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the informal procedures set forth in this section.

A. The requesting department shall solicit informal proposals by telephone or written request to prospective vendors.

B. Except as otherwise provided in this chapter, purchases shall be based on at least three informal proposals.

C. Informal proposals shall be submitted by prospective vendors to the requesting department. The City Clerk shall retain a record of all informal proposals for a period of two years following completion of the informal procedures established in this section, which shall be made available for public review and inspection upon request.

D. The order or contract shall be awarded by the Purchasing Officer to the lowest proposer consistent with the best qualified vendor selection criteria set forth in Section 3-08.100.

3-08.090 Procurement of goods and supplies, equipment, materials, and nonprofessional services – Greater than fifty thousand dollars ($50,000.00) – Formal procedures.

The procurement of goods and supplies, equipment, materials, and nonprofessional services with an estimated value of greater than fifty thousand dollars ($50,000.00), inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, shall be made by the formal procedures set forth in this section.

A. Notice Inviting Bids. Notices inviting formal bids or proposals from prospective vendors shall be ~~published~~publicly noticed ~~and posted~~ no later than ten calendar days before the submission date for formal bids. The notices shall describe the requested goods or supplies, equipment, materials, or nonprofessional services in general terms, how to obtain more detailed information concerning the procurement, and state the time, place, and deadline for submission of sealed bids or proposals.

B. ~~Published~~Public Notice. The notice inviting formal bids or proposals shall be ~~published~~ publicly noticed in any generally accepted manner~~and posted in at least three public places in the city that have been duly designated by the City Clerk as the official places for the posting of public notices and~~, which includes on the city's official website. In addition, such notice may also include trade publications when practicable.

C. Bid Opening Procedure. Sealed bids or proposals shall be submitted to the office of the City Clerk or requesting city department and shall be identified as formal competitive bids or proposals on the outside of the sealed envelope. The City Clerk or requesting city department head shall store all sealed bids in a secure location until opening. The City Clerk or requesting city department head shall open all bids or proposals in public at the time and place stated in the notice inviting bids. A tabulation of all bids or proposals received shall be open for public review and inspection in the office of the City Clerk or requesting city department during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

D. Rejection of Bids. ~~In its sole discretion, t~~The City Council or the Purchasing Officer shall have the discretion to ~~may~~ reject any and all bids or proposals for any reason or for no reason, and may suspend, delay, or otherwise cancel the procurement, or may order the re-advertisement of the request for bids. If all formal bids or proposals are rejected and the City Council resolves by a recorded majority vote of the total membership of the City Council that the procurement can be performed more economically by force account, by informal procedures, or through open market purchases, then it may dispense with further formal competitive public bidding.

E. Tie Bids. If two or more formal bids or proposals received are the same and are the lowest, the City Council may accept the one it chooses~~, and the City Council may allow for a local vendor preference~~.

F. Award of Contracts. Contracts or purchase orders shall be awarded by the City Council to the lowest bidder or proposer consistent with the best qualified vendor selection criteria set forth in Section 3-08.100, except as otherwise provided herein. The decision of the City Council shall be final. The City Council may authorize that such purchase orders or contracts be executed by either the Mayor or the City Manager, or the City Council may otherwise delegate such signature authority.

G. No Bids Received. If no bids or proposals are received, the purchase may be let in the open market or by the informal procedures set forth in Section 3-08.080, subject to City Council approval.

H. Performance Bonds. The Purchasing Officer shall have authority to recommend that a performance bond or other form of security or guarantee be required before entering into a contract in such amount as may be reasonably necessary to protect the best interests of the city. If a performance bond or other form of security or guarantee is required, the form and amount of the bond, security or guarantee shall be described in the notice inviting bids, and the performance bond, security or guarantee shall be in a form approved by the City Attorney.

I. Defects, Irregularities, and Informalities. The City Council may, in its sole discretion, waive any defect, irregularity, or informality in the formal bids or proposals or in the competitive procedures established in this section, and no such defect, irregularity, or informality shall void any contract entered into by the city.

3-08.100 Best qualified vendor.

In determining the best qualified vendor, consideration is to be given to price, quality, and performance of the goods and supplies, equipment, or materials to be purchased or nonprofessional services to be provided by the vendor. Criteria for determining the best qualified vendor shall include but not be limited to the following:

A. The cost and quality of the goods and supplies, equipment, materials, or nonprofessional services;

B. The ability, capacity, and skill of the vendor to perform the contract and to provide the goods and supplies, equipment, materials, or nonprofessional services requested;

C. The ability of the vendor to provide the goods and supplies, equipment, materials, or nonprofessional services requested promptly or within the time specified, without delay, ~~or~~ interference, or service interruption;

D. The ability of the vendor to demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform ~~the contract~~;

E. The character, integrity, reputation, judgment, references, experience, and efficiency of the vendor;

F. The quality of vendor's performance history and record on previous purchases or contracts with the city;

G. The ability of the vendor to provide future maintenance, repair parts, and services for the use of the goods and supplies, equipment, or materials purchased; and,

H. The ability of the vendor to demonstrate its prior, current, and continued compliance during the contract term with all applicable federal, state, and local laws, statutes, ordinances and all lawful orders, rules, and regulations promulgated thereunder~~;~~.

~~I. The ability of the vendor to timely produce a complete and accurate IRS Form W9; and~~

~~J. A local business enterprise preference may be given when practicable.~~

3-08.110 Exceptions to purchasing requirements.

~~The procurement policies and procedures set forth above need not be followed, may be dispensed with, and/or are not applicable to the following situations, purchases, or contracts~~The procurement policies and procedures set forth in 3-08.070, 3-08.080, 3-08.090 and 3-08.150 need not be followed, may be dispensed with, and are not applicable, irrespective of their estimated value, when the City Council or Purchasing Officer find and determine that the following situations, purchases, procurements or contracts apply, but are otherwise subject to the purchasing limitations set forth in this code:

A. When goods and supplies, equipment, materials, or contract services are of a unique, sole source nature because of their quality, durability, availability, or fitness for a particular use and are available only from one source. A sole source procurement is a procurement where only one source is practicably available for the type of procurement required;

B. When the goods and supplies, equipment, materials, or nonprofessional services are proprietary. A proprietary procurement is a procurement where the desired good or service must be restricted to one manufacturer because the good or service is compatible with or is an integral component of existing equipment or products, is necessary to support a specific need of a program, is covered by patent or copyright, must yield absolute continuity of results, or is one with which a user has extensive experience and the use of any other similar good or service would require considerable reorientation and training. Under such circumstances, an equitable evaluation of comparable goods or services should be made showing that rejection of other goods or services is based solely on their failure to meet that need;

C. When after a reasonable attempt has been made to obtain informal bids or proposals, and it has been determined by the Purchasing Officer that three bids or proposals cannot be obtained;

D. When ~~the Purchasing Officer finds that~~ emergency conditions require the immediate purchase of goods and supplies, equipment, materials, or services.

For purposes of this section, emergency purchases are those procurements that are required to prevent immediate interruption or cessation of necessary city services or to safeguard life, property, or the public health and welfare. The Purchasing Officer shall file promptly with the City Council a ~~certificate~~report showing such conditions and the necessity for such action, together with an itemized account of all expenditures;

E. When ~~in the opinion of the Purchasing Officer~~ formal bidding is not likely to result in the lowest price. However, under such circumstances compliance with the informal procedures set forth in Section 3-08.080 ~~shall be required~~should be considered;

F. When ~~in the opinion of the Purchasing Officer~~ a specific make, model, or brand is necessary to match existing city equipment or to facilitate the continuity of effective maintenance and support;

G. When the goods and supplies, equipment, materials, or nonprofessional services are available from a vendor who has been selected as the lowest bidder ~~within the prior six months by~~ through a procurement with another local public agency or government entity using competitive bidding procedures substantially the same as or similar to those normally utilized by the city for the acquisition of such goods and supplies, equipment, materials, or services, and when the price offered to the city is substantially equivalent to that offered to the other public agency or government entity;

H. ~~When the goods and supplies, equipment, materials, or nonprofessional services are available from a vendor who has been selected as the lowest bidder through a cooperative-type agreement with another government entity using competitive bidding procedures substantially the same as or similar to those normally utilized by the city for the acquisition of such supplies or services, and when the price offered to the city is substantially equivalent to that offered to the other public agency; or~~When the goods and supplies, equipment, materials, or nonprofessional services are available from suppliers who have been awarded contracts by the State of California for the purchase of goods and supplies, information technology, and services where State procurement is made in the form of master agreements, price schedules, or multiple award schedules that allow the State to take advantage of leveraged pricing that can be obtained through the State's buying power and where the State has determined that such vendor pricing is deemed to be reasonable, fair, and competitive. Pursuant to such State multiple award programs, the Purchasing Officer or City Council may make these purchases directly from the vendors without competitive bidding, or the State may provide assistance to the City in making such purchases;

I. When ~~in the opinion of the Purchasing Officer it is determined that~~ an unusual or unique situation exists, in that due to experience, specialized qualifications, particular expertise, performance history, and/or reputation, a particular company, vendor, consultant, or contractor is uniquely qualified for a particular task or project, which makes application of the requirements for competitive solicitation under this chapter contrary to either the intended purpose of the project or the public interest~~.~~;

J. When in the opinion of the City Council, it is determined that compliance with the procurement policies, procedures and/or requirements is not in the best interest of the City.

K. When goods and supplies, equipment, or nonprofessional services are for information technology or computer hardware, software, programming, or related equipment and devices, such procurements shall be subject to the informal procedures set forth in Section 3-08.080.

L. When goods and supplies, equipment, materials, and nonprofessional or professional services are for any of the following:

(1) Contracts for professional or other expert witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the city is or may become a party, including contracts for special investigative services;

(2) Contracts to commission original works of art, and for fine art or any form of public art;

(3) The purchase of miscellaneous books, magazines, newspapers, subscriptions, on-line library reference services, film, videos, and assorted materials;

~~(a)~~ (4) Intergovernmental payments, purchases, and agreements, including but not limited to contracts for the procurement of law enforcement or other public safety services;

(5) Contracts for government affairs, public relations, and legislative advocacy or affairs;

(6) Contracts for economic development services;

(7) Specialized seminar, training, and educational classes;

(8) Contracts for election services;

(9) Contracts for appraisal services;

(10) Contracts for entertainment services;

(11) Contracts for community support and/or recreation services;

(12) Contracts for printing and/or graphical design services.

3-08.120 Amendments and change orders.

Following the award of a procurement contract for goods and supplies, equipment, materials, or nonprofessional services pursuant to Sections 3-08.070, 3-08.080, and 3-08.090, the contract may be amended by the issuance of a change order or amendment, provided the change which is the subject of the change order or amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiating of the proposed change(s) and the Finance Director will confirm the availability of funds for the proposed change in the event that the change order increases the contract cost. Any change order or amendment which results in a total contract amount of fifty thousand dollars ($50,000.00) or less may be approved by the Purchasing Officer. Any change order or amendment which results in a total contract amount of greater than fifty thousand dollars ($50,000.00) shall be approved by the City Council.

3-08.130 Vehicle purchases.

Any vehicle(s) with an estimated value greater than twenty thousand dollars ($20,000.00) to be purchased or leased by the city shall be approved in advance by the City Council prior to commencement of the procurement process.

3-08.140 Trade-ins.

The Purchasing Officer is authorized to exchange for or trade in goods and supplies, equipment, and materials for the purpose of exchanging or trading in such supplies and equipment for like-kind replacement, for other commodities, products, equipment, or property, or for rebate, down payment, or credit toward the purchase of other similar goods and supplies, equipment, or materials. The Purchasing Officer shall not consider the trade-in value amount in calculating the procurement authority dollar thresholds established in Sections 3-08.070, 3-08.080, and 3-08.090.

3-08.150 Professional services contracts.

A. The informal and formal bidding procedures contained in this chapter shall not apply to contracts for professional services. Rather, to secure professional services, the city shall utilize a request for proposals procedure, the method and details of which shall be promulgated by the City Manager in the form of administrative regulations. The City Manager may award any contract for professional services when the total not to exceed contract amount of such services is fifty thousand dollars ($50,000.00) or less. Any contract for professional services having a total contract amount of greater than fifty thousand dollars (>$50,000.00) shall be awarded by the City Council.

B. In the event of a vacant city employee position previously approved by the City Council, the City Manager shall have the authority to award any and all contracts for the same or substantially similar services to independent contractors or consultants when the cost of such contract does not exceed the salary, benefits, and other related costs of the vacant position.

C. Notwithstanding any provision in this chapter to the contrary, selection by the city for professional services in areas including but not limited to private architectural, landscape architectural, engineering, environmental, land surveying, construction project management, management and administration, financial, accounting, auditing, actuarial, economics, and/or development and planning, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise, training, or unique skills gained by formal studies or experience, shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and shall not be awarded solely on the basis of cost. In order to implement this method of selection, the City Manager shall promulgate administrative regulations concerning contracting for professional services to ensure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the city. In accordance with state law, the city shall consider price after the city is satisfied that the would-be person, company, corporation, contractor, consultant, or firm has demonstrated the competence and professional qualifications necessary for the satisfactory performance of the services required.

3-08.160 Amendments to professional services contracts.

Contracts for professional services pursuant to Section 3-08.150 may be amended by the issuance of a written amendment provided the change which is the subject of the amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiating of the proposed change(s), and the Finance Director will confirm the availability of funds for the proposed change in the event that the amendment increases the contract cost. Any amendment which results in a total contract amount of fifty thousand dollars ($50,000.00) or less may be approved by the City Manager. Any amendment which results in a total contract amount of greater than fifty thousand dollars ($50,000.00) shall be approved by the City Council.

3-08.170 Exemptions to provisions of this chapter.

~~The provisions of this chapter are not applicable to:~~

~~A. Contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the city is or may become a party, including contracts for special investigative services for law enforcement purposes;~~

~~B. Agreements negotiated and/or prepared by the city attorney or special counsel in connection with the settlement of a dispute, claim, or matter of litigation or threatened litigation;~~

~~C. Contracts to commission original works of art, and for fine art or entertainment;~~

~~D. The award of financial participation agreements, owner participation agreements, disposition and development agreements, development agreements, real estate purchase or lease agreements, covenants, easements, encroachment agreements, memoranda of understanding, or other similar agreements or instruments. Such contracts shall be awarded in accordance with applicable legal requirements and/or administrative directives of the city;~~

~~E. The purchase of miscellaneous books, magazines, newspapers, subscriptions, online library reference services, film, videos, and assorted materials for which contracts by competitive bid solicitation are not practicable;~~

~~F. Intergovernmental payments, purchases, and agreements;~~

~~G. Specialized seminar, training, and educational classes;~~

~~H. Contracts for election services;~~

~~I. Contracts for legal services;~~

~~J. Franchise agreements; and~~

~~K. Contracts for procuring and maintaining insurance policies for the benefit of the city, which are approved by the City Council.~~The provisions of this chapter are not applicable to the following procurements, which may be approved by the City Council and are otherwise subject to the requirements of this code: contracts for banking and/or investment services; franchise agreements; and contracts for procuring and maintaining insurance policies for the benefit of the city.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: DAVID REYNOLDS
DEPUTY CITY MANAGER

ISSUE: REVISED EFFECTIVE DATE TO AN AMENDMENT OF THE WASTE DISPOSAL AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE CITY OF LAGUNA HILLS

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING THE REVISED EFFECTIVE DATE TO AN AMENDMENT TO THE 2009 WASTE DISPOSAL AGREEMENT WITH THE COUNTY OF ORANGE."

SUMMARY:

On April 28, 2015, the City Council approved by Resolution an Amendment to the 2009 Waste Disposal Agreement (WDA) to provide for continuation of importation of waste at the County landfills, City allocation of future importation revenues, and to extend the terms of the WDA through June 30, 2025. City Council Resolution No. 2015-4-28-2, and the supporting staff report, are attached and will serve as the background information for the WDA Amendment (See Attachment B). The WDA Amendment established an effective date of September 30, 2015. Unfortunately, by the original expiration date of September 30, 2015, not all cities were able to approve the WDA Amendment. However, since it is anticipated that the issues will be resolved, the County is requesting all cities to approve an updated Amendment by the end of March 2016 that simply extends the effective date. The revision to the WDA Amendment updates the effective date from September 30, 2015 to June 30, 2016. All other terms and conditions that were negotiated in the April 2015 WDA Amendment, and approved by the City Council of Laguna Hills on April 28, 2015, remain in full force and effect. Once again, this updated WDA Amendment requires approval by all 34 cities.

FISCAL IMPACT:

The City will benefit from ongoing annual payments from the County based on sharing net importation revenues in accordance with the allocation percentages set forth in Appendix 5 of the WDA Agreement. The City's current allocation percentage is 0.74% and will receive an initial payment of $40,098 during Fiscal Year 2016/2017. Based on County of Orange worksheets, the projected importation revenue via annual payments to the City of Laguna Hills through Fiscal Year 2019/2020 is $210,393. The 0.74% allocation will be adjusted for all cities in late Fiscal Year 2019/2020 and will apply to the remainder of the WDA Agreement term (or until 2025).

ATTACHMENTS:

- Attachment A – Draft Resolution to Extend Effective Date of Agreement
- Attachment B – Laguna Hills City Council Resolution No. 2015-4-28-2 and Staff Report
- Attachment C – WDA Amendment with Revised Effective Date
- Attachment D – Waste Disposal Agreement

RESOLUTION NO. 2016-03-22-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING THE REVISED EFFECTIVE DATE TO AN AMENDMENT TO THE 2009 WASTE DISPOSAL AGREEMENT WITH THE COUNTY OF ORANGE

The City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, the City Council approved a Waste Disposal Agreement (the "Agreement") with the County of Orange (the "County") at its meeting of May 27, 2009, which requires the City to dispose of all specified solid waste generated within the City to County landfills and for the County to accept all such waste at an agreed-upon rate structure, and also permits the importation of waste from outside of the County; and

WHEREAS, the Agreement became effective on or about July 23, 2009, and by its term is set to expire on June 30, 2020; and

WHEREAS, Section 3.6 (C) of the Agreement provides that the County shall not accept waste imported from outside the County at County landfills after June 30, 2016; and

WHEREAS, an Amendment to the Waste Disposal Agreement (the "Amendment") has been negotiated between the County and various cities throughout Orange County to provide for continuation of importation of waste from outside the County at County landfills in exchange for allocation to the cities of a portion of future importation revenues and to extend the terms of this activity within the Waste Disposal Agreement to June 30, 2025; and

WHEREAS, the City Council desires to ensure that solid waste generated within the City can be disposed of in a convenient, reliable and environmentally safe manner and at a reasonable cost for the near future; and

WHEREAS, the proposed Amendment furthers these goals by, among other things, ensuring that solid waste generated within the City can be disposed of at County landfills through June 30, 2025; that the landfills will be operated in an environmentally safe and reliable manner; and that the cost of disposing of solid waste at County landfills will be reasonable; and

WHEREAS, on April 28, 2015, by Resolution No. 2015-04-28-2, the City Council of the City of Laguna Hills approved the Amendment in which the effective date be no later than September 30, 2015;

WHEREAS, the County requested a revision to the effective date of the Amendment from September 30, 2015 to December 31, 2015; and

WHEREAS, the County has now requested another revision to the effective date of the Amendment from December 31, 2015 to June 30, 2016 (Revised Effective Date").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. That the City Council hereby finds and determines that the Revised Effective Date to the Amendment to the Waste Disposal Agreement between the County of Orange and the City of Laguna Hills ("Amendment") furthers public health, safety and welfare.

SECTION 3. That the City Council hereby finds and determines that the Revised Effective Date shall be amended into the terms and provisions of the Amendment, attached hereto as Exhibit "A" as submitted by the City Manager, is approved and that the Mayor is authorized to execute, and the City Clerk to attest, the Amendment on behalf of the City.

SECTION 4. That the Mayor, City Manager, and City Attorney are hereby directed and authorized to take all necessary actions to implement the Revised Effective Date and the Amendment, including but not limited to, the signing of contracts, agreements, and other related documents.

PASSED, APPROVED, AND ADOPTED this 22nd day of March 2016.

____
BARBARA D. KOGERMAN, MAYOR

ATTEST:

____
MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2016-03-22-x adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the day of x 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

RESOLUTION NO. 2015-04-28-2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE 2009 WASTE DISPOSAL AGREEMENT WITH THE COUNTY OF ORANGE.

The City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, the City Council approved a Waste Disposal Agreement (Agreement) with the County of Orange (County) at its meeting of June 9, 2009, which requires the City to dispose of all specified solid waste generated within the City to County landfills and for the County to accept all such waste at an agreed-upon rate structure, and also permits the importation of waste from outside of the County; and

WHEREAS, the Agreement became effective on or about July 23, 2009, and by its term is set to expire on June 30, 2020; and

WHEREAS, Section 3.6 (C) of the Agreement provides that the County shall not accept waste imported from outside the County at County landfills after June 30, 2016; and

WHEREAS, an Amendment to the Waste Disposal Agreement (Amendment) has been negotiated between the County and Orange County cities to extend the Agreement to June 30, 2025, to allow for the continuation of importation of waste from outside the County through the extended term of the Agreement, and to provide cities with an allocation of an agreed-upon portion of future importation revenues; and

WHEREAS, the City Council desires to ensure that solid waste generated within the City can be disposed of in a convenient, reliable and environmentally safe manner and at a reasonable cost; and

WHEREAS, the proposed Amendment meets the City Council's objectives regarding solid waste disposal through June 30, 2025, including accommodating the importation of waste from outside the County with no impact to these objectives.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct.

SECTION 2. The City Council hereby finds and determines that the proposed Amendment to Waste Disposal Agreement between the County of Orange and the City of Laguna Hills furthers the public health, safety and welfare of the Laguna Hills community.

SECTION 3. The City Council hereby finds and determines that the terms and provisions of the Amendment, in the form as submitted by City staff, are approved and that the City Manager is authorized to execute the Amendment on behalf of the City.

PASSED, APPROVED, AND ADOPTED this 28th day of April 2015.

DORE J. GILBERT, M.D., MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2015-04-28-2 adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 28th day of April 2015, by the following vote:

AYES: Council Members Blount, Carruth, Sedgwick, Mayor Pro Tempore Kogerman, and Mayor Gilbert

NOES: None

ABSENT: None

ABSTAIN: None

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: APRIL 28, 2015

TO: MAYOR AND COUNCIL MEMBERS

FROM: DAVID REYNOLDS
DEPUTY CITY MANAGER

ISSUE: AMENDMENT TO WASTE DISPOSAL AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE CITY OF LAGUNA HILLS

RECOMMENDATION: THAT THE CITY COUNCIL: (1) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND AUTHORIZING EXECUTION OF AN AMENDMENT TO THE 2009 WASTE DISPOSAL AGREEMENT WITH THE COUNTY OF ORANGE;" AND (2) AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT.

SUMMARY:

The County of Orange and the cities within the county approved a Waste Disposal Agreement (WDA) in 2009 which established landfill disposal rates for cities and established parameters for management of the solid waste disposal in Orange County landfills. This Agreement also permitted the County to accept "out of county waste" for disposal (importation waste) until June 30, 2016 as a means to pay bankruptcy debt. The WDA also set certain annual waste disposal tonnage targets for what the County of Orange would need to rely on for waste disposal fee revenues. Because of the Great Recession and the success of recycling programs, the anticipated tonnage targets have not been met and Orange County has experienced revenue shortfalls. Consequently, the County of Orange and a committee of City Managers drafted the attached Amendment to The Waste Disposal Agreement (Amendment) which calls for an extension to the term of the WDA, the allowance of importation waste for the remainder of the term of the WDA, and the sharing of importation waste revenue with all Orange Cities as further described in the staff report.

BACKGROUND:

In 2009, the cities in Orange County and the County of Orange approved the WDA to govern the disposal of solid waste in Orange County landfills. The cities received stabilized disposal rates in exchange for agreeing to deposit their solid waste at the county's three landfill facilities for a 10-year term, from July 1, 2010 to June 30, 2020. Among other terms in the WDA, the importation of waste from areas outside of Orange County is permitted; however, this provision expires on June 30, 2016.

The County uses the waste disposal revenues, including those collected from imported waste, to maintain the landfill system, preserve funds for landfill closure costs, address post-closure maintenance, and mitigate long-term risk and environmental liabilities. Cities benefit from stability in cost, convenience in local waste disposal, permanent household collection facilities, green waste acceptance, and support of city programs to meet diversion requirements.

However, with the success of solid waste diversion and recycling programs in recent years, combined with a slow recovery from the Great Recession, the in-County waste generation has dramatically decreased by approximately 30% since Fiscal Year 2004/05. This means that less waste has been disposed in local landfills resulting in County revenue shortfalls.

A committee of City Managers representing Orange County cities participated with the County staff in preparing an agreement to address the County's reduction in revenues and to ensure rate stabilization for local residents and businesses. This work effort resulted in the proposed Amendment which sets forth the continuation of future waste importation to offset the revenue reduction with in-County disposal, pays off County bankruptcy related obligations in full, establishes a sharing of net importation revenues to cities, and stabilizes disposal fees for cities.

In regards to the sharing of net importation revenues, the City of Laguna Hills' first year allocation (or Initial Payment per the Amendment) will be $40,098 and represents 0.74% of the overall waste disposed in local landfills by Orange County cities. This payment will occur by September 30, 2016. At the end of Fiscal Year 2019/20, the County will adjust the percentages allocated to each city based on actual tonnage disposed during Fiscal Year 2017/18 through Fiscal Year 2019/20. The revised percentages will be applied to net importation revenue payments to cities for the remainder of the Agreement term.

An in-depth review of County resources concluded the amount of imported waste combined with in-County waste will remain below total disposal tonnage projections contemplated in the current WDA. The proposed 5-year extension of the WDA to 2025 for in-County waste will also provide additional stability to the system in light of more stringent State legislation and regulatory requirements such as AB 1826 (Commercial Organics Recycling), AB 1594 (Green Waste Diversion), and the 75% recycling target of AB 341 (Mandatory Commercial Recycling).

It is recommended that the City Council approve the Amendment to the WDA to provide stable rates for residents and businesses, continued service levels, ensure long-term capacity, maintain a long-term partnership between the City and County, and the sharing of net importation revenues. Upon approvals by the Orange County cities, the proposed Amendment will be considered by the Board of Supervisors at their earliest available meeting.

FISCAL IMPACT:

The City will benefit from ongoing annual payments from the County based on sharing net importation revenues in accordance with the allocation percentages set forth in Appendix 5 of the Agreement. The City's current allocation percentage of 0.74% will generate an initial payment of $40,098 during Fiscal Year 2016/17. Based on County of Orange worksheets, the projected importation revenue via annual payments to the City of Laguna Hills through Fiscal Year 2019/20 is $210,393. The 0.74% allocation will be adjusted for all cities in late Fiscal Year 2019/20 and will apply to the remainder of the Agreement term (or until 2025).

ATTACHMENTS:

- Attachment A: Resolution
- Attachment B: Waste Disposal Agreement Amendment
- Attachment C: 2009 Waste Disposal Agreement

AMENDMENT TO WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and the

CITY OF ______________

_______ __, 2015

County Amendment Authorization Date:

________ __, 2015

City Amendment Authorization Date:

______ __, 2015

County Notice Address:

Director
OC Waste and Recycling
300 N. Flower, Suite 400
Santa Ana, CA 92703

City Notice Address

____
City of ____________
____
____

AMENDMENT TO WASTE DISPOSAL AGREEMENT

THIS AMENDMENT TO WASTE DISPOSAL AGREEMENT (the "Amendment") is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the "County"), and the City designated on the cover page of this Amendment, a general law or charter city and political subdivision of the State of California (the "City").

RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the "Disposal System"). The Disposal System includes three active landfills and four regional household hazardous waste collection centers.

The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

The County has entered into waste disposal agreements in 2009 (the "Original Waste Disposal Agreements") with all of the cities in the County, including the City, as well as certain sanitary districts located in the County (the "Participating Cities"), pursuant to which the County agreed to provide disposal capacity for waste generated in or under the control of the Participating Cities, and the Participating Cities agreed to deliver or cause the delivery of waste generated in or under the control of the Participating Cities to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of, the Original Waste Disposal Agreements.

The City has determined that the execution of this Amendment by the City is in the best interest of the City and will serve the public health, safety and welfare by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and sound environmental management.

The County has determined that the execution by the County of this Amendment will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis consistent with its obligations to the State and the holders of obligations secured by its Disposal System.

Official action approving this Amendment and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Amendment and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

Section 1. Amendment to Original Waste Disposal Agreement.

(a) Sections 3.6(C) and 3.6(E) of the Original Waste Disposal Agreement are deleted and replaced in their entirety, as set forth below:

"(C) Receipt of Imported Acceptable Waste on a Contract Basis. Throughout the Term hereof, the County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. "

"(E) Application and Use of Revenues From Other Users. (1) Throughout the term hereof, all revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System (including amounts received by the County as a result of the failure of contract counterparties to deliver minimum required amounts of Imported Acceptable Waste) , shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County's Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) ("Net Import Revenues") from the disposal of Imported Acceptable Waste by the Disposal System. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. Net Import Revenues shall be used for the payment of bankruptcy related obligations until payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment. It is estimated that payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment will occur by the end of Fiscal Year 2017-18.

(2) Until the County's obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as provided in Section (3.6)(E)(1). For any period after the County's obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as follows:

(i) in Fiscal Year 2017-18, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess of $17.57 per ton;

(ii) in Fiscal Year 2018-19, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported

Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess of $18.01 per ton;

(iii) in Fiscal Year 2019-20, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess in excess of $18.46 per ton; and

(iv) thereafter, Net Import Revenues shall be equal to 30% of the revenues received by the County from the disposal of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located).

(3) After the County's obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full (i) 50% of any Net Import Revenues (as calculated pursuant to Section 3.6(E)(2)) shall be paid to the County General Fund; and (ii) 50% of such Net Import Revenues shall be paid to the Participating Cities (and to the County, with respect to the unincorporated area) listed in Appendix 5 for use for any purpose by the Participating City, including but not limited to state mandated solid waste programs. Payments of such amounts to the County General Fund and the Participating Cities shall be made by the County within 90 days after the end of each fiscal year. The portion of Net Import Revenues specified above payable to the Participating Cities shall be apportioned in the percentages set forth in Appendix 5.

(4) The percentages set forth in Appendix 5 with respect to each Participating City will be adjusted at the end of Fiscal Year 2019-20 to reflect the percentage of actual deliveries of Acceptable Waste from each Participating City as compared to the total amount of actual deliveries from all of the Participating Cities during Fiscal Years 2017-18, 2018-19, and 2019-20. The County shall notify each Participating City of the revised percentages in Appendix 5 within 120 days after the end of Fiscal Year 2019-20. The revised percentages will be used for the allocation of Net Import Revenues generated during Fiscal Year 2020-21 and thereafter.

(b) Section 4.2(A)(z) is added to the Original Waste Disposal Agreement (immediately following Section 4.2(A)(y)) as follows:

"(z) decrease the amount of Net Import Revenues otherwise payable to the County General Fund and the Participating Cities pursuant to Section 3.6(E)(2) and Section 3.6(E)(3) and use the amount of such decrease to pay costs of the Disposal System."

(c) Section 6.1(A) and Section 6.1(B) of the Original Waste Disposal Agreement are deleted and replaced in their entirety with the following:

"SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall continue in full force and effect until June 30, 2025, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2023, for an additional term of ten years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2022. If the parties do not renew this Agreement by June 30, 2023, the Agreement shall expire on June 30, 2025."

(d) The first sentence of Section 6.1(C) of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the following:

"In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2023, negotiate an applicable change in the Contract Rate for such renewal term."

(e) Appendix 2 of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the form attached hereto.

(f) Appendix 5 shall be added to the Original Waste Disposal Agreement as a new appendix, in the form attached hereto.

(g) All other terms and conditions of the Original Waste Disposal Agreement shall remain in full force and effect.

Section 2. Initial Payment. As consideration for the execution of this Amendment by all of the Participating Cities, and subject to the occurrence of the Amendment Effective Date pursuant to Section 3, the County agrees to pay, from the County OC Waste & Recycling Enterprise Fund, the Amendment Payment to the Participating Cities listed in Appendix 5. The aggregate Amendment Payment shall be $5,400,000**,** and shall be distributed to the individual Participating Cities (including the City) in the percentages set forth in Appendix 5 by September 30, 2016.

Section 3. Effectiveness of Amendment. The provisions of this Amendment shall not become effective unless and until the Amendment has been executed by the County and all of the Participating Cities. The date on which the County and all of the Participating Cities have executed the Amendment shall be the "Amendment Effective Date." The County shall give written notice of the Amendment Effective Date to the City. In the event that the Amendment Effective Date does not occur by June 30, 2016, this Amendment shall be automatically terminated and the County shall have no obligation to make the Amendment Payment.

Section 4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES. Each of the parties to this Amendment represent and warrant that it is a political subdivision of the State of California validly existing under the Constitution and laws of the State and (ii) it has duly authorized the execution and delivery of this Amendment, and has duly executed and delivered the Amendment.

All other terms and conditions of the 2009 Original Waste Disposal Agreement not specifically changed by this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Amendment to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date ___________________________ By ___________________________________
Director, OC Waste & Recycling

Date ___________________________ By ___________________________________
[NAME]
City Representative
City of [CITY]

Date ___________________________ By ___________________________________
[NAME]
City Representative
City of [CITY]

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By ______________________________
James Steinmann, Deputy

APPENDIX 2

County Acceptable Waste Tonnage Target to be Used for Purposes of Section 4.2(b)

Fiscal Year	Tonnage	Cumulative
FY 2015-16	2,724,250	2,724,250
FY 2016-17	2,681,153	5,405,403
FY 2017-18	2,638,746	8,044,149
FY 2018-19	2,597,017	10,641,166
FY 2019-20	2,558,522	13,199,688
FY 2020-21	2,520,605	15,720,293
FY 2021-22	2,483,256	18,203,549
FY 2022-23	2,483,256	20,686,805
FY 2023-24	2,483,256	23,170,061
FY 2024-25	2,483,256	25,653,317

APPENDIX 5

PARTICIPATING CITY ALLOCATION PURSUANT TO SECTION 3.6

City	Allocation Percentage for Purposes of Section 3.6	Allocation of Initial Payment
Anaheim	13.18%	$711,509
Aliso Viejo	0.67	36,416
Buena Park	2.34	126,275
Brea	2.28	123,085
Costa Mesa	2.18	117,936
Costa Mesa Sanitary District	1.48	79,976
Cypress	2.56	138,115
Dana Point	0.99	53,278
Fullerton	4.10	221,271
Fountain Valley	1.76	95,217
Garden Grove/ GG Sanitary District	7.17	387,197
Huntington Beach	6.13	330,807
Irvine	8.22	444,036
Laguna Beach	1.14	61,796
Laguna Hills	0.74	40,098
Laguna Niguel	1.36	73,341
Laguna Woods	0.41	22,274
La Habra	1.69	91,431
Lake Forest	2.45	132,214
La Palma	0.32	17,325
Los Alamitos	0.58	31,362
Mission Viejo	2.42	130,902
Newport Beach	3.68	198,946
Orange	4.90	264,468
Placentia	1.58	85,116
Rancho Santa Margarita	1.11	60,009
Santa Ana	10.60	572,184
San Clemente	1.40	75,728
San Juan Capistrano	1.23	66,420
Seal Beach	0.82	44,292
Stanton	1.62	87,287
Tustin	1.42	76,648
Villa Park	0.21	11,081
Midway City Sanitary District (Westminster)	2.13	114,893
Yorba Linda	1.78	96,344
County Unincorporated	3.35	180,723
Totals	100%	$5,400,000

Attachment D

WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and
the

CITY OF LAGUNA HILLS

Dated _____, 2009

County Authorization Date:

March 24, 2009

County Notice Address:

Director
OC Waste & Recycling
300 N. Flower Street, Suite 400
Santa Ana, CA 92703

City Authorization Date:

City Notice Address:

TABLE OF CONTENTS

Page

ARTICLE VII
GENERAL PROVISIONS

WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the "County"), and the City designated on the cover page of this Agreement, a general law or charter city and political subdivision of the State of California (the "City").

RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the "Disposal System"). The Disposal System includes three active landfills and four regional household hazardous waste collection centers.

The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

The City, in the exercise of its police power and its powers under the Act, has entered into a franchise or other agreement with or issued permits or licenses to one or more private haulers for the collection and disposal of municipal solid waste generated within the City.

A significant portion of municipal solid waste generated within the City historically has been and currently is delivered by such hauler or haulers to the County for disposal in the Disposal System.

In 1997, the City and the County entered in a waste disposal agreement (the "Original WDA"), pursuant to which the County agreed to provide disposal capacity for waste generated in the City, and the City agreed to deliver or cause the delivery of waste generated in the City to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of, the Original WDA.

The Original WDA, as amended, will expire by its terms on June 30, 2010, unless the City and the County agree to renew the Original WDA.

The City and the County desire to enter into this agreement to extend, amend and restate the Original WDA, on the terms and conditions set forth herein. The County and City acknowledge that the Original WDA shall remain in full force and effect until the Commencement Date.

The City has determined that the execution of this Agreement by the City will serve the public health, safety and welfare of the City by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and the continuation of sound environmental management.

The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis consistent with its obligations to the State and the holders of obligations secured by its Disposal System.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below.

"Acceptable Waste" means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments and which are acceptable at Class III landfills under Applicable Law.

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

"Agreement" means this Waste Disposal Agreement between the County and the City as the same may be amended or modified from time to time in accordance herewith.

"Appendix" means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof

"Applicable Law" means the Act, the Orange County Code, CERCLA, RCRA, CEQA, any Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System, the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

"Board" means the California Integrated Waste Management Board.

"Capital Costs" means all costs of the Disposal System that are classified as capital costs for purposes of the budget of the Department in accordance with procedures established by the County of Orange Auditor-Controller in compliance with the California State Controller's Manual, including but not limited to all of the categories of costs of the Disposal System reported as "Buildings and Improvements, and Infrastructure" (Object Code 4200) or "Equipment" (Object Code 4000) in the County of Orange – Chart of Accounts, or any successor accounting or reporting system utilized by the County.

"CEQA" means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 *et seq*. as amended or superseded, and the regulations promulgated thereunder.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq*., as amended or superseded, and the regulations promulgated thereunder.

"Change in Law" means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System or other matters to which Applicable Law applies:

(1) the enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County);

(2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or

omission or lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

A "Change in Law" shall include but not be limited to any new or revised requirements relating to the funding or provision of disposal services, including but not limited to any regulations for disposal operations or activities associated with the remediation, closure, funding or monitoring of closed sites with respect to facilities comprising the Disposal System, or facilities which the County previously utilized to provide waste disposal, transfer, recycling, processing or other waste related activities.

"City" means, as applicable, the city or Sanitary District designated on the cover page of this Agreement and party to this Agreement.

"City Acceptable Waste" means all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residue from the foregoing wherever produced, whether within or outside the City (or Tonnage equivalencies of such Residues, as and to the extent provided in subsection 3.1(C) hereof).

"Commencement Date" means the date on which the obligations of the parties hereto commence, established as provided in Section 6.2(B) hereof.

"Contract Date" means the first date on which this Agreement has been executed by both parties hereto.

"Contract Rate" has the meaning specified in Section 4.2 hereof.

"Contract Year" means the fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

"Controllable Waste" means all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefor and which is:

(1) Non-Recycled City Acceptable Waste;

(2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate; and

(3) collected and hauled by Franchise Haulers.

"County" means the County of Orange, a political subdivision of the State of California and party to this Agreement.

"County Plan" means the integrated waste management plan of the County approved by the Board pursuant to the Act as in effect from time to time.

"County Acceptable Waste" means Acceptable Waste generated in the County.

"County OC Waste & Recycling Enterprise Fund" means the waste management enterprise fund established and managed by the County pursuant to Section 25261 of the Government Code separate from its other funds and accounts for receipts and disbursements in connection with the Disposal System.

"County-wide Recycling Services" has the meaning set forth in subsection 3.7(A) hereof.

"Cumulative Tonnage Target" for any given Contract Year means the amount specified in Appendix 2 hereto with respect to such Contract Year.

"Department" means OC Waste & Recycling, and any agency, department or other Governmental Body which succeeds to the duties and powers thereof.

"Disposal Agreements" means each of the waste disposal agreements entered into between the County and any city within the County, Sanitary District or operator of any Transfer Station located in the County in accordance herewith.

"Disposal Services" means the solid waste disposal services to be provided by the County pursuant to the Service Covenant and otherwise hereunder.

"Disposal System" means the Orange County Waste Disposal System which includes solid waste disposal operations at three active landfills (Olinda Alpha, Frank R. Bowerman and Prima Deshecha); four regional Household Hazardous Waste Collection Centers; as well as services, such as monitoring and other activities, at closed refuse stations formerly operated by the County, as appropriate under Applicable Law.

"Environmental Fund" means the fund or funds held by the County to pay unanticipated costs of environmental mitigation, remediation or liability.

"Franchise Hauler" means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by, a permit, contract, franchise or other agreement with the City. The term Franchise Hauler includes the City itself if Acceptable Waste collection and transportation services are provided directly by City operated municipal collection service.

"Governmental Body" means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"Hazardous Substance" has the meaning given such term in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq*.), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder.

"Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq*.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq*.) and the regulations contained in 10 CFR Part 40.

"Imported Acceptable Waste" means Acceptable Waste that is generated outside of the geographical boundaries of the County and delivered to the Disposal System.

"Independent Haulers" means those waste collection/hauler companies primarily engaged as a principal business in the collection and transportation of municipal solid waste generated in the County of Orange which are not obligated to deliver County Acceptable Waste to the Disposal System pursuant to a franchise, contract, permit or other authorization with a city in the County.

"Initial Term" has the meaning specified in Section 6.1(A) hereof.

"Legal Entitlement" means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Disposal System or the performance of any obligation under this Agreement or the matters covered hereby.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Loss-and-Expense" means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, charge, tax, or expense, including all fees and costs.

"Net Import Revenues" has the meaning ascribed thereto in Section 3.6(E).

"Non-Recycled City Acceptable Waste" means all City Acceptable Waste other than Recycled City Acceptable Waste.

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State, if applicable, or the prime rate established from time to time by the Bank of America, N.A. or its successors and assigns, plus 2%, whichever is lower.

"Participating City" means any city or Sanitary District executing a Disposal Agreement in accordance with Section 3.6(A) hereof and meeting all requisite conditions to the Commencement Date thereof.

"Plan of Adjustment" means the County's Modified Second Amended Plan of Adjustment, confirmed by the United States Bankruptcy Court Central District of California in that Conformed Order Confirming Modified Second Amended Plan of Adjustment, filed May 17, 1996.

"Posted Disposal Rate" means the per ton tipping fee charged by the County for the disposal of solid waste at the Disposal System by parties which are not entitled to disposal service at the Contract Rate pursuant to this Agreement.

"Prohibited Medical Waste" means any medical or infectious waste prohibited or restricted under Applicable Law from being received by or disposed at the Disposal System.

"Qualified Household Hazardous Waste" means waste materials determined by the Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

(1) Of a nature that they must be listed as hazardous in State statutes and regulations;

(2) Toxic/ignitable/corrosive/reactive; and

(3) Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Unacceptable Waste.

"Recycled City Acceptable Waste" means any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is "recycled" within the meaning of Section 40180 of the Public Resources Code.

"Renewal Term" has the meaning specified in Subsection 6.1(B) hereof.

"Residue" means any material remaining from the processing, by any means and to any extent, of City Acceptable Waste or Recycled City Acceptable Waste; provided, however, that Residue shall not include minimal amounts of material remaining after such processing (which minimal amounts shall in no event exceed 10% of the amount of such City Acceptable Waste or Recycled City Acceptable Waste prior to processing).

"Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 *et seq*., as amended and superseded.

"Restricted Reserves" has the meaning specified in Section 4.5.

"Sanitary Districts" means the sanitary districts in the County formed pursuant to the Sanitary District Act of 1923, codified at Cal. Ann. Health & Safety Code Section 6400 *et seq*., as amended, supplemented, superseded and replaced from time to time.

"Self-Hauled Waste" means City Acceptable Waste collected and hauled by Self-Haulers.

"Self-Hauler" means any person not engaged commercially in waste haulage who collects and hauls Acceptable Waste generated from residential or business activities conducted by such person.

"Service Coordinator" means the service coordinator for either party designated pursuant to subsection 3.5(C) hereof.

"Service Covenant" means the covenants and agreements of the County set forth in Sections 3.2 and 3.3 hereof.

"Source-Separated Household Hazardous Waste" means Qualified Household Hazardous Waste which has been segregated from Acceptable Waste originating or generated within the geographical jurisdiction of the City at the source or location of generation.

"Source-Separated Household Hazardous Waste Disposal System" means the collection centers, facilities, contracts and other arrangements owned or administered by the County for the receipt, handling and disposal of Source-Separated Household Hazardous Waste.

"State" means the State of California.

"Term" shall mean the Term of this Agreement.

"Ton" means a "short ton" of 2,000 pounds.

"Transfer Station" means any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility to which solid waste collected for the City is delivered for processing before disposal in the Disposal System.

"Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste; explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine vessels and steel cable; hot loads; and any waste which the Disposal System is prohibited from receiving under Applicable Law.

"Uncontrollable Circumstance" means any act, event or condition affecting the Disposal System, the County, the City, or any of their Franchise Haulers, contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control of and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Examples of Uncontrollable Circumstances are:

(1) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and

(2) a Change in Law.

"Unincorporated Area" means those portions of the County which are not contained within the jurisdictional boundaries of incorporated cities.

"Unincorporated Area Acceptable Waste" means Acceptable Waste originating from or generated within the Unincorporated Area.

"Unrestricted Reserves" means cash and other reserves of the Disposal System which are not Restricted Reserves.

"Waste Disposal Covenant" means the covenants and agreements of the City set forth in Section 3.1 hereof.

SECTION 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on haulers or any other person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(G) Applicable Law. This Agreement shall be governed by and construed in accordance with the Applicable Laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist, unless such invalidity frustrates the underlying primary purpose of the Agreement.

(I) Integration; Preservation of Certain Agreements. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions; provided, however, that this Agreement shall not supersede the following agreements:

1) MOU, dated March 10, 1992, between the City of Brea and the County of Orange regarding the Olinda Alpha Landfill as amended on April 6, 1993 and November 29, 1994;

2) MOU, dated May 11, 1995, between the City of Brea and the County of Orange regarding importation of out-of-County waste to the Olinda Alpha Landfill;

3) Settlement Agreement, dated August 1, 1984, between the City of Irvine and the County of Orange regarding the Bee Canyon Landfill (currently called Frank R. Bowerman Landfill);

4) MOU, dated May 16, 1995, between the City of Irvine and the County of Orange regarding importation of out-of-County waste to the Frank R. Bowerman Landfill;

5) MOU, dated September 12, 1995, and amended November 21, 1995, between the City of San Juan Capistrano and the County of Orange regarding importation of out-of-County waste to the Prima Deshecha Landfill;

6) MOU, dated July 1, 1997, between the City of San Clemente[, the Orange County Flood Control District] and the County of Orange regarding the Prima Deshecha Landfill; and

7) Cooperative Agreement, dated August 15, 2006, between the County and the City of Irvine.

(J) Recitals. The recitals to this Agreement are not intended to bind the parties hereto. In the event of a conflict between the recitals and the operative provisions of this Agreement, the operative provisions shall prevail. The recitals shall not be used to interpret the provisions of the Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) Existence. The City is a general law or charter city validly existing under the Constitution and laws of the State.

(B) Due Authorization. The City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

(A) Existence. The County is a political subdivision of the State of California validly existing under the Constitution and laws of the State.

(B) Due Authorization. The County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County.

ARTICLE III
DELIVERY AND ACCEPTANCE OF WASTE
AND PROVISION OF DISPOSAL SERVICE

SECTION 3.1 DELIVERY OF WASTE.

(A) Waste Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith.

(B) Recycled City Acceptable Waste. The parties hereto acknowledge the responsibility of the City to meet the recycling and landfill diversion goals contained in the Act. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Controllable Waste generated in the City and delivered to the Disposal System by or on behalf of the City which may result from any such source separation or recycling program shall cause the City any liability hereunder (other than potential adjustment to the Contract Rate to the extent provided in Article IV hereof) and shall not constitute a breach of this Agreement.

(C) Waste Delivered to Transfer Station. All Residue from any processing of Controllable Waste by materials recovery, composting, recycling or other means, wherever performed, shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Where City Acceptable Waste is processed at a facility which concurrently processes other Acceptable Waste in a manner which produces commingled residue which cannot be traced to a geographic source, generic residues from such facility in Tonnage equal to the residues that would have been produced had City Acceptable Waste only been processed at the facility shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Any City Acceptable Waste or material derived or segregated therefrom which is held in storage and asserted by the possessor thereof to constitute Recycled City Acceptable Waste awaiting sale or distribution to the secondary materials markets shall constitute Controllable Waste if, when and to the extent that the storage or diversion thereof can be reasonably deemed to constitute an evasion of the Waste Disposal Covenant rather than generally recognized, accepted and prevailing practice in the Southern California materials recovery and recycling industry conducted in accordance with Applicable Law. In order for the owner and/or operator of a transfer station to be entitled to deliver Acceptable Waste from a Participating City to the Disposal System for the Contract Rate as provided in Article IV, such owner and/or operator must execute a direct agreement with the County, acknowledging and agreeing to comply with the obligation of the Participating City to cause the delivery of all Controllable Waste to the Disposal System pursuant to this Agreement. In addition, the County shall be authorized to implement procedures to determine if Acceptable Waste delivered by the owners or operators of Transfer Stations is entitled to utilize the Disposal System for the Contract Rate. Such procedures may include requiring Transfer Stations to certify, under penalty of perjury, the source of any such Acceptable Waste. If necessary, the County may require that, in order to qualify for use of the Disposal System for the Contract Rate, Transfer Stations must deliver Controllable Waste in loads containing only Controllable Waste, and not commingled with Acceptable Waste from entities which are not Participating Cities or Participating Independent Haulers.

(D) Power to Obligate Waste Disposal and Comply with this Agreement. On or before the Commencement Date, (i) any City franchise, contract, lease, or other agreement which is lawfully in effect relating to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the Commencement Date to direct the delivery of all Controllable Waste to a disposal location selected by the City (whether or not such Controllable Waste is delivered to a transfer station as an intermediate step prior to landfill disposal) and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise Haulers, and (ii) the City shall designate the Disposal System as the disposal location pursuant to such franchise, contract, lease or other agreement. On and after the Commencement Date and throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval, or adopt any ordinance, resolution or law which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements over any City Acceptable Waste which, as of the Contract Date, is subject to non-exclusive or exclusive franchise or other contractual arrangements. The City agrees that the County shall be a third party beneficiary of the obligation of Franchise Haulers to deliver Controllable Waste to the Disposal System, and may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchise Hauler of the County's third party beneficiary rights.

(E) Waste Flow Enforcement. (1) The City, in cooperation with the Department, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Disposal System pursuant to and in accordance with the Waste Disposal Covenant for disposal at the times and in the manner provided herein. The waste flow enforcement program shall consist of amending City franchises, permits or authorizations with all Franchise Haulers, to the extent required by this Section and to the extent allowed by law, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with the Waste Disposal Covenant, but shall not be limited to: (i) licensing or permitting Franchise Haulers, upon the condition of compliance with the Waste Disposal Covenant, (ii) providing for and taking appropriate enforcement action under any such franchise, license, or permit, such as but not limited to the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchise Haulers and (iii) causing any Transfer Station to which Controllable Waste is delivered for processing to deliver certification, under the penalty of perjury, of the amounts of Controllable Waste received and Residue remaining from processing at such Transfer Station.

(2) The City acknowledges and agrees that in the event of a breach of the Waste Disposal Covenant by the City, the City shall pay the County an amount equal to the amount that the City would have been required to pay to the County had the Waste Disposal Covenant not been breached, which shall be calculated by (x) subtracting the number of tons actually delivered during the month(s) of the breach from the number of tons that were delivered during the same month(s) closest in time when there was no such breach, even if such month(s) closest in time was prior to the Term, and (y) multiplying such amount by the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2). In the event that the County terminates the Waste Disposal Agreement as a result of such breach, the damages due as a result of such termination shall be equal to (aa) the average monthly deliveries by the City for the twelve months prior to the commencement of the breach multiplied by (bb) the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2), multiplied by (cc) the number of months that would have remained in the Term of the Agreement had the termination not occurred. The parties recognize that if the City fails to meet its obligations hereunder, the County will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the parties agree that the damages specified above represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

(F) Legal Challenges to Franchise System. The City shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant against any challenge thereto, legal or otherwise (including any lawsuits against the City or the County, whether as plaintiff or defendant), by a

Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The City shall bear the cost and expense of any such Legal Proceeding or other challenge. In the event any such Legal Proceeding relating to the Waste Disposal Covenant or the City's exercise thereof establishes in a final determination that such covenant or exercise thereof is void, unlawful or unenforceable, or if any Franchise Hauler fails to deliver Controllable Waste to the Disposal System in breach of its franchise with the City on the grounds that a judicial determination made by any court or other Applicable Law has rendered its obligation to deliver Controllable Waste to the Disposal System void, unlawful or unenforceable on any legal grounds, with the result that actual waste deliveries to the Disposal System fall below the Cumulative Tonnage Targets, the County shall be entitled to avail itself of the remedies described in Section 4.2(B) hereof.

(G) Franchise Haulers. The City shall compile and provide the Department with the following information concerning all Franchise Haulers: name, address and phone number; identification number; area of collection and transportation; and franchise and permit terms.

(H) Waste Information System. The City shall cooperate with the Department in collecting information and otherwise monitoring Franchise Haulers in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of, Recycled City Acceptable Waste collected, transported, stored, processed and marketed or disposed of, Franchise Haulers' franchise, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the Department in connection with this Agreement. The City agrees to include in any revised franchise, contract, license or permit or other authorization granted to Franchise Haulers an obligation of the Franchise Hauler to provide to the County information relating to the Controllable Waste collected by such Franchise Hauler, including origins from which such Controllable Waste was collected, tonnage by type of load (residential, commercial, roll-off box), customer service levels, tonnage delivered by transfer station or material recovery facility utilized, and other related information.

(I) City Actions Affecting County. The City agrees to carry out and fulfill its responsibilities under this Agreement and Applicable Law so as to permit full and timely compliance by the County with its covenants and agreements with the State. In particular, the City agrees not to conduct, authorize or permit any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste or its collection, transportation, transfer, storage, treatment or disposal that may materially and adversely affect the County's ability to achieve such timely compliance. Notwithstanding the foregoing, the City shall not be required to deny any permit or license or refuse to grant any approval while exercising its police powers.

(J) No Right of Waste Substitution. Nothing in this Agreement shall authorize or entitle the City to deliver or cause the delivery to the Disposal System of Acceptable Waste originating from or generated outside the jurisdiction of the City, nor obligate the County to receive or dispose of any such Acceptable Waste. The City shall not assign in whole or in part its right to deliver or cause to be delivered Controllable Waste to the County hereunder, and shall not permit any Acceptable Waste originating from or generated outside the jurisdiction of the City to be substituted for Controllable Waste for any purpose hereunder.

(K) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant and the Contract Rate, shall, to the extent permitted by Applicable Law, extend to any territory annexed by the City (or any territory with respect to which the City assumes, after March 30, 2008, solid waste management responsibility from a Sanitary District or other public entity) and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

SECTION 3.2 PROVISION OF DISPOSAL SERVICES BY THE COUNTY.

(A) Service Covenant. Commencing on the Commencement Date, the County shall provide or cause the provision of the service of (1) receiving and disposing of all Controllable Waste at the Disposal System (or such other facilities, including transfer stations, as the County may determine to use), (2) disposing in accordance with subsection 3.2(C) hereof of Controllable Waste which, at any time and for any reason, is in excess of the disposal capacity of the Disposal System, and (3) in accordance with subsection 3.3(C) hereof, disposing of Unacceptable Waste inadvertently accepted at the Disposal System. The County, to the maximum extent permitted under Applicable Law, shall use its best efforts to keep the Olinda Alpha, Prima Deshecha and Frank R. Bowerman Landfills open for the receipt of waste for disposal or transfer of Controllable Waste pursuant to this Agreement. The County shall do and perform all acts and things which may be necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations.

(B) Particular Facilities. The Department and the City shall consult and cooperate in determining whether and to what extent from time to time other landfills other than that primarily used by the City shall be utilized to receive Controllable Waste. The Department shall immediately advise the City by telephone of any situation, event or circumstance which results in the partial or complete inability of the County to receive Controllable Waste at any particular landfill within the Disposal System, its effect on the County's ability to perform its obligations hereunder, and the County's best estimate of the probable duration. The Department shall confirm such advice in writing within 24 hours of the occurrence of any such inability. The County shall use its best efforts to resume normal operation of the landfill primarily used by the City as soon as possible. In the event of a temporary material increase in average daily deliveries of Controllable Waste from the City which the County reasonably believes could result in the permitted daily disposal capacity limit to be exceeded with respect to a particular landfill within the Disposal System, the County shall have the right to redirect the increased Controllable Waste to another landfill within the Disposal System for the duration of the increase in average daily deliveries; provided, however, that in such circumstances the County shall utilize reasonable efforts to first redirect waste which is not Controllable Waste.

(C) Compliance with Service Covenant Not Excused for any Reason. Commencing on the Commencement Date, the obligations of the County to duly observe and comply with the Service Covenant shall apply continuously and without interruption for the Term of this Agreement. In the event that any Change in Law or other Uncontrollable Circumstance impairs or precludes compliance with the Service Covenant by the means or methods then being employed by the County, the County shall implement alternative or substitute means and methods to enable it to satisfy the terms and conditions of the Service Covenant. In the event that a Change in Law precludes the County from complying with such covenants with the means or methods then being employed and from utilizing any alternate or substitute means or methods of compliance, the County shall continuously use all reasonable efforts to effectuate executive, legislative or judicial change in or relief from the applicability of such law so as to enable the County lawfully to resume compliance with such covenants as soon as possible following the Change in Law.

SECTION 3.3 COUNTY RIGHT TO REFUSE WASTE.

(A) Right of Refusal. Notwithstanding any other provision hereof, the County may refuse delivery of:

(1) Hazardous Waste;

(2) Controllable Waste delivered at hours other than those provided in Section 3.5 hereof;

(3) Waste that does not constitute Acceptable Waste;

(4) Waste that is delivered by any party which has not executed a Waste Disposal Agreement; and

(5) Controllable Waste consisting primarily of construction and demolition debris or inerts which may cause a particular facility's daily tonnage limit to be exceeded.

(B) Identification of Unacceptable Waste. The Department shall have the right (but not the duty or the obligation) to inspect the vehicles of all Franchise Haulers delivering material to the Disposal System, and may require that the Franchise Hauler remove any Unacceptable Waste from such vehicle before it is unloaded. If the Department determines that it is impractical to separate Controllable Waste from Unacceptable Waste in any vehicle, or if the Franchise Hauler delivering such waste is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the Department may reject the entire vehicle, and the City shall forthwith remove or cause the removal of the entire delivery from the Disposal System. The Department may take all reasonable measures to prevent waste from being blown or scattered before and during unloading. The City shall cause the Franchise Haulers to observe and comply with Applicable Law, the operating rules and regulations of the Department, and the provisions of this Agreement prohibiting the delivery of Unacceptable Waste to the Disposal System.

(C) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Disposal System has not been designed or permitted, and is not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Hazardous Waste or Hazardous Substances. Neither the County nor the City shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Disposal System.

(D) Disposal of Unacceptable Waste and Hazardous Waste. If Unacceptable Waste or Hazardous Waste is discovered in a vehicle at any landfill within the Disposal System, the driver of the vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of a landfill within the Disposal System Department personnel will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading onto the delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with Applicable Law. Whenever Hazardous Waste is detected at any landfill within the Disposal System, the Department shall take immediate action in accordance with Applicable Law.

(E) Source-Separated Household Hazardous Waste. The County shall maintain, as part of the Disposal System, a Source-Separated Household Hazardous Waste Disposal System for the disposal of Source-Separated Household Hazardous Waste. The disposal service provided by such system shall constitute part of the Disposal Services, and shall be available to Participating Cities as part of the Contract Rate. The County may impose additional fees and charges for services relating to Source-Separated Household Hazardous Waste with respect to cities which are not parties to a Disposal Agreement. The County may provide for the expansion, contraction or modification of the Source-Separated Household Hazardous Waste Disposal System and its services to the extent necessary to ensure the Disposal System's viability; provided, however, if the County chooses to reduce services, the County shall nonetheless continue to expend funds for the Source-Separated Household Hazardous Waste Disposal System each year during the term of this Agreement in an amount at least equal to the amount of funds expended for the Source-Separated Household Hazardous Waste Disposal System during fiscal year 2006-07 as adjusted by changes in the Producer Price Index.

SECTION 3.4 UNINCORPORATED AREA ACCEPTABLE WASTE. Commencing on the Commencement Date, the County in accordance with Applicable Law shall provide or cause to be provided the service of disposing of non-recycled Acceptable Waste originating or generated within the Unincorporated Area and, with respect to such waste, shall comply with the Waste Disposal Covenant as if the County constituted a City subject to the Waste Disposal Covenant hereunder. Rates charged by the County for the disposal of each class of non-recycled Acceptable Waste generated in the Unincorporated Area shall be the same as the Contract Fee charged for the disposal of each class of Controllable Waste. The County shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area) against any challenge thereto, legal or otherwise, by a Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The County shall bear the cost and expense of any such Legal Proceeding or other challenge (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area).

SECTION 3.5 MISCELLANEOUS OPERATIONAL MATTERS.

(A) Operating Hours. The County shall keep the Disposal System open for the receiving of Controllable Waste during such regular operating hours as may be established by the Department in the operating rules and regulations applicable to the Disposal System. The County shall utilize best efforts to maintain substantially similar hours, as were in effect on January 2, 2009, for the receipt of waste through the term of this Agreement (subject to Applicable Law).

(B) Scales and Weighing. The Department shall operate and maintain permanent scales at the Disposal System. The Department shall weigh all vehicles delivering waste by or on behalf of the City (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery.

(C) Service Coordinator. The County and the City each shall designate in writing thirty days prior to the expected Commencement Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each a "Service Coordinator"). Either party may designate a successor or substitute Service Coordinator at any time by notice to the other party.

(D) Review of Records. Each party may review the other party's books and records with respect to matters relevant to the performance by either party under this Agreement or otherwise related to the operation of the Disposal System to the extent allowed under the California Public Records Act (interpreted as if the parties to this Agreement were natural persons for purposes of the Public Records Act).

SECTION 3.6 OTHER USERS OF THE DISPOSAL SYSTEM.

(A) On or Before July 23, 2009. the County shall have the right to enter into waste disposal agreements with Orange County entities with respect to Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the County, including other cities in the County, Sanitary Districts, Transfer Stations and Independent Haulers, which waste disposal agreements shall have terms and provisions substantially identical to the terms and provisions of this Agreement; provided, however, that in no event shall such agreements have terms and provisions more favorable than the terms and provisions of this Agreement (including but not limited to the Contract Rate and availability of disposal capacity).

(B) After July 23, 2009. the County shall have the right to enter into waste disposal agreements with Orange County entities, including any city, Sanitary District, Transfer Station and Independent Hauler, or otherwise accept Acceptable Waste from such parties, but only within the limitations contained in this Section. Any such agreement or waste acceptance agreement must provide that the party delivering waste shall pay a Posted Disposal Rate at least 10% higher than the Contract Rate unless the County determines it is in the best interest of the Disposal System to establish a Posted Disposal Rate less than 10% higher than the Contract Rate. In no event shall the Posted Disposal Rate be equal to or less than the Contract Rate. In addition, the County shall reserve the right in any such waste disposal agreement at any time, to the extent permitted by Applicable Law, to refuse to receive and dispose of Acceptable Waste from any city, County Sanitary District, Transfer Station and Independent Hauler if and to the extent that such receipt and disposal may materially and adversely affect the ability of the County to comply with its obligations to the Participating Cities under the Disposal Agreements to which each is a party.

(C) Receipt of Imported Acceptable Waste on a Contract Basis. The County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. The term of any such agreement for the disposal of Imported Acceptable Waste shall end by the later to occur of (i) December 31, 2015 or (ii) the date on which County general purpose revenues are no longer expended to pay debt service on the Orange County Public

Financing Authority Lease Revenue Refunding Bonds Series 2005, but in no event later than the last day of the fiscal year commencing July 1, 2015.

(D) Self Haulers. The City and the County acknowledge that Self-Haulers shall be entitled to deliver Self-Hauled Waste to the Disposal System, on a non-contract basis, at the Posted Disposal Rate. Such Self-Haulers shall not be entitled to dispose of Acceptable Waste for the Contract Rate.

(E) Application and Use of Revenues From Other Users. All revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System, shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County's Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) ("Net Import Revenues") from the disposal of Imported Acceptable Waste by the Disposal System, and such Net Import Revenues may be used for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), incremental operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. The parties acknowledge that their intention in determining to allow the importation of Imported Acceptable Waste for disposal by the Disposal System is to stabilize the Contract Rate at rates below those which would otherwise prevail in the absence of such importation.

SECTION 3.7 COUNTY PROVISION OF WASTE DIVERSION SERVICES.

(A) County-Wide Recycling Services. This Agreement does not require the County to provide for any source reduction, materials recovery, recycling, composting, or other waste diversion services by the County nor any payment therefor by the City, by Franchise Haulers or by ratepayers; provided, however, any County-Wide Recycling Services may be funded through the County OC Waste & Recycling Enterprise Fund. Any such recycling services may be expanded, contracted or modified by the County at any time in its sole discretion.

(B) Separate City-County Diversion Service Agreements. Nothing in this Agreement is intended to limit the right of the County to enter into a separate agreement with the City or any other person to provide source reduction, materials recovery, recycling, composting or other waste diversion services. Any such program conducted by the County, whether in participation with the City, any other of the Participating Cities, other Cities, Sanitary Districts, Transfer Stations, Independent Haulers, Unincorporated Area or non-County entity, shall be operated, managed and accounted for as a program separate and distinct from the Disposal Services program contemplated by the Disposal Agreements and shall not be funded through the general revenues of the Disposal System.

ARTICLE IV
CONTRACT RATE

SECTION 4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE. The City acknowledges that the County shall have the right to charge and collect a Contract Rate for the acceptance and disposal of Controllable Waste delivered to the System by any Franchise Hauler. The Contract Rate shall be calculated and established, and may be modified, as provided in Section 4.2 hereof. In addition, the City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Contract Rates.

SECTION 4.2 CONTRACT RATE.

(A) Establishment of Contract Rate. The Contract Rate payable by each Franchise Hauler shall be (x) $22.00 per ton from the Commencement Date through June 30, 2010, and (y) $29.95 per ton on and after July 1, 2010, in both cases contingent on the delivery to the Disposal System of an amount of Acceptable Waste at least equal to the Cumulative Tonnage Targets identified in Appendix 2, and subject to adjustment necessary to reflect the circumstances set forth in this Section 4.2:

(i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, other than Changes in Law;

(ii) costs incurred by the County (in excess of available insurance proceeds and amounts available in the Environmental Fund for such purposes) remediating environmental conditions at the Disposal System or inactive or closed disposal sites in the County, which, if uncorrected, could give rise to potential claims under CERCLA or related federal or state statutes, including costs incurred providing indemnification to any Participating City pursuant to subsection 7.3; or

(iii) tonnage shortfalls to the extent permitted by Sections 4.2(B);

(iv) average annual inflation prior to July 1, 2010 in excess of the levels set forth in Section 4.2(H) and escalation pursuant to Section 4.2(F) ;

(v) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Changes in Law; or

(vi) Capital Costs in excess of the Capital Costs at any point in time during the term hereof exceeding the Cumulative Capital Costs set forth in Appendix 3.

Prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (i), (ii) or (iii) above, the County shall utilize the following remedies in the following order of priority:

(x) reduce the costs of operating the Disposal System to the extent practicable; and

(y) utilize Unrestricted Reserves to pay costs of the Disposal System.

The County will not be required to utilize such remedies prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (iv), (v) or (vi) above.

Any adjustments to the Contract Rate permitted by this Section shall be calculated by the County to reflect the actual costs or expenses of addressing the circumstance or circumstances pursuant to which the adjustment is authorized. The County agrees that it will evaluate the feasibility of long term financing for significant capital costs where appropriate.

(B) County Acceptable Waste Shortfall. In the event that the actual amount of County Acceptable Waste delivered to the Disposal System at the end of any Contract Year is less than the Cumulative Tonnage Target for such Contract Year for County Acceptable Waste, as specified in Appendix 2, the County shall utilize the following options, in the following order of priority, in order to remedy any adverse effects of such tonnage shortfall:

(i) reduce the costs of operating the Disposal System to the extent practicable;

(ii) utilize Restricted Reserves described in clause (iii) of Section 4.5 to pay costs of the Disposal System;

(iii) utilize Unrestricted Reserves to pay costs of the Disposal System; and

(iv) adjust the Contract Rate.

In the event that implementation of the steps described above does not result in sufficient revenues to satisfactorily address the shortfall in tonnage, the County shall have the right to terminate the Agreement on 60 days written notice to the City. In addition, in the event that actual deliveries to the Disposal System exceed the Cumulative Tonnage Target as of the end of any Contract Year, the City acknowledges the County shall have the right to establish reserves intended to reflect the potential for lower than expected annual waste deliveries in subsequent years, and that any such reserves shall constitute "Restricted Reserves".

(C) [RESERVED]

(D) Interim Use of Remedies. In the event that, during any Contract Year, waste deliveries to the Disposal System are 25% or more below delivery projections for such Contract Year with the result that the County determines it is unlikely that the Cumulative Tonnage Target will be achieved as of the end of such Contract Year, the County may utilize the remedies described in Section 4.2(B) prior to the end of such Contract Year; provided, however, that if at the end of such Contract Year, the Cumulative Tonnage Target is actually met, the County shall reimburse any adjustments to the Contract Rate made pursuant to this Section to Participating Cities. Such reimbursement may be given as a credit or adjustment to the Contract Rate for future deliveries, rather than a lump sum payment.

(E) Special Charges. Notwithstanding Section 4.2(A), the County shall have the right to impose special charges for the receipt of hard to handle materials, such as bulky materials, construction and demolition debris, tree stumps and sludge. Such special charges shall be calculated to reflect the reasonable incremental costs to the County of accepting such hard to handle materials. In addition, in the event that the Board of Supervisors of the County makes a determination to implement a facility (including but not limited to a transfer station, landfill, conversion technology facility, or a materials recovery or processing facility), which facility would be intended to provide for disposal alternatives after the closure of one or more of the landfills currently operating within the Disposal System, the County may impose an additional charge of $0.50 per ton of Acceptable Waste in order to pay the costs of the study, development, planning, construction and/or operation of such facility.

Adjustments pursuant to this Section 4.2(E) shall not require compliance with the provisions of Section 4.2(I).

(F) Escalation. The Contract Rate shall be adjusted each July 1, beginning July 1, 2011. The change will be equal to the positive percentage change in the Consumer Price Index – All Urban Consumers, U.S. city average, All items, Not Seasonally Adjusted, Series ID CUUR0000SA0 ("CPI") as measured from the October 21 months prior to the rate adjustment to the October immediately preceding the rate adjustment. For example: The July 1, 2011 rate adjustment shall be based upon the index change from October 2009, to October 2010, referred to as year 1 and year 2 respectively in the following example .

Formula to calculate percentage change in the Contract Rate:

Step 1:

$$\left[\frac{\text{October Year 2 CPI}}{\text{October Year 1 CPI}} \right] - 1 = \text{\% increase in Contract Rate}$$

Step 2: Current Contract Rate x (1+ % increase in Contract Rate) = Contract Rate as of July 1 Year 2

On each April 1, commencing April 1, 2011, the County shall provide the City with notice of the adjustment to the Contract Rate to be effective the following July 1. Such notice shall contain the calculation of the adjustment set forth above. The County will calculate the new Contract Rate each year.

In the event that the change in the CPI is negative, no rate adjustment will be made for that year. No adjustment under this Section 4.2(F) will take place until the October CPI index surpasses the index level as of the October immediately preceding the last annual rate adjustment pursuant to this Section 4.1(F), which will be considered "year 1" in calculating the change in the Contract Rate.

For example, if the CPI is measured as follows: October 2009 = 205, October 2010 = 204, October 2011 = 201, October 2012 = 208, then there would be no adjustment in July 2011, or July 2012, and an adjustment equal to the change from 205 to 208 would be implemented on July 1, 2013.

Adjustments pursuant to this Section 4.2(F) shall not require compliance with the provisions of Section 4.2(I).

(G) Adjustment Resulting from Increased Fees. In addition to the other adjustments specified herein, the Contract Rate shall be adjusted to reflect the imposition of new fees or increase in existing fees relating to the disposal of Controllable Waste imposed by state, federal or other agencies (i.e., the State's Integrated Waste Management fee, which is currently $1.40 per ton). The adjustment shall be equal to the amount of any new or increased fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any increase pursuant to this Section 4.2(G) as soon as practicable after becoming aware of the imposition of any fees described above.

Adjustments pursuant to this Section 4.2(G) shall not require compliance with the provisions of Section 4.2(I).

(H) Calculation of Cumulative Inflation Rate. For purposes of Section 4.2(A)(iv) for adjustments prior to July 1, 2011, the inflation shall be calculated as the change in the CPI between July of the year of calculation and July 1, 2008. Inflation shall be deemed to exceed the levels set forth below if the ratio between the CPI for July for the year of calculation (calculated in accordance with the formula below) and July 2008 exceeds the ratio corresponding to such year of calculation on the table below. The ratio shall be calculated in accordance with the following formula:

(July CPI of calculation year / CPI for July 2008)

Year of Calculation	***Ratio***
July 1, 2008	1.0000
July 1, 2009	1.0356
July 1, 2010	1.0723

In the event the CPI is no longer published during the term of this Agreement, such other index identified by the Bureau of Labor Statistics or otherwise generally accepted as a replacement for CPI shall be used for purposes of this Agreement. In the event of an adjustment to the Contract Rate pursuant to this section 4.2(H), such adjustment shall be applied to the Contract Rate effective until June 30, 2010, and the Contract Rate effective July 1, 2010.

Adjustments pursuant to this Section 4.2(H) shall not require compliance with the provisions of Section 4.2(I).

(I) Procedure for Rate Adjustments. In the event the County determines that it is entitled to an adjustment of the Contract Rate pursuant to Section 4.2(A) (other than 4.2(A)(iv)) or Section 4.2(B), it shall utilize the procedures described in this Section 4.2(I). The County shall be required to provide the City with at least 90 days prior written notice of the adjustment, which notice shall identify the specific event(s) or circumstances which require the adjustment. The notice shall also specify the earliest date on which the County Board of Supervisors shall consider the proposed adjustment. At least 45 days prior to such meeting of the Board of Supervisors, the County shall provide the City with a report which shall contain the following information: a description of the specific event(s) or circumstances which require the adjustment; a description (including cost estimates) of any activities (which may include, but not be limited to capital improvements to the Disposal System) required in order to remedy such event or circumstance; certification by the County that it has implemented the remedies described in Section 4.2(A) or (B) prior to requiring the rate adjustment; and a description of the methodology used by the County to calculate the adjustment to the Contract Rate (hereinafter the "County Report"). In the event the City disputes the adjustment, it shall provide the County with a written description of the reason for the dispute at least 10 days prior to the meeting of the Board of Supervisors identified in the initial notice of the County (hereinafter the "City Report"). The City Report shall be provided to the Board of Supervisors for consideration at such meeting in connection with the proposed rate adjustment. At any time from and after the date that the County provides the City with the County Report, upon the request of either party, the City and County shall meet and confer in good faith to resolve any dispute that may arise regarding the proposed adjustment to the Contract Rate. In any such meeting, the County shall be represented by the Director of the Department or his or her designee. In the event the Board of Supervisors approves all or a portion of the proposed rate adjustment, such rate adjustment shall become effective on the date identified in the initial notice sent by the County regardless of whether or not the procedures in Section 4.2(J) are utilized, but subject to potential reimbursement pursuant to clause (11) of Section 4.2(J).

(J) Procedure for Expedited Judicial Review of Contested Rate Adjustment. In the event that, within 30 days after the effective date of any Contract Rate adjustment made pursuant to Section 4.2(I), Participating Cities which, in the aggregate, accounted for more than 50% of the County Acceptable Waste delivered to the County System in the twelve months preceding the Contract Rate adjustment, provide notice to the County of their election to utilize the procedures described in this Section 4.2(J), then the provisions of this Section 4.2(J) shall be utilized by such Participating Cities and the County to resolve the dispute over the Contract Rate Adjustment. In the event that Participating Cities which have delivered the amount of waste contemplated in the preceding sentence do not provide notice to the County of such election, the County shall have no obligation to participate in or cooperate in the implementation of the procedures described below in this Section 4.2(J).

(1) In order to pursue the expedited judicial determination described in this Section (the "Expedited Rate Determination"), the Participating Cities which have made the election described in the paragraph above (the "Challenging Cities") must commence a civil action for breach of contract (the "Action") in the Orange County Superior Court within 45 days of the date on which the Board of Supervisors approves the challenged adjustment to the Contract Rate.

(2) Within two (2) days of filing the Action, the Challenging Cities shall personally serve on the County Counsel both the summons and complaint, and a stipulation and request for the entering of an order incorporating all of the procedural provisions relating to the Expedited Rate Determination as set forth in this Section 4.2(J) (such stipulation and request for order is hereinafter referred to as the "Expedited Rate Determination Stipulation"). The Expedited Rate Determination Stipulation shall be signed by each of the Challenging Cities.

(3) Within fifteen (15) days of the date of service upon the County of the summons and complaint, and Expedited Rate Determination Stipulation, the County Counsel shall execute the Expedited Rate Determination Stipulation and personally serve upon the Challenging Cities through their counsel of record the Expedited Rate Determination Stipulation and its answer to the complaint in the Action. The Stipulation shall also include a waiver by each of the parties of their right to a jury trial of the issues raised in the Action. The City and the County mutually agree that the duty to execute the Expedited Rate Determination Stipulation and comply with the procedures set forth for Expedited Rate Determination in this Section 4.2(J) shall be, and are hereby deemed to be, ministerial duties which the law specifically enjoins upon each of them, and shall be subject to enforcement by the parties herein pursuant to Code of Civil Procedure Section 1085, *et seq*., or by means of a complaint for specific performance.

(4) Within three (3) days of the date of service by the County upon the Challenging Cities of the fully signed Expedited Rate Determination Stipulation, the County and the Challenging Cities shall jointly make *ex parte* application to the Orange County Superior Court in the Action for the issuance of the order contained in the Expedited Rate Determination Stipulation. At such *ex parte* application, the County and the Challenging Cities shall also seek to confirm with the Orange County Superior Court the briefing schedule, and request a hearing date in accordance with the procedures set forth in this Section 4.2(J).

(5) Within ten (10) days of the date of service by the County upon the Challenging Cities of the answer in the Expedited Rate Determination, the Challenging Cities shall file with the court and personally serve upon the County the Challenging Cities' opening brief and the Record in the Expedited Rate Determination. The opening brief shall not exceed 15 pages in length. The Record shall consist of, and be limited to, the record of the proceedings before the Board of Supervisors with respect to the adjustment of the Contract Rate, including but not limited to the County Report and the City Report prepared by each or any of the Challenging Cities pursuant to Section 4.2(I), any materials filed or lodged with the Board of Supervisors and the Orange County

Waste Commission, the transcript of the proceedings of the Board of Supervisors meeting and the Orange County Waste Commission, the minutes of the Board of Supervisors and the Orange County Waste Commission meeting, and the resolution and/or other documentation evidencing action by the Board of Supervisors and the Orange County Waste Commission to adjust the Contract Rate pursuant to Section 4.2(A) or (B). The record shall also include the most recent reports prepared pursuant to Sections 4.6 and 4.7. The Expedited Rate Determination shall be decided solely on the evidence in the Record, and no extrinsic evidence shall be submitted to or considered by the court.

(6) Within ten (10) days of service by the Challenging Cities of their opening brief and the Record, the County shall file and personally serve upon the Challenging Cities the County's opposition brief. The opposition brief shall not exceed 15 pages in length.

(7) Within five (5) days of service by the County upon the Challenging Cities of the opposition brief, the Challenging Cities may file and personally serve upon the County a rebuttal brief, which shall not exceed 10 pages in length.

(8) The trial of the Expedited Rate Determination shall be conducted as a hearing which shall be conducted at the date set by the court in the *ex parte* hearing conducted pursuant to Section 4.2(J)(4), or such other date and time ordered by the court. If the court requests the parties to prepare supplemental briefs in response to any question or issue raised by the court, the parties may do so.

(9) The standard of review for the Expedited Rate Determination shall be the preponderance of the evidence based upon the Record. The burden of proof shall be borne by the Challenging Cities, and the burden of proof shall be the same as with respect to a plaintiff in a damages action for breach of contract. Both parties have participated in the drafting of this Agreement. Accordingly, nothing set forth in this Agreement shall be interpreted or construed for or against either of the parties as a consequence of their participation in the drafting of this Agreement.

(10) The court shall issue its written statement of decision and enter judgment within thirty (30) days of the date of the hearing in the Expedited Rate Determination.

(11) If the court determines that any portion of the County's adjusted Contract Rate which is the subject of the Expedited Rate Determination was improperly imposed, the County shall, within 30 days of the date of the statement of decision, reimburse to the City the amount improperly imposed, together with interest calculated at the highest percentage rate that does not constitute usury under California laws. Such reimbursement may be made in the form of a reduction in the Contract Rate for a future period (not to exceed twelve months) reasonably calculated to provide full reimbursement of the amounts described above.

(12) If for any reason the court does not sign the order contained in the Expedited Rate Determination Stipulation, the City shall, within 30 days of the court's denial of such requested order, file with the court and personally serve upon the County a motion for summary judgment and/or motion for judgment on the pleadings, in accordance with Code of Civil Procedure Section 437(c) and 438. By executing this Agreement, the parties hereby stipulate that, in the event that the Challenging Cities file such summary judgment motion and/or motion for judgment on the pleadings, the Record shall be deemed to have been incorporated into the complaint and answer filed by the Challenging Cities and the County, and no evidence outside of the Record is relevant or material to the dispute raised in the Expedited Rate Determination. The briefing schedule and hearing on such motion for summary judgment and/or motion for judgment on the pleadings shall be in accordance with Code of Civil Procedure Section 437(c). The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (12).

(13) In the event that the court both does not sign the order contained in the Expedited Rate Determination Stipulation and either does not hear or does not issue a ruling on the merits on the motion for summary judgment and/or judgment on the pleadings which is dispositive of the issues, claims and causes of action in the complaint filed by the Challenging Cities, the County and the Challenging Cities shall, within twenty days following the issuance of the Court's order or decision not to honor the parties' stipulation or not to hear the parties' motion for summary judgment, make application to the Presiding Judge of the Orange County

Superior Court for an expedited hearing or trial date. The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (13). In this regard, and without limiting the foregoing, the only evidence to be presented at the hearing or trial shall be the Record, no testimony shall be presented at the hearing or trial; and both the County and the Challenging Cities waive all rights to a jury trial, to any reconsideration of the decision of the court, to a new trial after the court renders a decision, and to any appeal or review of the decision of the court.

SECTION 4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE.

(A) Payment by City. In the event and to the extent (1) the City uses municipal collection forces directly for the haulage of Controllable Waste to the Disposal System or (2) the City uses non-municipal Franchise Haulers for collection but nonetheless elects to pay the Contract Rate from City revenues, the City, as its own Franchise Hauler, shall have direct responsibility for payment of the Contract Rate, and shall take all such budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate. Such action may include, depending upon the means authorized by the City to provide for such payment, the levy and collection of general or special taxes, the imposition of benefit assessments, or the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal. The City shall use best efforts in accordance with Applicable Law to levy and impose all such taxes, assessments, fees or charges, and will take all steps, actions and proceedings for the enforcement, collection and payment of all such amounts which shall become delinquent, to the full extent permitted by Applicable Law. To the extent provided in Section 7.5 hereof, the obligation of the City for such Contract Rates shall be limited to amounts in the City's Solid Waste Enterprise Fund. From the Commencement Date to the date of expiration or termination of this Agreement, the obligation to the City to pay the Contract Rate, to the extent the City rather than Franchise Haulers is responsible directly for payment and provided that the Service Covenant has been complied with, shall be absolute and unconditional and shall not be subject to delay or diminution by reason of set-off, abatement, counterclaim, existence of a dispute or otherwise.

(B) Payment by Franchise Haulers. With respect to Controllable Waste delivered by Franchise Haulers other than City municipal collection forces, the obligation to pay the Contract Rate shall rest with such Franchise Haulers and not with the City and, unless the City has agreed with the County to be responsible for Franchise Hauler payments, the City shall not be financially responsible for any delay or failure by such Franchise Hauler to pay the Contract Rate or any portion thereof when due. In the event of any such failure, the County and the City shall cooperate with each other and use their best efforts to obtain timely payment. Such efforts by the County may include, as appropriate, requiring cash payments for disposal rights from such Franchise Hauler and bringing a legal proceeding for payment and damages. Such efforts by the City may include, as appropriate, legal proceedings to suspend, revoke or terminate the Franchise Hauler's franchise, permit or license rights.

(C) Disputes. If the City or the Franchise Hauler disputes any amount billed by the County in any Billing Statement, the City or the Franchise Hauler shall nonetheless pay the billed amount and shall provide the County with written objection within 30 days of the receipt of such Billing Statement indicating the amount that is being disputed and providing all reasons then known to the City or the Franchise Hauler for any objection to or disagreement with such amount. If the City or the Franchise Hauler and the County are not able to resolve such dispute within 30 days after the City's or the Franchise Hauler's objection, either party may pursue appropriate legal remedies.

SECTION 4.4 BILLING OF THE CONTRACT RATE. The County shall continue to bill Contract Rates after the Commencement Date, in the same manner as it has customarily billed tipping fees. Subject to the other provisions of this Agreement, the County shall have the right to modify or amend such manner of billing on reasonable notice to affected parties.

SECTION 4.5 RESTRICTED RESERVES. For purposes of this Agreement, "Restricted Reserves" means cash and other reserves of the Disposal System which are restricted to specific uses or are otherwise being reserved by the County to meet its obligations hereunder throughout the term of the Agreement with respect to the Disposal System pursuant to any Applicable Law, contract, adopted budget, budgetary policy of the County with respect to the Disposal System, or other arrangement. Such cash and other reserves are not required to be deposited in separate accounts or funds in order to constitute "Restricted Reserves" hereunder, and may be commingled with

Unrestricted Reserves or other funds of the County attributable to the Disposal System. “Restricted Reserves” shall include, but not be limited to, the following:

(i) reserves for closure of components of the Disposal System to the extent required by Applicable Law;

(ii) amounts reserved by the County for funding of post closure maintenance and monitoring with respect to components of the Disposal System;

(iii) reserves established to protect the Disposal System against the adverse financial impact of potential decreases in waste deliveries pursuant to Section 4.2(B);

(iv) amounts reserved to pay the costs of capital improvements with respect to the Disposal System;

(v) amounts funded from revenues during the early years of the term of the Agreement reserved to enable the County to provide disposal services for the Contract Rate during the later years of the Agreement;

(vi) amounts temporarily held by the County prior to payment to the State or other Governmental Bodies pursuant to Applicable Law (including any fees or charges payable to the State Integrated Waste Management Board);

(vii) reserves required to meet bond covenants pursuant to financing agreements for Disposal System assets to the extent such amounts must be legally separate and distinct from other reserves identified in this Section;

(viii) security deposits from landfill deferred payment program users;

(ix) amounts held by the County in the Environmental Fund (provided, however, that such amounts in the Environmental Fund will be made available and used by the County if required to pay costs relating to environmental remediation or other related costs);

(x) AB939 surcharges;

(xi) amounts held by the County in the Corrective Action Fund held pursuant to CCR Title 27 to demonstrate financial assurance to pay for potential groundwater contamination; and

(xii) an amount equal to three months of budgeted expenses for the Disposal System for the current fiscal year, representing working capital of the Disposal System.

SECTION 4.6 AUDITED FINANCIAL STATEMENTS. The County shall annually, on or before January 1 each year, prepare or cause to be prepared and have on file for inspection an annual report for the preceding Contract Year, accompanied by a certificate of an independent public accountant or of the County Auditor and Controller as to the examination of the financial statements therein (describing such statements as fairly presenting the information therein in conformity with generally accepted accounting principles) relating to the Disposal System, the Disposal Services, and the fiscal activities of the County OC Waste Disposal Enterprise Fund, and including statements in reasonable detail of the financial condition of the County OC Waste Disposal Enterprise Fund as of the end of the Contract Year and revenue and expenses for the Contract Year.

SECTION 4.7 ANNUAL UPDATE OF TEN-YEAR FINANCIAL PROJECTION. The County shall annually, on or before May 1 of each year, prepare or cause to be prepared, an updated Ten-Year Financial Projection for the Disposal System. Said Financial Projection shall include at least two full years of prior actual data and ten years of future projections including the following elements:

1. County Acceptable Waste, in tons;

2. Imported Acceptable Waste, in tons;

3. Revenues and expenditures;

4. Cash fund balances, including all monies in the County Solid Waste Enterprise Fund, with specific delineation of monies in the Environmental Fund, Restricted Reserves, Unrestricted Reserves, and all other funds of the System.

5. Projected liabilities for closure and post closure as well as reasonable reserves for other environmental costs.

The purpose of the Ten-Year Financial Projection is to keep the City fully informed about the future financial condition of the Disposal System. The County shall cause a copy of the Ten-Year Financial Projection to be delivered to the City Manager of the City no later than May 1 of each year. Upon request, the County shall make available to the Cities supporting information related to the ten-year financial projection

ARTICLE V
BREACH, ENFORCEMENT AND TERMINATION

SECTION 5.1 BREACH. The parties agree that in the event either party breaches any obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither party shall have the right to terminate this Agreement except as provided in Section 5.2 and Section 5.3 hereof or as otherwise provided in this Agreement.

SECTION 5.2 CITY CONVENIENCE TERMINATION. The City shall have the right to terminate this Agreement in its sole discretion, for its convenience and without cause at any time during the Term hereof upon 90 days' written notice to the County. If the City exercises its rights to terminate the Agreement pursuant to this Section, the City shall pay the County a termination fee equal to the Contract Rate in effect at the time of such termination (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2) multiplied by the number of tons of City Acceptable Waste delivered to the Disposal System during the preceding twelve months (or, if the City had been in breach of the Waste Disposal Covenant during such prior months, such amount as would have been delivered if the City had complied with the Waste Disposal Covenant), multiplied by the number of years remaining in the Term of the Agreement.

SECTION 5.3 TERMINATION.

(A) By City. Except as expressly provided herein, the City shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the County substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the City the right to terminate this Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the County stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County and which will, in its opinion, give the City the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The County has neither challenged in an appropriate forum (in accordance with Section 5.5) the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the

County shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the County is continuing to take such steps to correct such breach).

(B) By County. Except as expressly provided herein, the County shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the City substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the County the right to terminate this Agreement for cause under this subsection unless:

(1) The County has given prior written notice to the City stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the City and which will, in its opinion, give the County right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The City has neither challenged in an appropriate forum (in accordance with Section 5.5) the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the City shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the City is continuing to take such steps to correct such breach).

SECTION 5.4 NO WAIVERS. No action of the County or the City pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or the City in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or the City under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

SECTION 5.5 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Disposal System or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California having appropriate jurisdiction.

ARTICLE VI
TERM

SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon the City and the County from the Contract Date and shall continue in full force and effect until June 30, 2020, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2018, for an additional term of ten years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2017. If the parties do not renew this Agreement by June 30, 2018, the Agreement shall expire on June 30, 2020.

(C) Contract Rate During Renewal Term. In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2018, negotiate an applicable change in the Contract Rate for such renewal term. In determining any revisions to the

Contract Rate to be applicable during any renewal period, in addition to the circumstances described in Section 4.2(A), the parties may take into consideration the following parameters, including but not limited to:

(i) actual cost of operations;

(ii) population growth;

(iii) increase or decrease in available tonnage;

(iv) economic and disposal market conditions in the Southern California region;

(v) changes in transportation and technology;

(vi) closure and expansion of nearby landfills;

(vii) capacity of the Disposal System; and

(viii) available reserves which are in excess of the amount reasonably required as reserves.

(D) Survival; Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 3.1(E)(2), 5.1, 5.3, 5.5, 7.2, 7.3, 7.5, 7.7, 7.8, 7.9, and 7.10 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties shall terminate.

SECTION 6.2 COMMENCEMENT DATE.

(A) Obligations of the Parties Prior to the Commencement Date. The parties acknowledge that the Disposal Agreements may be executed and delivered on different dates and that, except as provided in this subsection, neither the County nor the City shall be obligated to perform its obligations hereunder until the participation threshold provided herein has been met and the other conditions to the occurrence of the Commencement Date have occurred. Prior to the Commencement Date, each party hereto shall at its own expense exercise good faith and due diligence and take all steps within its reasonable control in seeking to satisfy the conditions to the Commencement Date set forth herein as soon as reasonably practicable. The County and the City, each at its own expense, shall cooperate fully with each other and the other Participating Cities in connection with the foregoing undertaking. Until the Commencement Date occurs, the Original WDAs shall remain in full force and effect.

(B) Condition to the Commencement Date. The Commencement Date for the Agreement shall be the date on which the percentage of the County's Acceptable Waste attributable to Participating Cities which have executed and delivered Disposal Agreements shall exceed 85% percent (using the percentage rates attributed to such Cities in Appendix 1). Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with this Section 6.2(b) and Appendix 1 of this Agreement.

(C) Satisfaction of Condition and Commencement Date. Upon the satisfaction or waiver of the condition to the Commencement Date, the County shall give written notice thereof to the cities which have theretofore executed Disposal Agreements. The parties shall thereupon hold a formal closing acknowledging the satisfaction or waiver of the condition to the Commencement Date, certifying that the Commencement Date has occurred and designating the Participating Cities. Copies of all of the documents or instruments constituting or evidencing satisfaction of the Commencement Date conditions shall be furnished to each party prior to or on the Commencement Date.

(D) Newly Incorporated Cities. Any city within Orange County which becomes incorporated after the Commencement Date shall upon request be offered the opportunity by the County to become a Participating City. If any such City executes a Disposal Agreement and meets the applicable condition provided in subsection 6.2(B) hereof within 180 days following the date of its municipal incorporation, then such City shall be entitled to execute a Waste Disposal Agreement on substantially the same terms and conditions as this Agreement (including the Contract Rate), notwithstanding the limitations contained in Section 3.6(B).

(E) Failure of Condition. If by ___________ [120 DAYS AFTER BOARD APPROVAL], or such later date as the County may agree, the condition to the Commencement Date specified in this Section is not satisfied, either party hereto may, by notice in writing to the other party, terminate this Agreement. Neither party shall be liable to the other for the termination of this Agreement pursuant to this subsection, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the condition to the Commencement Date. Notwithstanding anything in this Agreement to the contrary, in the event that this Agreement is terminated pursuant to this Section, the provisions of the Original WDA shall remain in full force and effect on the terms and conditions set forth therein.

ARTICLE VII
GENERAL PROVISIONS

SECTION 7.1 OPERATION AND MAINTENANCE OF THE DISPOSAL SYSTEM. The County, at its cost and expense through the County Solid Waste Enterprise Fund, shall at all times operate, or caused to be operated, the Disposal System in accordance with Applicable Law and the operating rules and regulations of the Department.

SECTION 7.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, (3) the estimated amount, if any, by which the Contract Rate may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such party under this Agreement and (5) potential mitigating actions which might be taken by the County or City and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. In addition, with respect to Changes in Law, the County shall diligently contest any such changes the imposition of which would have a material adverse impact on the Disposal System. While the delay continues, the County or City shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted.

(C) Impact on Contract Rate. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to the County of meeting its obligations hereunder and providing Disposal Services to the Participating Cities in accordance herewith, the County shall be entitled to an increase in the Contract Rate as provided in Section 4.2 herein or an extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. The proceeds of any insurance available to meet any such increased cost shall be applied to such purpose prior to any determination of cost increases payable under this subsection. Any cost reductions achieved through the mitigating measures undertaken by the County pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the

Contract Rate would have otherwise been increased or shall serve to reduce the Contract Rate to reflect such mitigation measures, as applicable.

SECTION 7.3 INDEMNIFICATION. To the extent permitted by law, the County agrees that, it will protect, indemnify, defend and hold harmless the City from and against all Loss-and-Expense arising from the City's activity as an "arranger" (for purposes of and as such term is defined under CERCLA or comparable state statutes) of municipal solid waste disposal pursuant to this Agreement. In the event the City shall determine that because of conflict or any other reason that it wishes to be defended by legal counsel other than the legal counsel provided by the County, the cost of providing such legal counsel shall be the City's sole responsibility. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement whether the County or the City provides legal counsel. Any costs incurred by the County pursuant to this Section shall be considered an Uncontrollable Circumstance cost and the County shall be entitled to adjust the Contract Rate as provided in subsection 4.2(A) herein. The County shall not, however, be required to indemnify or defend the City from and against all Loss-and-Expense arising from any willful, knowing, illegal or negligent disposal of hazardous waste (other than incidental amounts of Household Hazardous Waste commonly found in municipal solid waste and permitted to be disposed in Class III landfills under RCRA) which violates the County's landfill permits or Applicable Law. The parties agree that this provision constitutes an indemnity under CERCLA (to the extent of the specific provisions of this Section). The parties acknowledge that this subsection is not intended to and does not create any obligation on the part of the County to provide any indemnification or defense to any Franchise Hauler, whether franchised or not, or any Independent Hauler or Transfer Station, under any circumstances. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement, and shall, as a condition to this indemnity, coordinate fully with the County in the defense.

SECTION 7.4 RELATIONSHIP OF THE PARTIES. Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The County is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

SECTION 7.5 LIMITED RECOURSE.

(A) To the City. Except in the event the City has not established or maintained a City Solid Waste Enterprise Fund, no recourse shall be had to the general funds or general credit of the City for the payment of any amount due the County hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the County for all such amounts shall be to the funds held in any such Solid Waste Enterprise Fund. All amounts held in any City Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the County. The City shall make adequate provision in the administration of any City Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

(B) To the County. No recourse shall be had to the general funds or general credit of the County for the payment of any amount due the City hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the County's obligations hereunder. The sole recourse of the City for all such amounts shall be to the funds held in the County Solid Waste Enterprise Fund in accordance with the terms of this Agreement. All amounts held in the County Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the City. The County shall make adequate provision in the administration of the County Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

SECTION 7.6 PRE-EXISTING RIGHTS AND LIABILITIES. Nothing in this Agreement is intended to affect, release, waive or modify any rights, obligations or liabilities which any party hereto may have to or against the other party as of the Contract Date relating to the disposal of waste in the Disposal System or any other related matter.

SECTION 7.7 NO VESTED RIGHTS. The City shall not acquire any vested property, license or other rights in the Disposal System by reason of this Agreement.

SECTION 7.8 LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING. Any liability incurred by the City as a result of collecting Acceptable Waste or processing it for diversion from landfill, or as a result of causing, franchising, permitting, licensing, authorizing or arranging any of the foregoing, shall be its sole liability, except as expressly otherwise provided herein.

SECTION 7.9 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 7.10 AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

SECTION 7.11 NOTICE OF LITIGATION. Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement executed by the City or the County or any Legal Entitlement issued in connection herewith.

SECTION 7.12 FURTHER ASSURANCES. At any and all times the City and the County so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 7.13 ASSIGNMENT OF AGREEMENT. (A) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which may be withheld in the other party's sole discretion. Notwithstanding the foregoing, either party may assign this Agreement to another public entity, subject to the reasonable consent of the other party. In such circumstances the party not requesting the assignment shall have the right to demand assurances of the financial, technical and legal ability of the proposed assignee to undertake the responsibilities and obligations of the assigning party.

(B) Sale. The County shall not enter into any agreement for the sale of the Disposal System which provides for an effective date for such sale prior to the termination of this Agreement.

SECTION 7.14 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

SECTION 7.15 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 7.13 hereof.

SECTION 7.16 NOTICES. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth on the cover page of this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date ______________________________ By ______________________________
Director, OC & Recycling

Date ______________________________ By ______________________________
[NAME]
City Representative
City of Laguna Hills

Date ______________________________ By ______________________________
[NAME]
City Representative
City of Laguna Hills

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By ______________________________

Date ______________________________

APPENDIX 1

ESTIMATED ANNUAL TONNAGE

APPENDIX 1

PERCENTAGE OF COUNTY ACCEPTABLE WASTE ATTRIBUTABLE TO PARTICIPATING CITIES FOR PURPOSE OF SECTION 6.2(b)

Jurisdiction	Percentage of County Acceptable Waste
Anaheim	13.4%
Santa Ana	10.6%
Irvine	7.5%
Huntington Beach	6.0%
Orange	5.8%
Garden Grove	5.1%
Fullerton	4.5%
Unincorporated Orange County (1)	4.3%
Costa Mesa	3.6%
Newport Beach	3.0%
Lake Forest	2.6%
Buena Park	2.5%
Mission Viejo	2.3%
Westminster	2.3%
Yorba Linda	2.3%
Brea	2.1%
Tustin	2.0%
Cypress	1.9%
La Habra	1.8%
San Clemente	1.7%
Fountain Valley	1.6%
Laguna Niguel	1.6%
Placentia	1.6%
San Juan Capistrano	1.6%
Laguna Beach	1.4%
Dana Point	1.2%
Stanton	1.1%
Rancho Santa Margarita	1.0%
Laguna Hills	0.9%
Seal Beach	0.8%
Aliso Viejo	0.7%
Los Alamitos	0.5%
La Palma	0.3%
Laguna Woods	0.2%
Villa Park	0.2%
Total	100%

(1) Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with Section 6.2(b) of this Agreement.
(2) A Participating City will only be included for purposing of determining the Commencement Date upon (i) execution of a Waste Disposal Agreement by that Participating City and (ii) execution of a Hauler Acknowledgement(s) by the Franchise Hauler(s) operating within such Participating City

APPENDIX 2

CUMULATIVE TONNAGE TARGETS

APPENDIX 2

Cumulative County Acceptable Waste Tonnage Target to be Used for Purposes of Section 4.2 (B)

Fiscal Year	***County Acceptable Waste Tonnage***	***Cumulative County Acceptable Waste Tonnage***
FY 2008-09	3,170,387	3,170,387
FY 2009-10	3,092,806	6,263,193
FY 2010-11	3,185,590	9,448,783
FY 2011-12	3,344,870	12,793,653
FY 2012-13	3,445,216	16,238,869
FY 2013-14	3,514,120	19,752,989
FY 2014-15	3,549,262	23,302,251
FY 2015-16	3,565,608	26,867,859
FY 2016-17	3,582,033	30,449,892
FY 2017-18	3,598,535	34,048,427
FY 2018-19	3,615,115	37,663,542
FY 2019-20	3,631,774	41,295,316

APPENDIX 3
CUMULATIVE CAPITAL COSTS
to be Used
for Purposes of Section 4.2(A)vi

Fiscal Year (ending June 30)	Annual Capital Costs	Cumulative Capital Costs
2009	$37,939,538	$37,939,538
2010	$59,343,405	$97,282,943
2011	$10,433,978	$107,716,921
2012	$13,678,113	$121,395,034
2013	$17,525,040	$138,920,074
2014	$11,259,518	$150,179,592
2015	$37,682,758	$187,862,350
2016	$5,068,800	$192,931,150
2017	$10,662,265	$203,593,415
2018	$29,397,698	$232,991,113
2019	$8,263,795	$241,254,908
2020	$45,103,805	$286,358,713

APPENDIX 4

FORM OF HAULER ACKNOWLEDGMENT

FRANCHISE HAULER ACKNOWLEDGMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT, dated as of June 9, 2009 (the "Acknowledgment"), by and between the City of Laguna Hills (the "City") and CR&R Incorporated (the "Franchise Hauler").

WITNESSETH

WHEREAS, the City and the Franchise Hauler have heretofore entered into an agreement entitled "Contract for the Collection, Transportation And Disposal of Municipal Solid Waste and For the Collection, and Transportation of Recyclable Materials to Processors for Diversion", dated as of September 28, 2005 (the "Franchise"); and

WHEREAS, the City has issued to the Franchise Hauler a permit, license, approval or other authorization the "Authorization") which allows the Franchise Hauler to provide solid waste collection services within the City; and

WHEREAS, the Franchise Authorization provides for the collection and disposal of municipal solid waste as described therein ("Franchise Waste") generated within the City; and

WHEREAS, Orange County (the "County") owns, manages and operates a sanitary landfill disposal system for municipal solid waste generated within the County; and

WHEREAS, the City and the County have heretofore entered into a Waste Disposal Agreement, dated as of June 9, 2009 (the "Disposal Agreement") determining that the execution of such Disposal Agreement will serve the public health, safety and welfare of the residents of the City and County, by maintaining public ownership and stewardship over the Orange County Landfill Disposal System (the "Disposal System"); and

WHEREAS, under the Disposal Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the City and the City has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Disposal System; and

WHEREAS, the provisions of the Waste Disposal Agreement which guarantee capacity for the long term disposal of waste at specified rates generated in the City provide significant benefits to the Franchise Hauler;

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Disposal System; and

WHEREAS, the City and the Franchise Hauler desire to enter into this Acknowledgment to assure that the City and the Franchise Hauler will be entitled to the benefits of the Waste Disposal Agreement and to assure conformity with the waste delivery obligations which have been agreed to by the City under the Disposal Agreement through the delivery of waste by the Franchise Hauler to the Disposal System; and

WHEREAS, the Franchise Hauler's agreement to deliver Franchise Waste to the Disposal System under this Acknowledgment is given in consideration of the Franchise Hauler's right to receive the Contract Rate for such disposal as provided in the Disposal Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Capitalized terms used and not otherwise defined herein are used as defined in the Disposal Agreement.

2. The Franchise Hauler hereby waives any right which it may possess under applicable law to contest on any ground, constitutional, statutory, case law, administrative or otherwise, (a) the right, power or authority of the County or the City to enter into or perform their respective obligations under the Disposal Agreement, (b) the enforceability against the County or the City of the Disposal Agreement, or (c) the right, power or authority of the City to deliver or cause the delivery of all Controllable Waste to the Designated Disposal Facility in accordance with this Acknowledgment.

3. The City and the Franchise Hauler each hereby represent that this Acknowledgment has been duly authorized by all necessary action of their respective governing bodies.

4. The Franchise Hauler shall deliver or cause to be delivered all Controllable Waste (including all residue from the processing by any means, wherever conducted, of Controllable Waste), to the Disposal System, and shall otherwise assist the City in complying with its obligations under the Waste Disposal Covenant in Section 3.1 of the Disposal Agreement.

5. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Designated Disposal Facility in compliance with the Waste Disposal Covenant.

6. The Franchise Hauler shall pay the Contract Rate imposed by the County at the Designated Disposal Facility for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Disposal Agreement.

7. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in the Franchise to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.

8. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.

9. This Acknowledgment may be enforced by the City by any available legal means. In any enforcement action by the City, the burden of proof shall be on the Franchise Hauler to demonstrate compliance herewith.

10. This Acknowledgment shall be in full force and effect and shall be legally binding upon the City and Franchise Hauler from the dated hereof and shall continue in full force and effect until the earlier of (i) the end of the term of the Franchise or (ii) the end of the term of the Disposal Agreement.

11. The City and Hauler agree that the County shall be an express third party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Franchise Hauler hereunder.

12. The Hauler agrees to assist the County in verifying tonnage collected by the Franchise Hauler and providing information required by the County. Hauler will provide upon request refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box), and by facility to which it was delivered (specify which landfill or transfer station). Hauler will provide customer service levels and route lists. Hauler will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.

IN WITNESS WHEREOF, the parties have caused this Acknowledgment to be executed by their duly authorized officers or representatives as of 9th day of June, 2009.

CITY OF LAGUNA HILLS

Signature: ______________________________

Joel Lautenschleger, Mayor

CR&R INCORPORATED

Signature: ______________________________

Dean Ruffridge
Senior Vice President

DISCHARGE ELIMINATION SYSTEM PERMIT FOR POLLUTANT DISCHARGES RELATING TO THE CITY'S 4TH OF JULY FIREWORKS DISPLAY; AND (2) ADOPTED A CATEGORICAL EXEMPTION.

ITEMS REMOVED FROM THE CONSENT CALENDAR

3.2 APPROVAL OF MINUTES FOR FEBRUARY 23, 2016

Council Member Blount removed Item No. 3.2 from the Consent Calendar due to his absence at the February 23, 2016, Regular Meeting.

THE CITY COUNCIL APPROVED THE MINUTES OF THE FEBRUARY 23, 2016, REGULAR MEETING, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER BLOUNT.
APPROVED BY A VOTE OF 4-0 WITH COUNCIL MEMBER BLOUNT ABSTAINING.

3.10 COOPERATIVE AGREEMENT NO. C-5-3586 BETWEEN ORANGE COUNTY TRANSPORTATION AUTHORITY AND CITIES OF LAGUNA HILLS, ALISO VIEJO, LAGUNA NIGUEL, AND MISSION VIEJO FOR ALICIA PARKWAY REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROJECT (CITY DESIGNATED PROJECT, CIP NO. 168G)

Mayor Kogerman removed Item No. 3.10 from the Consent Calendar for additional information.

Public Services Director Rosenfield reviewed the information provided in the Staff Report.

THE CITY COUNCIL APPROVED COOPERATIVE AGREEMENT NO. C-5-3586 BETWEEN ORANGE COUNTY TRANSPORTATION AUTHORITY AND CITIES OF LAGUNA HILLS, ALISO VIEJO, LAGUNA NIGUEL, AND MISSION VIEJO FOR ALICIA PARKWAY REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROJECT (CITY DESIGNATED PROJECT, CIP NO. 168G) AND AUTHORIZED THE MAYOR TO SIGN AND THE CITY CLERK TO ATTEST THERETO, BY M/MAYOR KOGERMAN, S/COUNCIL MEMBER GILBERT.
APPROVED BY A VOTE OF 5-0.

4. PLANNING AGENCY

Mayor Kogerman recessed the City Council meeting and acting in the capacity of Chair, called the regular meeting of the Planning Agency of the City of Laguna Hills, California, to order at 7:33 p.m.

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Kogerman, Vice Chair Sedgwick, Agency Member Blount, Agency Member Carruth, Agency Member Gilbert

4.2 PUBLIC COMMENTS

There were no Public Comments.

4.3 APPROVAL OF MINUTES FOR FEBRUARY 23, 2016

THE PLANNING AGENCY APPROVED THE MINUTES OF THE FEBRUARY 23, 2016, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/VICE CHAIR SEDGWICK.
APPROVED BY A VOTE OF 4-0 WITH AGENCY MEMBER BLOUNT ABSTAINING.

4.4 ADMINISTRATIVE REPORTS

There were no Administrative Reports.

4.5 PLANNING AGENCY PUBLIC HEARINGS

There were no Planning Agency Public Hearings.

PLANNING AGENCY ADJOURNMENT

Mayor Kogerman adjourned the Planning Agency meeting and acting in the capacity of Chair/Mayor, called the Joint Planning Agency/City Council Meeting to order at 7:34 p.m.

JOINT PLANNING AGENCY / CITY COUNCIL MEETING

ROLL CALL OF JOINT PLANNING AGENCY / CITY COUNCIL MEETING

Present: Chair/Mayor Kogerman, Vice Chair/Mayor Pro Tempore Sedgwick, Agency/Council Member Blount, Agency/Council Member Carruth, Agency/Council Member Gilbert

PUBLIC COMMENTS

There were no Public Comments.

PUBLIC HEARINGS

CONSIDERATION OF A REQUEST BY LAGUNA HILLS INVESTMENT COMPANY AND OAKBROOK URBAN VILLAGE I, LLC, TO AMEND AN EXISTING DEVELOPMENT AGREEMENT AND MODIFY CONDITIONS OF APPROVAL NO. 47 AND NO. 54 OF SITE DEVELOPMENT PERMIT/MASTER

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: CITY COUNCIL/ PLANNING AGENCY

FROM: DAVID CHANTARANGSU, AICP
COMMUNITY DEVELOPMENT DIRECTOR

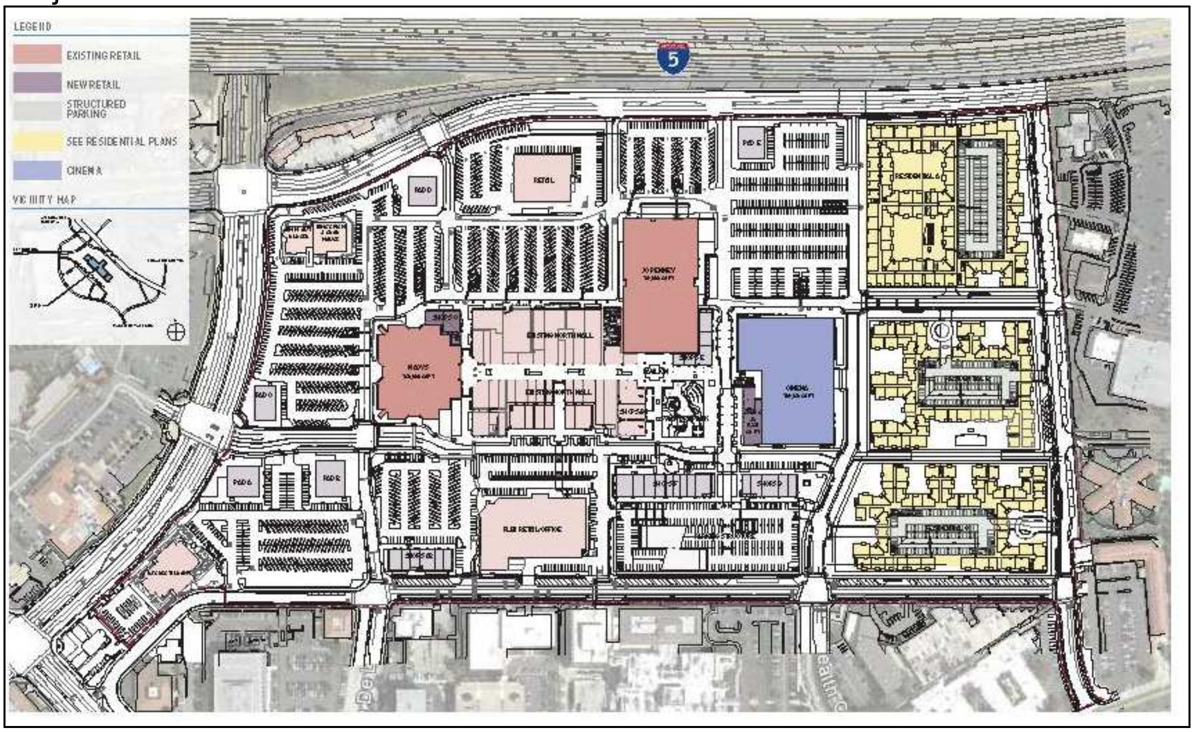
ISSUE: SITE DEVELOPMENT PERMIT, MASTER SIGN PROGRAM, CONDITIONAL USE PERMIT, PARKING USE PERMIT, VESTING TENTATIVE TRACT MAP, AND PRECISE PLAN NO. 2-15-3114, A REQUEST BY MERLONE GEIER MANAGEMENT, LLC, TO REDEVELOP THE LAGUNA HILLS MALL LOCATED AT 24155 LAGUNA HILLS MALL AND ADOPTION OF A THIRD ADDENDUM TO THE CITY OF LAGUNA HILLS GENERAL PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 20080811100)

RECOMMENDATION: THAT THE PLANNING AGENCY/CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A JOINT RESOLUTION OF THE PLANNING AGENCY AND CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING A THIRD ADDENDUM TO THE CITY OF LAGUNA HILLS PROGRAM ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 20080811100) AND APPROVING A SITE DEVELOPMENT PERMIT, MASTER SIGN PROGRAM, CONDITIONAL USE PERMIT, PARKING USE PERMIT, VESTING TENTATIVE TRACT MAP, PRECISE PLAN NO. 2-15-3114, A REQUEST BY MERLONE GEIER MANAGEMENT, LLC, TO REDEVELOP THE LAGUNA HILLS MALL SITE LOCATED AT 24155 LAGUNA HILLS MALL, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH."

SUMMARY:

Merlone Geier Management, LLC ("Applicant") has submitted plans for redevelopment of the Laguna Hills Mall property on behalf of MGP FUND X Laguna Hills, LLC ("Owner"). The Laguna Hill Mall is located immediately west of the Santa Ana Freeway (I-5) and Avenida de la Carlota, south of El Toro Road, east of Calle de la Louisa, and north of Calle de los Caballeros and the Oakbrook Village Shopping Center in the Urban Village Specific Plan.

Project Site:



The Applicant is seeking approval to redevelop the existing Laguna Hills Mall property into a new project named "Five Lagunas" (hereinafter the Project). The Project would include the demolition and reconstruction of the southern portion of the central mall building (generally between JC Penney and Sears), the construction of new commercial spaces on development pads located around the property, and the development of high-density multi-family dwelling units.

In all, the Project will include the following activities:

1) Demolition of approximately 449,000 square feet of existing building area at the southern portion of the central Mall building, including the existing south Mall retail shops, all former Sears improvements (including the retail store, auto center, and catalog center), and the Just Tires building located near El Toro Road and Regional Center Drive;

2) Exterior façade renovations to provide a cohesive look between the new and old portions of the Mall encompassing the remaining in-line retail space such as the north Mall retail shops, Macy's, and J.C. Penney;

3) The construction of approximately 410,000 square feet of new commercial buildings between 25 and 75 feet in height on development pads in various locations throughout the project site consisting of +/- 60,300 square feet of restaurant uses, +/- 155,000 square feet of retail uses, a +/- 40,100 square foot fitness use, a 2,068 seat movie theater

encompassing +/- 109,000 square feet, and allowance of +/- 45,800 square feet of flex space for retail or medical office uses;

4) The construction of a six-story parking structure containing over 1,500 parking stalls;

5) The development of three multifamily buildings up to 75 feet in height (one-mixed use retail/ residential building and two residential buildings) containing a total of 988 dwelling units and associated structured parking;

6) Various site improvements that include the renovation of existing landscape areas and installation of new landscaping and pedestrian walkways throughout the site totaling over +/- 363,000 square feet, including the construction of several pedestrian plaza areas including a main central plaza identified as "Sycamore Park";

7) Rehabilitation of all existing private streets and private parking areas;

8) Project signage including a free-standing 75 foot tall freeway oriented sign, freeway oriented project sign, and numerous on-site directional/ on-site advertising signs; and

9) The removal, replacement and/or construction of utility systems (water, sewer, storm drain, and other public utilities) necessary to support the Project.

The applicant has demonstrated that the project complies with all aspects of the Laguna Hills Municipal Code (LHMC) and the Urban Village Specific Plan (or will comply as conditioned). However, the City is required to issue the following discretionary approvals in order for the Project to be implemented:

- A Site Development Permit for new construction pursuant to Section V of the City of Laguna Hills' uncodified Urban Village Specific Plan (as adopted by Ordinance No. 2002-8 as amended by Ordinance 2011-3 – hereinafter the UVSP), and Section 9-92.080(G) of the LHMC;
- A Precise Plan pursuant to Section V of the UVSP, and Section 9-92.080 (B) of the LHMC for the development of a mixed-use project in the UVSP area;
- A Master Sign Program (MSP) to exceed the UVSP sign requirements pursuant to Section V of the UVSP and Section 9-42.090 of the LHMC.
- A Conditional Use Permit for a proposed health club use pursuant to Table 1 of Section V of the UVSP, and shared parking pursuant to Section V of the UVSP.
- A Vesting Tentative Tract Map to subdivide +/- 66 acres consisting of 9 existing lots into 16 lots pursuant to Chapter 9-86 of the LHMC.

Together, the requested discretionary actions constitute a project that is subject to review under the California Environmental Quality Act (CEQA). In accordance with Section 21166 of the Public Resources Code and Sections 15168, 15162, and 15164 of the CEQA Guidelines, and based on the initial study completed, the City has determined that an addendum to the 2009 General Plan Update Program Environmental Impact Report (hereinafter the PEIR) is the appropriate environmental document for the project. As proposed, the project constitutes a later activity within the scope of the PEIR; the later activity does not propose substantial changes to the project evaluated earlier that would involve new or more severe significant impacts; no substantial changes have occurred with respect to the circumstances under which the project evaluated earlier would be undertaken, and there is no new information of substantial importance showing that there would be new or more severe significant impacts, that mitigation measures or alternatives previously found to be infeasible will be feasible, or that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce significant effects. The applicable mitigation measures identified in the PEIR are incorporated into the design of the Project and will be imposed as conditions of approval, as appropriate. The proposed addendum is identified as “Addendum to the City of Laguna Hills General Plan Update EIR Five Lagunas Project (SCH No. 20080811100)” – hereinafter the Third Addendum.

AUTHORITY:
Because the project involves items which both the City’s Planning Agency and City Council must approve for the project to go forward, the items are being considered through a joint public hearing between the Planning Agency and City Council. The Third Addendum and requested entitlements are being processed concurrently.

BACKGROUND:

The following information provides a history of the UVSP and its consistency and interrelatedness with the City’s current General Plan adopted in 2009.

Urban Village Specific Plan (UVSP)
In 2002, the City of Laguna Hills adopted the UVSP, which encompasses a +/- 240 acre planning area and is bounded by Paseo de Valencia on the north and west, Los Alisos Boulevard on the south, and Interstate 5 on the east, across Avenida de la Carlota. The UVSP promotes a variety of public, regional commercial, recreational, and high density residential uses that work in concert to create an urban village and provide safe pedestrian pathways that conveniently provide direct access to the transit center, civic center, and regional trails.

The overarching theme of the plan is to better integrate the variety of activity nodes that already exist in the UVSP and transform it into an “Urban Village” “where residents, employees, and visitors to Laguna Hills can meet, socialize, shop, and conduct business.” The area is the center of Laguna Hills providing a mix of retail, office, financial, medical, residential, and transportation uses. The UVSP regulates development within the boundaries as identified in the UVSP, which includes the Project site, through the land use plan, design guidelines, and land use and development standards contained in the UVSP.

The main goals of the UVSP are to:

- Encourage and facilitate new uses in the area;
- Create new pathways and add landscaping to existing sidewalks to create a pedestrian-friendly environment;
- Create an identity for the area through the use of entry features, area wayfinding signs, consistent landscaping and street furniture;
- Facilitate the private investments in the development of desirable and planned activity nodes;
- Take full commercial and market advantage of the Urban Village's central location in the Saddleback Valley;
- Increase the employment opportunities, tax revenues, and ensure the long-term viability of the Urban Village; and
- Provide the framework for a public/private partnership to implement the goals of the specific plan.

Additional new development or uses within the UVSP is regulated based on a regulatory framework that uses the capacity of the local street network to accommodate additional vehicles from new development during peak traffic conditions. This framework was established to ensure that additional traffic from new development would not exceed acceptable community traffic standards. For Laguna Hills, these standards are contained within the City's 2009 General Plan Circulation Element and are referred to as intersection Level of Service (LOS). Therefore development intensity in the Urban Village is regulated based upon remaining vehicle trip capacity contained in the UVSP, not land use type or project size. The City implements this aspect of the UVSP through a vehicle trip budget debiting process, in which additional peak hour vehicle trips generated by each new development or redevelopment project are subtracted from the current aggregate total additional peak hour vehicle trips available to accommodate future new development in the UVSP area. For example, there could be more residential uses and less retail uses established, or vice-versa, as long as the overall AM and PM peak hour vehicle trip budget is not exceeded.

At the time the General Plan Update was adopted in July 2009 (see discussion below), the UVSP area could accommodate development that generated up to 1,243 additional AM peak hour trips and 2,272 additional PM peak hour trips. This trip cap was set to ensure that the maximum buildout trip levels evaluated in the 2009 PEIR were not exceeded as a result of new development projects within the UVSP area. Using traffic capacity rather than development maximums allows project applicants to be extremely flexible in the development options and mix of land uses their projects could contain.

The 2009 General Plan Update

The General Plan Update and its associated program environmental impact report (the PEIR), which were adopted and certified (respectively) in July 2009, identify the UVSP area as a "future study area" that would undergo expansion/revitalization in the future and increased commercial and residential development opportunity within the UVSP. Specifically, the General Plan Update and PEIR assumed 300,000 square feet of new retail uses within the UVSP area, 117,000 square feet more than anticipated by the prior General Plan and prior UVSP as originally adopted. The General Plan Update and PEIR also contemplated a 250-room hotel, 200 residential units, and 380,000 square feet of general office uses within the UVSP area. The traffic study prepared for the General Plan Update and 2009 PEIR included the corresponding increases in AM and PM peak hour vehicle trips to the overall trip budget allocated to the UVSP area, as a result of the additional contemplated development indicated above.

The General Plan Update included an Implementation Program requiring the UVSP to be amended by the City to include the additional development and its associated vehicle trips to ensure consistency with the General Plan and help implement the General Plan goals and policies. The Housing Element (2008-2014) included with the General Plan Update also required that the UVSP be amended to establish a minimum residential density of 30 units per acre. These revisions were completed in 2011 via an addendum to the PEIR (Addendum No. 1) and adoption of an amendment to the UVSP by Ordinance 2011-3.

Although the PEIR anticipated the development of a variety of uses, the UVSP provides applicants with the flexibility to propose any type of permitted land use consistent with the General Plan Update and the UVSP as described above. An example of this flexibility is the redevelopment of the Oakbrook Village Shopping Center, where 489 residential units were approved, even though the City had initially only anticipated 200 additional dwelling units at the time of the General Plan Update. The UVSP permitted the additional units to be built since the anticipated additional vehicle trips generated by the Oakbrook Village project did not exceed the vehicle trip budget established in the UVSP as described earlier.

The 2011 UVSP Amendment

An amendment to the UVSP (the 2011 Amendment) enacted by the City Council's adoption of Ordinance 2011-3 incorporated the additional development potential analyzed by the General Plan Update described above. The 2011 Amendment also included other minor but important changes that: 1) modified the development standards in order to integrate and improve internal consistency between the existing commercial and residential development standards, 2) incorporated the mixed-use application process and development standards already contained in the City's Development Code, 3) added the new AM and PM peak hour trips that would be generated by the additional anticipated development, and 4) updated the Public Art section to clarify the management of the funds collected. The 2011 Amendment also added Housing Element requirements to establish a minimum residential density standard of 30 units per acre and reduce high-density residential open space standards from 30 percent to 10 percent.

No changes were made to the permitted land use matrix for the UVSP. However, to ensure a compatible mix of uses, the 2011 Amendment required that new mixed-use developments be approved through a Precise Plan permit process, which requires the careful consideration of potential impacts from proposed development and ensures a proper balance of uses. Furthermore, the 2011 Amendment added provisions for mixed-use developments for enhanced security, restrictions on activities, noise standards, vibrations and odors, and lighting to ensure that residential uses are not adversely impacted by commercial uses.

PROJECT DESCRIPTION AND ANALYSIS:

Existing Conditions
In its entirety, the Laguna Hills Mall property is approximately 68 acres and currently consists of a +/- 869,000 square-foot enclosed mall originally developed in 1973 and comprised predominately of department stores (including the former Sears store) and other retail spaces, with some restaurants and a cinema use. Contiguous to the Laguna Hills Mall are seven outlying buildings, which include In-N-Out Burger/King's Fish House, Firestone, BJ's Restaurant & Brewhouse, Nordstrom Rack/Total Woman Gym & Spa, the former Sears Auto Center and Sears Catalog Center, and Just Tires (approximately 78,000 square feet). Major anchor tenants currently include Macy's and JC Penney. Nearly three-quarters of the site (approximately 50-acres) is devoted to 4,347 parking spaces, drive aisles, walkways, and landscaping improvements. No public open space currently exists on the project site and pedestrian accessibility through and around the site is difficult. The mall exterior has generally not significantly been upgraded since being built, with the exception of a few exterior-facing tenant spaces. Strong competition from newer and more recently upgraded shopping, dining and entertainment uses within the property's market area has rendered the property all but obsolete. The mall suffered the loss of a significant retailer in 2014 when Sears vacated its position on the property.

The project site is bounded on four sides by a combination of two major arterial streets (El Toro Road and Avenida de la Carlota), a private street (Calle de la Louisa), and a private driveway (Calle de los Caballeros). The immediately surrounding land uses are entirely located within the Urban Village Specific Plan. Uses surrounding the Project site are described below.

Surrounding Land Uses	
North	Laguna Hills Civic Center, Laguna Hills Lodge, and commercial retail uses across El Toro Road.
East	Commercial retail and residential across Avenida de la Carlota and the I-5 Freeway (uses across the freeway are located in the City of Lake Forest).
South	Oakbrook Village shopping center, Villa Valencia Health Center, and the Laguna Hills Transportation Center.
West	Saddleback Memorial Medical Center and offices

Development Summary
The Applicant is seeking approval to redevelop the Laguna Hills Mall by transforming the existing enclosed retail in-line stores to a pedestrian-oriented, open-air environment by reconfiguring the commercial development and integrating high-density residential, numerous plazas and open space areas, and incorporating a network of pedestrian and bike-friendly paths throughout. The overall project is designed so that pedestrians can easily traverse the site to frequent the planned retail, restaurant and entertainment destinations. The new project has been named “Five Lagunas”.

The initial development activity of the redevelopment plan includes the partial demolition and renovation of retail space on the northern portion of the mall. The northern portion of the mall would be renovated with an updated architectural design, improved pedestrian circulation, and better access to natural light and air by integrating additional skylights and a new mall access point on the west side of the mall retail shops. Additionally, the design would include a new east/west side mall entrance between Macy’s and the adjacent retail shops.

The site plan approach to implement the Project entails the demolition of the southern portion of the mall’s retail space, including the former Sears department store, Sears Auto Center, Sears Catalog Center, and Just Tires, to accommodate the new construction. The central mall structure would be renovated to create an updated retail concept and to accommodate a new pavilion plaza, village green (Sycamore Park), and dining and retail shops. Additional structures would be constructed around the periphery of the renovated mall for retail and dining, as well as a new 2,068-seat cinema, a +/- 40,000 square-foot fitness center, and a six-story, 1,581 space, parking structure to serve the Project. Further, the redevelopment plan includes the development of 988 residential units in three buildings (one multistory mixed-use building and two stand-alone, multi-story residential buildings). Building heights within the Project vary between 25 feet and 75 feet. Significant streetscape and pedestrian walkway improvements are contemplated along with the development.

While individual buildings within the Project are generally expected to be constructed concurrently (with the possible exception of various Pad Buildings located at the periphery of the site) the Applicant has identified a distinct "project phasing plan" identifying the renovation and construction schedule of existing buildings to remain and the construction of new buildings respectively. To accommodate the new construction and redevelopment of existing buildings, a total of +/- 449,000 square feet of commercial building areas would be demolished. Redevelopment of the in-line retail space includes a centralized pedestrian plaza area and a village green (Sycamore Park). Additionally, the redevelopment plan includes a number of pedestrian facilities, including the UVSP's requirement for a "Main Street Promenade" and a network of paseos that would connect the various commercial and residential uses to several smaller public spaces integrated into the Project and outlying areas of the site, as well as to the Civic Center to the north, hospital and medical offices to the west, Oakbrook Village and Villa Valencia to the south, and Avenida de la Carlota to the east.

Table 1 below summarizes the existing area, building area to be demolished, proposed building area and the proposed area at project build out. The Five Laguna's Concept Site Plan (sheet A1.1 of the applicant's submitted plans) illustrates the proposed site design and layout of the proposed project, while the concept elevations (sheets A2.1 through A3.2) illustrate the conceptual building elevations and modern architectural style and elements of the project. Overall, the architecture includes various types of plaster finishes including smooth plaster, painted smooth troweled plaster, and sand finish plaster, as well as resysta composite wood siding and louver, stone veneer, tile, metal, and glass canopies, fabric awnings, metal trellises and panels, and living green walls. The parking structure would incorporate painted concrete, resysta composite wood siding, decorative metal panels, and a steel trellis structure atop the parking structure to accommodate potential future solar system. Macy's and JC Penney would be updated to blend with the new architecture by incorporating new paint and adding resysta composite wood siding and awnings, stone veneer, decorative metal panels, and a standing seam metal roof (JC Penney).

Along with the architectural, enhancements proposed, the Project includes a health club which requires approval of a CUP for its operation pursuant to the UVSP. Staff does not anticipate any adverse impacts from the incorporation of this use into the Project. While the use is contemplated to be in close proximity to Residential Building B, the proposed health club is oriented toward Sycamore Park and the main entrance to the facility is located on the north elevation of Major A/B and the Cinema Building (specifically along the front elevation of the Major B tenant space). No entrance doors leading directly to the health club are located on the south elevation of the building (the elevation that faces the residential uses) so the additional health club activity will not be a nuisance and will not conflict with the residential uses.

In addition, the Project includes what is anticipated to be a luxury cinema with over 2,000 seats. It is possible that the operator would serve alcohol within the theater or in a lounge area. Since the City does not require a discretionary permit for the service of alcohol such as a CUP like other cities may require, staff has added Condition 140 which requires the Applicant to submit an operations plan for the theater to staff for review and approval. Staff will review the operator's precautions in serving alcohol to ensure minors do not have access to alcohol. Staff notes the Department of Alcohol Beverage Control will also include restrictions on the sale and service of alcohol where minors are present.

Table 1 - Five Laguna's Development Summary

USE	EXISTING S.F.	DEMO S.F.	PROPOSED NEW S.F.	PROPOSED BUILD OUT
Residential	-	-	1,300,000 sf. (988 units)	1,300,000 sf. (988 units)
Retail	873,551	412,690	155,152	616,013*
Restaurant	78,795	23,755	60,314	115,354
Cinema	13,166	13,166	109,070 (2,068 seats)	109,070
Health Club	-	-	40,102	40,102
Flex Retail/Medical Office	-	-	45,890	45,890
TOTAL Commercial	965,512	449,611	410,528	926,429

Reflects total gross square footage. Gross leaseable area is 570,180 square feet.

In addition to the commercial development, the project proposes 988 multifamily dwelling units housed in three separate building structures on the south portion of site immediately adjacent to Calle de los Caballeros, which is a proposed private driveway. In total, the project includes 1,300,000 square feet of residential GFA and is comprised of the following:

- 63 studio apartments
- 493 one-bedroom apartments
- 407 two-bedroom apartments
- 25 three-bedroom apartments

Building A is a mixed-use development located on the northwest corner of Avenida de la Carlota and Calle de los Caballeros. The improvements include three commercial retail units (Majors C, D, and E) totaling +/- 77,500 square feet on a portion of the first floor and 373-residential units, six-stories in height wrapped around a seven-story parking structure, and two interior open courtyards with recreational amenities located on the third level for the residents. Parking for the ground-level retail uses is located just to the north, adjacent to the retail entrances, to take advantage of visibility and to engage pedestrians, residents, and customers.

Building B (297 units) and Building C (318 units) include five stories of residential units wrapped around a seven-story parking structure. Both buildings include several exterior ground-level courtyards with varying recreational amenities. Table 2 below identifies the mix of units proposed in the Project.

Table 2 - Total Residential Units

Units	Unit Type	Net Leasable Area	Patio/Balcony	Number of Units
S1 – S2	Studio / 1 BA	600 - 604 sq. ft	43 - 52 sq. ft.	63
A1 – A8	1 BR / 1 BA	703 - 788 sq. ft.	51 – 96 sq. ft.	493
B1, B2, B4 – B7, B9	2 BR / 2 BA	1,028 – 1,648 sq. ft.	59 – 102 sq. ft.	407
C1	3 BR / 2 BA	1,400 sq. ft.	71 sq. ft.	25
			TOTAL	**988**

Various units are designed to be ADA accessible and adaptable as required by Title 24 of the California Building Code and the Fair Housing Act. At least one unit of each one-bedroom type and one bathroom within each two-bedroom unit are provided with an expanded bathroom for wheelchair turnaround space. All the units may be adapted with grab bars and other elements needed to customize a unit to be fully accessible to a particular resident's needs.

Additional highlights within the residential portion of the project include:

- Pedestrian, bicycle, and vehicular improvements with sidewalks and landscaped parkways along Calle de los Caballeros

- Sidewalks and landscaped parkways around the perimeter of each building

- Pedestrian and bicycle connection between Building A and B to Oakbrook Village

- Landscaping along the building edges

- Bike racks along Health Center Drive
.
- Secured corridor and garage access using card-reader/Fob access control devices for residents and call-boxes for visitors

- Lobby area (Bldg. A & C) and a club house, fitness center, and leasing office (Bldg. B)

- Secondary indoor recreation facility (Bldg. A)

- Private open space/balconies/patios for each unit

- Enhanced building entry features

- On-site recreational amenities including two lap pools and spas, pool cabanas, patio areas with shade structures, built-in barbecues and picnic areas, seating and outdoor fire features and fire pits, dog park, tot lot with play structure, bocce court, shuffle board, pool/ping pong tables, movie night area, and pool cabanas.

Table 3 below compares the Project's proposed/required residential components with the development standards of the UVSP.

Table 3 – Residential Component Consistency with UVSP Standards

	UVSP Development Standards	***Residential***			***Commercial***
		Residential Site A	**Residential Site B**	**Residential Site C**	
Min. lot size	10,000 sq. ft.	391,621 sq. ft.	271,463 sq. ft.	277,339 sq. ft.	11,601 sq. ft. (Lot 2)
Min. lot width	100 ft.	728.5 ft	556.83 ft.	588.33 ft.	100 ft. (Lot 2)
Min. lot depth	100 ft.	368 ft.	408 ft.	236.66 ft.	
Max. lot coverage	70%	46%	41.3%	41.80%	
Density	30-50 DUs/AC (gross)	41.5 DU/AC	47.7 DU/AC	49.9 DU/AC	NA
Max. building height	75 ft.	73'-6"	73'-6"	73'-6"	74'-9"
Open	10% of lot	Min. 10 %	12.9%	10.6%	NA

Table 3 – Residential Component Consistency with UVSP Standards

	UVSP Development Standards	***Residential***			***Commercial***
		Residential Site A	**Residential Site B**	**Residential Site C**	
Space/ Amenity area	area	(39,162 sq. ft.)	(35, 150 sq. ft.)	(29,315 sq. ft.)	
Min. Landscape Coverage	15% of lot area	15.1%	21.4%	17.1%	15.8% (316,692 sq. ft.)
Pedestrian Plaza	3% of total floor area	3.01% (39,065 sq. ft.)			4.1% (38,005 sq. ft.)

To ensure appropriate open space and amenities are provided, conditions are included to require the applicant to submit a final open space plan identifying the amenities of all outdoor landscaped courtyards and pool courtyards to the Community Development Director for review and approval (Conditions 34 and 80),

The General Plan Update and UVSP impose both lower and upper limits on dwelling unit density. Specifically, density must be from 30 and 50 units per one acre. As proposed, the project complies with these limits, and would not require any amendment of the General Plan or UVSP. Therefore, the project would carry out the City's goals, policies, and the intent of the General Plan Update and UVSP for the site since it would provide a new community core with commercial and high-density residential uses.

The proposed residential buildings feature a contemporary architectural style characterized by prominent features, including flat roofs with varying elevation heights, strong horizontal projections/elements from the face of the building; building elevations with varied-width rectilinear forms that protrude and recede to create shadow lines and visual interest; cantilevered horizontal overhangs; and a variation of window types and styles, balconies, and base elements that help ground the building massing.

As conditioned, the Project will comply with all applicable development standards of the UVSP and LHMC.

Project Consistency with UVSP Design Guidelines Consistency

Per the UVSP, the Land Use Plan (Section III) provides guidelines for improvements to the streets and pedestrian pathways located throughout the Urban Village. The diagrams are schematic in nature and not meant to be precise. However, the proposed Project is a Precise Plan as defined by the UVSP pursuant to Section V (Land Use & Development Standards), which incorporates the regulations and development standards to create an integrated village atmosphere while insuring functionality. In cases where standards are not addressed by Section V of the UVSP, the Municipal Code requirements and standards prevail.

The Conceptual Land Use Plan, Figure 6 in the UVSP, portrays the elements of concepts and the potential site planning orientation regarding Main Street, Streetscape Edge Conditions, Pedestrian Pathways, Public Open Space, and Entry-Feature and Way-Finding Signage.

The following paragraphs discuss how the project's implementation of Main Street, Streetscape Edge Conditions, and Pedestrian Pathways conforms to the UVSP Conceptual Land Use Plan and describe the internal circulation system of Five Lagunas.

Main Street Concept

The proposed project provides a tree-lined pedestrian-oriented Main Street Promenade that follows the direction depicted on the Conceptual Land Use Plan of the UVSP. The north/south Main Street Promenade parallels the central mall providing definition and transition from the major project entry on El Toro Road connecting to Health Center Drive and eastbound to Avenida de la Carlota.

Scored and treated sidewalks with planting areas for trees of various widths are provided near continuously on the Main Street Promenade, in compliance with the Pedestrian Pathways concept. Angled parking is provided sparingly on both sides, and designated crosswalks with special vehicular paving are provided throughout. Driveway widths vary: 63-feet wide (five-lanes) at El Toro Road and considerably narrower and more pedestrian-scaled 24-to-25 feet wide (two-lane driveway) as the street winds its way through the commercial and residential heart of the urban village. Emanating from the Main Street is a grid system of pedestrian pathways and vehicular driveways that link Main Street with the various buildings and open spaces on-site and to perimeter roadways. All main buildings, plazas, paseos, and open spaces of the project can be accessed via Main Street, thereby implementing the Main Street Concept of the specific plan in location, design, and intent.

Streetscape Edge Conditions

The concept described in the specific plan envisions a continuous system of parkways, sidewalks, and planting areas in locations near or at the perimeter of the site to create a unified identity that would be recognized immediately as the Urban Village. The pathways, driveways, entryways, and the perimeter of the project site are provided with a continuous network of parkways with a minimum of four-foot-wide sidewalks, and minimum of four-foot-wide planting areas comprised of drought-tolerant and native California trees and vegetation per the project's landscape plan. In some locations, the sidewalks and planting areas exceed the minimum, up to 24 feet for planting areas and eight feet, six inches for sidewalks. The proposed landscape plan has significantly more street trees than what is conceptualized in Figure 31 of the UVSP, Landscape/Street Tree Plan.

Pedestrian Pathways

The project proposes an internal circulation system that accommodates pedestrians and bicyclists. Along the proposed pedestrian and bicycle paths are streetscape, open space and landscaping elements, painted crosswalks, and enhanced regulatory signage that visually emphasize connectivity between the various residential and commercial buildings that are proposed and existing within the UVSP area, including the Oakbrook Village Hillside Paseo linkage. The project is consistent with the Pedestrian Plan (Figure 16) of the UVSP, which identifies the primary pedestrian pathways within the urban village. Due to the proposed pedestrian-oriented, open-air development of the central mall, additional pedestrian pathways are provided. Exhibit L1.09 (Pedestrian Accessibility) diagrams the pedestrian accessibility paths within the project and the abutting roadways.

Public Open Space
The proposed landscape plan includes the required paseos, parkways, pedestrian plazas, and the Village Green as envisioned in the UVSP. The proposed Village Green (Sycamore Park) is a 9,628-square-foot landscaped open space plaza located at the center of the project site, and it is accessible directly from the Main Street Promenade and other pedestrian pathways. The Village Green consists of green space with sycamore trees and stone amphitheater seating, decomposed granite pathways, and decoratively paved seating surrounding a water element with wetland plantings and boulders along the water's edge. The perimeter of the central mall buildings and surrounding the Village Green are pedestrian plazas with decorative paving and seating. As required per the UVSP, a minimum of 15 percent of the project site should be landscaped and three percent of the total building floor area devoted to pedestrian plazas. Within the non-residential portion, the project proposes 15.8 percent landscape coverage (316,692 square feet) and 4.1 percent (38,005 square feet) of pedestrian plazas and is in compliance with the UVSP.

Within the residential portion of the project, residential areas will provide a minimum of 10 percent open space and amenities, 15 percent landscape coverage, and three percent devoted to pedestrian plazas. As previously described, the Applicant is required to provide a final open space plan to the Community Development Director for review and approval that indicates the type of amenities to be provided within the required open space. The open space amenities are comprised of several courtyards within each residential building, and conceptually include outdoor fireplace features, patios, balconies, pools, a tot lot, a dog park, a bocce court, and a main recreation area adjacent to Building B. The landscape coverage provided among the three residential parcels range from 15.1 to 21.4 percent for a cumulative landscape coverage of 17.5 percent (165,714 square feet). A landscaped linear park between Buildings B and C includes a 39,025-square-foot pedestrian plaza (three percent of the parcel size) embossed with decorative cattle branding pavement and access to other open spaces and amenities.

To ensure the project provides sufficient screening, shade corridors, and shaded rest stops within the project parking lot and pedestrian walkways, the applicant shall be required to provide a final landscape and irrigation plan for staff's review and approval. Further, staff is requiring the applicant to provide the Community Development

Department funds to retain a qualified landscape professional to review the applicant's final landscape and irrigation plans and inspect the applicant-installed landscaping to ensure compliance with the approved plans (Condition No's. 22-33).

Entry-Feature and Way-Finding Signage

The Master Sign Program proposed for the project discussed in detail below provides unified wayfinding signage and entry feature signage. The UVSP Entry Feature/Wayfinding Plan (Figure 21) conceptualizes entry features and signage within the project site into distinct types that portray an overall consistent village image within the entire Urban Village. The elements include Major Entry Feature (sites at main entrance on El Toro Road), Secondary Entry Feature (Avenida de la Carlota), Perimeter Entry Feature (southwest intersection of El Toro Road and Avenida Carlota), and a comprehensive system of wayfinding signage for pedestrians and vehicles.

The major entry feature on El Toro Road already exists as envisioned in the UVSP and will be updated to reflect the proposed project. Three center identification signs are proposed along Avenida de la Carlota, including a 75-foot pylon sign visible from the freeway. A perimeter entry feature sign comparable to the major entry feature on El Toro Road is proposed on the southwest corner of El Toro Road and Avenida de la Carlota. On the southern boundary of the project site at entry points along Calle de la Louisa, a total of four 10-foot-tall pylon signs are proposed. A total of 72 permanent signs, generally to assist in vehicular and pedestrian wayfinding, and to identify the project site along the entry points, are proposed in the Master Sign Program, with design elements and locations consistent with the UVSP Entry Feature/Wayfinding Plan. Conditions are included to further enhance the quality and location of signage. For example, Condition No. 70 requires a placement of wayfinding signage to direct residents of Villa Valencia to the Project site. Condition No. 73 requires final sign locations to be reviewed and approved by the Community Development Director to ensure the location of wayfinding signs throughout the site are in areas that are helpful to pedestrians coming to and using the site.

Lighting

The project would result in new lighting for proposed buildings, parking areas, and paseos, and to enhance security and safety for pedestrians and vehicles. All lighting associated with the project shall be directed toward the interior of the site so as not to create impacts to motorists on adjacent roadways or on surrounding uses in accordance with all City lighting standards and requirements. Additionally, illuminated signs shall not be oriented toward residential buildings. As required per Condition No. 19, the applicant shall submit a final project photometric study to the Community Development Department for review and approval prior to the issuance of any building permits. Pedestrian and parking lot lighting poles and fixture types shall be consistent with the types depicted in the UVSP.

Public Art

Pursuant to the UVSP, the City requires that all new developments within the UVSP with construction costs of at least $250,000 provide public art or contribute to the City's Public

Art In-Lieu Fund. Public art includes, but is not limited to, sculptures, paintings, graphic arts, mosaics, photographs, fountains, decorative arts, and the preservation of historical or cultural resources. The public art must be located in places that are open and easily accessible to the public, which may be on private or public properties. The UVSP sets the projects Public Art fee at on one-half percent (0.5%) of the Project's value.

Although no specific designs or details are provided, the applicant proposes to include five different pieces of art throughout the site, each representing one of the five Laguna communities: Laguna Hills, Laguna Woods, Laguna Niguel, Laguna Canyon, and Laguna Beach (sheet LA.17 of the entitlement package).

Zone 1: *Laguna Hills:*
Landscaping Includes mounded landscaping with stone walls. Artwork to include a sculpture or art-infused bench seating and custom designed graphics applied to the exterior of the parking structure.

Zone 2: *Laguna Woods:*
Landscape features include large specimen trees. Artwork will include a sculpture.

Zone 3: *Laguna Niguel:*
Landscape features include a central lake with Sycamore trees, grasses, and seating (Sycamore Park). Artwork will include a set of sculptures.

Zone 4: *Laguna Canyon:*
Landscape features include canyon-inspired hardscape and water tunnels between the interior mall shops. Artwork will include a sculpture or other similar medium

Zone 5: *Laguna Beach:*
Landscape features include boardwalk-inspired hardscape and two large saltwater aquariums near the interior entrance to Macys. Artwork will include a floor-based mosaic representing the sea and beach.

Staff is recommending the applicant work with staff to expand upon the conceptual public art component of the project and provide a Final Public Art Program with specifications of the art, including design, detail, location, and value for the Planning Agency's review and approval (Condition No. 77). The Applicant will also pay $300,000 to the City's Public Art Fund as part of the Project's public art obligation. The payment will be counted towards the Project's Public Art obligation.

Circulation and Parking
The proposed mall redevelopment provides new and expanded vehicular and pedestrian circulation on site, including internal drive aisles and intersections, pedestrian walkways and paseos, and bicycle pathways, as well as surface parking areas and parking

structures. The improved vehicular and pedestrian expansion connects the various commercial and residential uses to a number of smaller public spaces integrated into the site design, as well as to the surrounding properties in the vicinity.

Calle de la Louisa, a private street, serves as a collector street between El Toro Road and Calle de los Caballeros. The four-lane roadway includes sidewalks, on-street bus loading stops, and parallel parking along both sides. The project redevelopment would reconfigure Calle de la Louisa to a complete street, which includes reducing travel to two lanes, incorporating Class II bike lanes along both sides, providing bus cut-outs for loading and diagonal parking on the east side of the street, and maintaining the existing on-street bus loading stop and parallel parking on the west side of the street (Sheet L1.08B).

Site access features that have been incorporated into the design of the site plan include a new signal on Avenida de la Carlota at the fifth entry drive south of El Toro Road. The proposed traffic signal would be located a distance of 1,085 feet north of the new signal planned for the Oakbrook Village development. Additionally, right-turn in/out restrictions and related median modifications along Avenida de la Carlota, provisions of adequate driveway "throat" lengths to address 95th percentile queues, and lane geometry restriping improvements at specific driveway locations would be provided with the mall redevelopment as shown on Figure 21 of the Traffic Impact Report prepared for the project.

Public transit bus service is provided in the project area by Orange County Transportation Authority (OCTA). Currently, 10 fixed routes provide bus service to portions of Laguna Hills. All routes, except bus route 70, serve the Laguna Hills Transportation Center, which is located south of the subject site. A park and ride facility is also located at the Laguna Hills Transportation Center and in the Laguna Hills Mall parking lot. The bus stops nearest to the project site are located along El Toro Road, Avenida de la Carlota, and Calle de la Louisa.

Bicycle Network
The project will integrate Class I, II, and III bikeway facilities within the project site. The bikeways will connect via a proposed Class II bike lane on Calle de los Caballeros to the designated Class II bike lane along Paseo de Valencia southwest of the project site. Class II bike lanes are proposed along Calle de la Louisa, Health Center Drive, and Calle de los Caballeros with a connection to Oakbrook Village between residential buildings A and B, connections to several Class III (sharrow) lanes that traverse the project site, and a connection to a Class 1 (pedestrian/bicycle passageway) located between residential building B and C. Ten bicycle racks are proposed on site near or adjacent to Main Street Promenade and the residential development. Within the project site, bicycles and pedestrians can traverse the site using interior private streets and pedestrian pathways... Sheets L.1.9 and L.1.10 in the Plans Booklet (Attachment 9) identify pedestrian and bike connectivity.

Table 4 below provides a summary of the location of bike lanes within the Project.

Table 4 – Bike Lane Summary

Type	Description	Location
Class 1 – Bike Path	Provides a completely separated right-of-way for the exclusive use of bicycles and pedestrians with cross flow minimized	Between Residential Buildings B and C
Class 2 – Bike Lane	Provides a striped lane for one-way bike travel on a street or highway	Along Calle de la Louisa, Health Center Drive, Calle de los Caballeros, and between Residential Buildings A and B.
Class 3 – Sharrow Bike Route	Provides for shared use with pedestrian or motor vehicle traffic	Northwest portion of Calle de la Louisa and along three access drives on Calle de la Louisa

Parking - Commercial

Both the LHMC and UVSP set forth parking ratios for individual uses. The UVSP is unique in that it supports the shared use of parking facilities on sites with multiple uses like the Project. The Code allows for reduced parking in such situations, when the applicant can demonstrate that the provided parking is adequate for the proposed uses.

Pursuant to the UVSP parking methodology, the parking requirement for the retail component of the Laguna Hills Mall property is 4.5 spaces per gross leasable area (GLA), as long as restaurant, entertainment, or cinema use does not exceed 20 percent of the total GLA. Where more than 20 percent of the GLA within the Laguna Hills Mall property result in restaurant, entertainment, or cinema use, the proposed expansion of existing use, construction of new development, or intensification of existing facilities must apply the shared parking methodology to calculate the required parking. The objective of the shared parking methodology is to estimate the peak parking requirements for the various commercial components of the project based upon their combined parking demand patterns. As proposed, the Project's restaurant/ entertainment/ cinema uses account for 26 percent of the total commercial square footage, which requires the UVSP shared parking model to be applied in determining the parking needs for the non-residential components of the project.

A shared parking analysis was performed by Linscott, Law & Greenspan Engineers, which used a methodology analyzing the parking demand for each individual land use type on the property against a parking demand profile based on the time-of-day to establish the parking requirements. The analysis utilized modest parking adjustments to account for (1) "walk-in/internal capture" trips attributable to synergy between uses within the project and adjoining commercial and medical uses, and (2) alternative modes of travel (i.e. carpool, drop-off/pick-up at designated stations on site, public transit via the on-site bus stops and Laguna Hills Transportation Center, Laguna Woods shuttle via designated stops on site, and bicycle travel). Additionally, the analysis did not apply seasonal adjustments (i.e., factors that account for monthly variation in parking resulting in less than 100% demand), thus assuming each land use category is at 100 percent demand at any given month. Using this methodology, the parking study found the future supply of 3,824 spaces for commercial uses will be adequate to meet the project's non-residential parking requirements. The shared parking analysis determined that peak parking demand would result in a demand for 3,788 spaces (occurring at 1:00 P.M.) under weekday conditions and 3,781 spaces (occurring at 2:00 P.M.) under weekend conditions for non-residential uses, corresponding to a surplus of 36 and 43 spaces respectively based on the proposed supply of 3,824 parking spaces. The parking study is included with this report (Appendix I in Attachment 2).

Per ADA's Design Guidelines, parking lots with 1,001 and more parking spaces must provide 20 accessible parking spaces, plus one accessible space for each 100 over 1,000 spaces. No compact parking spaces are provided.

Table 5 below summarizes the proposed supply for the commercial components of the project which totals 3,824 spaces, consisting of the following:

Table 5 – Parking Summary

	Standard Parking Stalls Available	**ADA Parking Stalls Available**	**Total Parking Stalls Available**
Parking Lots*		31	2,051
Parking Structure	1,554	27	1,581
On-Street Parking • Calle de la Louisa • Ronda del Rossmoor • Calle de los Caballeros	192 *(111)* *(27)* *(54)*		192
TOTAL Minimum Required Provided			3,788 3,824

* Reflects a potential future loss of 22 surface spaces near Avenida de la Carlota due to Caltrans' I-5 Freeway Widening project.

The overall commercial parking ratio results in 4.37 stalls per 1,000 GLA.

As an optional service, a valet parking system is proposed. The main advantage of valet parking is customer convenience. An additional advantage of valet parking is that it is possible to pack more cars into a given physical space. Valets can park cars closer, or stack cars making it possible to further provide premium parking spaces available to self-parking patrons. A condition of approval has been added requiring a Parking Management Plan be provided for staff's review and approval (Condition No. 43)

Parking - Residential

In total, the proposed project includes approximately 1.3 million square feet of residential GFA. Resident-dedicated parking facilities are included within each of the residential buildings. The proposed supply for the residential components of the project totals 1,910 spaces, comprised of the following:

- 714 spaces in Site A parking structure
- 581 spaces in Site B parking structure
- 615 spaces in Site C parking structure

Table 6 below depicts the required parking in each residential building based on the unit type (number of bedrooms) and includes visitor parking.

Table 6- Residential Parking Summary

Residential Building	***Unit Type***	***Number of Units***	***Required Parking/Unit***	***Parking Stalls Required***	***Total Parking Stalls Provided***
Bldg A	*Studio*	*24*	*1.5 Spaces*	*36*	
	One-bedroom	*195*	*1.5 Spaces*	*292.5*	
	Two-bedroom	*149*	*2.0 Spaces*	*298*	
	Three-bedroom	*5*	*2.5 Spaces*	*12.5*	
	Visitor Parking	*(373)*	*0.2*	*75*	
	Subtotal			***714***	***723***
Bldg B	*Studio*	*14*	*1.5 Spaces*	*21*	
	One-bedroom	*142*	*1.5 Spaces*	*213*	
	Two-bedroom	*131*	*2.0 Spaces*	*262*	
	Three-bedroom	*10*	*2.5 Spaces*	*25*	
	Visitor Parking	*(297)*	*0.2*	*60*	
	Subtotal			***581***	***587***
Bldg C	*Studio*	*25*	*1.5 Spaces*	*37.5*	
	One-bedroom	*156*	*1.5 Spaces*	*234*	
	Two-bedroom	*127*	*2.0 Spaces*	*254*	
	Three-bedroom	*10*	*2.5 Spaces*	*25*	
	Visitor Parking	*(318)*	*0.2*	*64*	
	Subtotal			***615***	***623***
TOTAL				**1,910**	**1,933**

Infrastructure Improvements

Water and sewer services to the project area are currently and would continue to be provided by the El Toro Water District (ETWD). The installation of new and the rerouting of existing potable water and sewer lines onsite would connect to the existing water and sewer main lines offsite. No substantive offsite infrastructure improvements are required. All modifications of, and connections to, water and sewer services would be accomplished consistent with City and purveyor requirements. Condition No's. 53-57 address requirements for ETWD to ensure that adequate water and sewer facilities are provided.

The project site is largely paved and impervious, and generally drains from north to south via an existing network of shallow concrete ribbon gutters that convey stormwater to storm drains. The proposed development will maintain existing drainage patterns; however, runoff from the site will be treated and detained in conformance with Orange County WQMP and hydromodification requirements which will result in a significant decrease of flows from the site. The project would upgrade the current storm drain facilities and require construction of three detention basins near the southwest portion of the project site designed to collect on-site stormwater flows. In addition, other infiltration-based stormwater best management practices (BMPs) will be incorporated into the project design, including permeable pavements, landscape areas, vegetated swales, and other low impact design (LID) drainage improvements designed to slow and treat runoff. (See Preliminary Hydrology Study provided in Appendix E of the Addendum). Condition No. 103 will result in the submittal of a final hydrology study to the Public Services Department to verify project runoff and on and off-site storm drain needs. The project has also been conditioned to comply with strict stormwater runoff quality standards and low impact development requirements.

Phasing
Total construction is expected to take approximately 31 months and is expected to be completed in several overlapping increments. While various construction activities would occur on the project site over the duration of the construction schedule, the basic construction phases would include the following: demolition; site preparation; grading; trenching/utility installation; building construction; paving; and architectural coating.

The Applicant has agreed to the following project phasing: Residential Building A and the retail space (Majors C, D, E) can be constructed at any time. The Applicant can pull permits for Residential Building B but no occupancy permits will be issued until Major A/B and the Cinema Building (including Shops H, J1, J2) and the parking structure have been completed. Additionally, the Applicant cannot begin construction on Residential Building C until Major A/B and the Cinema Building and the parking structure have been completed. Although the applicant would like all of the construction to move forward immediately, there is no way to provide specific timing because of the uncertainty of lease negotiations and market conditions. The Applicant also has obligations to ensure the site can service existing businesses that will remain open during construction, as well as provide for adequate construction staging areas for new construction.

Travel routes for employees, demolition export, and heavy equipment transport would be determined in consultation with City staff to avoid AM and PM peak traffic periods. There will be a maximum of approximately 100 construction workers on the project site at any one time under the development schedule. Parking for construction workers would be located on the project site.

Temporary lane closures and occasional street closures may be required, particularly during the delivery of heavy equipment. A Traffic Control Plan to provide safe and efficient traffic flow in the area and on the project site would be prepared prior to construction. The Traffic Control Plan will be prepared in consultation with the City and will contain project-specific measures for noticing, signage, policy guidelines, and the limitation of lane closures to off-peak hours (Condition No. 95).

Master Sign Program

The applicant is requesting approval of a Master Sign Program (MSP) that is all-encompassing and addresses all of the commercial project's signage needs. As is typical with a commercial development of this size and nature, the MSP's sign size, location, amount, and square footage criteria are beyond the scope allowed under a typical MSP for a single use or neighborhood shopping center. Given the nature and extent of the Project, using the limits of the Sign Code contained in Chapter 9-42 of the LHMC is inappropriate. For example the Project would be limited to a 40 square foot freestanding sign and each tenant a limited amount of wall sign area based on tenant storefront size. The City's standard requirements for signs would not recognize the regional attraction of the Project or the unique Project setting or design features of the Project that lend themselves to additional signage such as wayfinding signs.

Deviations to the sign standards matrix may be granted by the Planning Agency based on design quality, creativity, and compatibility of the signage with the building architecture and surrounding land uses. The MSP includes freeway-oriented signage, freestanding monument signs, center identification signs, on-site informational signs, directional/wayfinding, murals, decorative banners/pennants, tenant signs, and enhanced regulatory signage. The proposed MSP and tenant signage criteria are included in conjunction with the site development permit (Attachments 7 and 10). Staff has prepared a Sign Matrix Comparison Table to assist the Planning Agency in understanding the proposed Master Sign Program, the City's sign regulations, and the requirements of the UVSP.

The regulations of Section 9-42 of the LHMC relating to signs and advertising devices apply to all developments with the Urban Village, except as modified by the UVSP Design Guidelines and Land Use and Development Standards (Sections IV and V).

<u>Freeway Oriented Signs</u>

Sign A1 is identified as a freeway oriented sign as permitted in the UVSP. The sign is designed to be unique to the Urban Village and to create interest and attraction to the pedestrian-friendly commercial environment and surrounding area. The sign as proposed is integrated into the architectural design of the commercial building and provides high-visibility center identification with internally illuminated channel letters consisting of four rows of exposed neon lighting. The location, style, and detail of the sign is compatible with and reflects the spirit and quality of the City's objectives for the Urban Village.

Freestanding Signs
The freestanding signs consist of one center identification (ID) freeway sign (A2) and nine center ID monument signs (A3-A6) located around the site perimeter. Additionally, 40 directional/wayfinding signs (A14-A17) and five residential ID signs (A18) are proposed within the project site. The directional/wayfinding signs (A14 and A17) provide both pedestrian and vehicular direction within the internal circulation system. A number of these signs will include advertising panels on one side. The Applicant has indicated that the intent of the Ad Panels is to promote on-site tenants. Given the unique pedestrian nature of the Project, these panels could serve as wayfinding elements as well as enhance the symbiotic relationship between the residential and commercial uses on the property and provide information on special events occurring in the Project. To ensure the nature of these signs is focused on wayfinding to businesses and services located on-site and on providing information for patrons, Condition No. 76 requires the MSP to be revised to indicate that signs within 50 feet of the project boundary are not eligible for an optional advertising panel.

Wall Signs
The wall signs consist of five project ID wall signs (A7-A9 & A12) located on the parking structure, three project entry ID wall signs above the mall building entry (A10), two center ID/tenant wall signs (A11 & A13), and two parking identity blade signs (A27). In conjunction with the review and approval of a Master Sign Program, deviations to the Sign standards matrix may be granted by the Planning Agency based on design quality, creativity, and compatibility of the signage with the building architecture and surrounding land uses.

Miscellaneous Signs
Other sign types include regulatory signs, street signs, restrooms and miscellaneous room plaques, paving and crosswalk graphics, murals, and banner signs (A19-A26). Regulatory and streets signs, as well as crosswalk graphics and banner graphics incorporate the Five Lagunas design pattern illustratively harmonized throughout the project site contributing to a "shopping district" environment unique to Five Lagunas. Final locations and quantity of each of the miscellaneous signs identified shall be reviewed and approved by City staff.

The UVSP permits murals provided they are designed as an integral part of the building character and do not interfere with the visual quality of the streetscape. The Master Sign Program includes painted murals as a sign type; however, the location and design details are not provided and require further City review on an individual mural basis and are subject to the review and approval of the Planning Agency. The purpose of including murals within the Master Sign Program is to provide a placeholder to covey the design intent and to allow for murals in the future under the Master Sign Program.

Table 7 below provides a summary of the signs included in the Master Sign Program.

Table 7- Master Sign Program Summary

Five Lagunas Master Shopping Center Sign Program				
	Sign Type	**Proposed**	**UVSP**	**Development Code**
A1	Freeway Oriented Sign	1,706 sq. ft. center name Internally illuminated channel letters with four rows of exposed neon extending above parapet wall.	Freeway oriented signs are permitted to encourage creativity in sign design and to foster a pedestrian atmosphere.	None
A2	Freestanding - Center Identification Sign (Avenida de la Carlota)	One sign; 75 feet tall, 20 feet wide & double sided (1,500 sq. ft.). Includes center name (211 sq. ft.), eight major anchor panels (58 sq. ft. each), and tenant/restaurant panels (20 sq. ft. each);	Freeway oriented signs are permitted	Pole signs are prohibited, but code allows up to 400 sq. ft. for Center Identification Sign.
A3	Primary Entry Center Identification Monument Sign (Avenida de la Carlota)	One internally illuminated sign, 23'-3" tall, 8'-3" wide & double sided (192 sq. ft.). center name (28 sq. ft.) and six panels identifying two major anchors, two restaurants, and two tenants (12 sq. ft., each)	Refers to Development Code	One per driveway apron, with a min. separation of 75' between signs; max. size is 40 sq. ft.; max. height is four feet.
A4	Secondary Entry	Five internally	Two shown	One per driveway

	Center Identification Monument Sign (1-Avenida de la Carlota / 4 Calle de la Louisa)	illuminated signs, 10 ft tall, 4'-5" wide and double sided (45 sq. ft.). center name (10 sq. ft.) and four panels identifying two major anchors and two tenants (3 sq. ft. each)	along Ave. de la Carlota	apron, with a min. separation of 75' between signs; max. size is 40 sq. ft.; max. height is four feet.
A5	Primary/Major Entry Center Identification Monument Sign (El Toro Rd.)	Two internally illuminated Center name signs (89 sq. ft. each) behind green screen vegetation with four major tenant panels below (13 sf. each)	Refers to Development Code	One per driveway apron, with a min. separation of 75' between signs; max. size is 40 sq. ft.; max. height is four feet.
A6	Corner Center Identification Monument Sign (El Toro Rd./ Avenida de la Carlota)	Two internally illuminated center name signs (89 sf each); behind green screen vegetation with four major tenant panels below (13 sq. ft. each)	Refers to Development Code	One per driveway apron, with a min. separation of 75' between signs; max. size is 40 sq. ft; max. height is four feet.
A7 A12	Center Identification Parking Structure Wall Sign (Calle de la Louisa)	Two internally illuminated Center Identification Wall sign (542 and 266 sq. ft. respectively) on parking structure	Refers to Development Code	One sq. ft per lineal feet of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business).
A8 & A9	Center Identification Parking Structure Wall Sign	Three internally illuminated Center Identification	Refers to Development Code	One sq. ft. per lineal feet of building frontage; length limited to

		Wall signs with parking entrance identification on parking structure (one at 217 sq. ft. and two at 150 sq. ft. each)		70% of building face; max. aggregate of 150 sq. ft. (per business).
A10	Center Identification Wall Sign at each mall building entrance	Three internally illuminated Center Identification signs, one at each mall entrance (6.5 sq. ft. each)	Refers to Development Code	One sq. ft. per lineal feet of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business).
A11	Tenant Identification Wall Sign	One 685 sq. ft. internally illuminated tenant identification wall sign	Refers to Development Code	One sq. ft. per lineal feet of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business).
A13	Center Identification and Tenant Identification corner Wall Sign	One 183 sq. ft. internally illuminated center name sign on west elevation and four tenants identification on south elevation	Refers to Development Code	One sq. ft. per lineal feet of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business).
A14	Directional/Wayfinding Signs (Primary Vehicular)	13 internally illuminated signs; 29 sq. ft. each; maximum height is eight feet. and width is 3'-7".	Refers to Development Code	Four sq. ft. maximum size & three feet maximum height
A15	Directional/Wayfinding Signs (Secondary Vehicular)	Six signs; six sq. ft. each; maximum height is 11'-8" and	Refers to Development Code	Four sq. ft. maximum size & three feet maximum height

		width is 1’-9”.		
A16	Directional/Wayfinding Signs (Pedestrian)	11 internally illuminated signs; 18 sq. ft.; maximum height is nine feet and width is two feet.	Refers to Development Code	Four sq. ft. maximum size & three feet maximum height
A17	Directory/Ad Panel Signs (Pedestrian)	10 internally illuminated signs; 27 sq. ft.; maximum height is 8’-3” and width is 3’-3”.	Refers to Development Code	24 sq. ft. maximum size & eight feet maximum height
A18	Residential Building Identification Monument Sign	Five internally illuminated signs; 27 sq. ft.; maximum height is 4’-3” and width is 6’-6”	Refers to Development Code	One per driveway apron, with a min. separation of 75’ between signs; max. size is 40 sq. ft.; max. height is four feet.
A24	Murals		Murals are permitted provided they are designed as an integral part of the building character.	None
A26	Banners/Pennants	unspecified decorative banners	Nontraditional signs are permitted to encourage creativity and foster a pedestrian atmosphere.	Pennants 2 sq. ft. each; max. height is 10 feet; max, aggregate is 100 linear ft.
A27	Directional/wayfinding Blade sign	Two internally illuminated signs; 15 sq. ft. each	Projecting signs are permitted to encourage creativity in sign design and to foster a pedestrian atmosphere.	Four sq. ft. maximum size & three feet maximum height

Tenant Signs

Tenant signs vary in size, type, and amount depending on the tenant location as represented by the five tenant zoning areas identified on sheet 20 of the tenant signage criteria (Attachment 10). Each zoning area provides design guidelines for various signs and includes flexibility in both required and optional sign types. Zone 1 provides sign regulations for the interior pedestrian concourse of the mall. Zone 2 includes tenants with exterior pedestrian accessibility and visible from the pedestrian areas within the plaza and from internal vehicular circulation. Zones 3 and 4 include outlying buildings, major anchor tenants, and exterior in-line tenant with visibility from vehicular areas and site boundary roadways. Lastly, Zone 5 includes outlying pads and retail buildings with primary visibility from Avenida de la Carlota and El Toro Road. Table 8 below provides a summary of the Tenant Sign Criteria included in the Master Sign Program.

Table 8- Tenant Sign Criteria Five Lagunas Tenant Sign Criteria

Tenant Type	Sign Type	Proposed	UVSP	Development Code
Zone 1 Inline Tenants (Max. 1.5 sq. ft./ lin. ft. sign area)	Wall Sign	One primary sign per tenant frontage; Max. letter height is 24”, logo height 30”, max. sign height, if stacked 32”.	Refers to Development Code	1 sq. ft. per lin. ft. of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business)
	Blade Sign (optional)	Max. 5 sq. ft.	Projecting signs are permitted to encourage creativity in sign design and to foster a pedestrian atmosphere.	None
Zone 2 (Max. 1.5 sq. ft./ lin. ft. sign area)	Wall Sign	One primary sign per tenant frontage; Max. letter height is 18”	Refers to Development Code	1 sq. ft. per lin. ft. of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft.

Table 8- Tenant Sign Criteria Five Lagunas Tenant Sign Criteria				
Tenant Type	**Sign Type**	**Proposed**	**UVSP**	**Development Code**
				(per business)
	Blade Sign (required)	Max. 5 sq. ft.	Projecting signs are permitted to encourage creativity in sign design and to foster a pedestrian atmosphere.	None
Zone 3 (Max. 1.5 sq. ft./ lin. ft. sign area)	Wall Sign	One primary sign per tenant frontage; Max. letter height is 20"; If sign band is above 25', max. letter height and logo height is 48", max. sign height, if stacked 50".	Refers to Development Code	1 sq. ft. per lin. ft. of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business)
	Blade Sign (required)	Max. 6 sq. ft.	Projecting signs are permitted to encourage creativity in sign design and to foster a pedestrian atmosphere.	None

Table 8- Tenant Sign Criteria Five Lagunas Tenant Sign Criteria				
Tenant Type	**Sign Type**	**Proposed**	**UVSP**	**Development Code**
Zone 4 (Max. 2 sq. ft./ lin. ft. sign area)	Wall Sign	One primary sign per tenant frontage; Three primary signs for freestanding tenants; Max. letter height is 24"; If sign band is above 25', max. letter, logo, & sign height is 60".	Refers to Development Code	1 sq. ft. per lin. ft. of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business)
	Blade Sign (optional)	Max. 8 sq. ft.	Projecting signs are permitted to encourage creativity in sign design and to foster a pedestrian atmosphere.	None
Zone 5 (Max. 2 sq. ft./ lin. ft. sign area)	Wall Sign	Three primary signs for freestanding tenants; Max. letter height and logo height is 24", max. sign height, if stacked 30".	Refers to Development Code	1 sq. ft. per lin. ft. of building frontage; length limited to 70% of building face; max. aggregate of 150 sq. ft. (per business)
	Blade Sign (optional)	Max. 8 sq. ft.	Projecting signs are permitted to encourage creativity in sign design and to foster a pedestrian atmosphere.	None

Table 8- Tenant Sign Criteria Five Lagunas Tenant Sign Criteria				
Tenant Type	**Sign Type**	**Proposed**	**UVSP**	**Development Code**
	Window Sign (optional)	6" to 8" letters	Refers to Development Code	.5 sq. ft. per lin. ft. of building frontage; length limited to 35% of building face; max height 15 ft.
	Awning Sign (optional)	6" to 8" letters	Awning and canopy signs are permitted to enhance a business.	20 sq. ft. max. size; 20% of window

Vesting Tentative Tract Map

The proposed Vesting Tentative Tract Map provides the applicant with the ability to subdivide the project site into 16 lots from the existing 9 lots that currently make up the property. The tract map process provides the City with the opportunity to determine project consistency with the General Plan and the UVSP, review the site's suitability to accommodate the Project (such as ensure adequate infrastructure exists to serve the Project), and ensure the Project does not damage the environment or create health problems. Table 9 summarizes the proposed map and the uses of the property.

Table 9 - Vesting Tentative Tract Map No. 18036

Lots	***Area (square feet)***	***Acres***	***General Uses and Structures***
Lot 1A	391,621	8.99	Retail Major C and D, Parking Areas, and Residential
Lot 1B	271,463	6.23	Parking Areas and Residential
Lot 1C	277,339	6.37	Parking Areas and Residential
Lot 2	11,601	0.27	Pad "E"
Lot 3	592,757	13.61	Main Mall buildings, Major A and B buildings, Sycamore Park, and Parking Structure (6-levels)
Lot 4	132,405	3.04	Flex Retail Office
Lot 5	328,674	7.55	Mall building portion (JC Penney) and Parking Areas
Lot 6	39,674	0.91	Existing Retail building
Lot 7	18,576	0.43	Pad "D"
Lot 8	167,831	3.85	Existing buildings (In-n-Out,

Table 9 - Vesting Tentative Tract Map No. 18036

Lots	***Area (square feet)***	***Acres***	***General Uses and Structures***
			King's Fish House), and Parking Areas
Lot 9	389,055	8.93	Mall building portion (Macy's), Parking Areas, and Shops AB building
Lot 10	21,024	0.48	Pad "B"
Lot 11	14,802	0.34	Pad "C"
Lot 12	20,923	0.48	Pad "A"
Lot 13	35,563	0.82	Portion of Private Street (Ronda del Rossmoor)
Lot 14	169,013	3.88	Private Street (Calle de la Louisa)
Total Area	2,882,321	+/-66.17	

Staff notes that while the property that currently makes up the Laguna Hills Mall is over 68-acres, the proposed Vesting Tentative Tract Map only covers 66-acres. The existing parcel which accommodates BJ's Brewhouse and Grill is not included in the proposed map and is designated "Not A Part" in conformance with the requirements of the Subdivision Map Act.

The applicant is constructing the proposed project on an existing developed site where all public services and utilities are available to serve the development. Existing road access is sufficient to serve the project and there are no hazardous conditions that exist on the site that would prevent the redevelopment of the property from moving forward, transitioning an under-utilized shopping center to vibrant a mixed-use development. The project complies with the City's zoning regulations in that all required parking is provided, physical building limitations such as height limits, and setbacks are met, project density complies with the minimum and maximum number of dwelling units per acre allowed in the Urban Village (30-50 dwelling units per acre), and improvements necessary for the implementation of the UVSP are incorporated into the project. These include various pedestrian paseos, a village green, and UVSP entry signs. Since the project site is a previously developed property, the project does not impact fish or wildlife or their habitat. Further, as set forth in the Third Addendum, the project will not cause new significant environmental effects or a substantial increase in the severity of significant effects that were previously identified in the PEIR.

However, the project will impact existing water lines and easements used by the ETWD to provide water to the general area. Conditions of approval require the Applicant to design, relocate and build these facilities to the satisfaction of ETWD to ensure adequate water service is provided to the project as well as any other areas adjacent to the project that might utilize the existing facilities.

Prior to the approval of the final map, the applicant is required to accomplish a number of items including the design of water and sewer lines for the El Toro Water District. Dedication to the City is also required along Avenida de la Carlota in order for the Project to provide a “complete street” environment for future residents of the Project. The dedication is shown on the map and provides the City with sufficient right-of-way on the west side of the street right-of-way to provide an enhanced sidewalk for pedestrians. This dedication requirement will support the UVSP’s goal or improving walkability in the UVSP area. A similar requirement for the enhanced sidewalk improvement is part of the redevelopment of Oakbrook Village. The dedication will allow the City to continue this treatment from the Project’s south property line to El Toro Road. While there is an existing sidewalk on the west side of the right-of-way, it is not sufficient to accommodate the landscaping design elements that the UVSP requires for pedestrian walkways.

The tentative map also identifies a potential widening of Avenida de la Carlota by Caltrans from the widening of Interstate 5 at some point in the future, although the widening is not a proposed dedication on the map. No substantial improvements are proposed in this potential future road widening area.

Precise Plan

To ensure a compatible mix of uses, the UVSP requires that new mixed use developments be approved through a Precise Plan permit process, which requires the careful consideration of potential impacts from the proposed development and ensures that a proper balance of uses is established. Furthermore, the UVSP includes additional provisions for enhanced security, restrictions on activities, noise standards, vibrations and odors, and lighting to ensure that residential uses are not adversely impacted by commercial uses. Conformance with these provisions is to be reviewed for each development proposal and approved by the City under the precise plan.

The Five Lagunas project is an infill project that enhances community character, optimizes City investments in infrastructure and community facilities, supports increased transit use, and promotes a more walkable environment within its portion of the UVSP area. Additionally, as stated in the 2009 General Plan Update, infill projects reduce vehicle trips and resulting air pollution, increase housing diversity, and enhance retail viability. The project will add 988 dwelling units within close proximity to job centers, shopping opportunities, health facilities, and existing transit infrastructure.

The project as reflected in the proposed precise development plan mixes residential with retail, dining, and entertainment uses, which increases the balance of uses within the project area. By integrating these uses in proximity to one another, the project creates a desirable place for people to live, work, shop, and play. The key to successful mixed-use projects is creating pedestrian friendly environments within the project and connections to neighboring uses through the use of trails, pathways, bikeways, and safe crosswalks. The project achieves this by improving the site with a centralized pedestrian plaza area and a village green (Sycamore Park), a number of pedestrian facilities (including Main Street Promenade), and a network of paseos that connects the various commercial and residential uses integrated into the project site, as well as, to neighboring uses, such as the Civic Center to the north, the hospital and medical offices to the west, and Oakbrook Village, Villa Valencia, and the Laguna Hills Transportation Center to the south.

The proposed commercial and residential buildings are of quality design, with a strong and appropriately scaled framework of architectural and landscape elements and design. The new buildings have been sited in ways that meet development standards, while making the best use of available space and maintaining a cohesive flow between uses in the Plan area. The building masses and landscaping throughout the project site are designed to create a sense of unity. High-quality development features are provided throughout the project site through site design (e.g., building orientation, screening and placement of service areas), architecture (e.g., mass, scale and form, style, material and color), and streetscape elements (e.g., lighting, paving materials). Collectively, these architectural and design features of the project promote community image and enhance compatibility of uses in the plan area as envisioned in the UVSP.

Additionally, the project is designed to ensure the security of its residents. The residential units have secured entrances and exits that are separate from the non-residential uses and are directly accessible to parking areas, and the residential units have private balconies that are not accessible from non-residential uses. A “Residential Security Features Plan” has been submitted for each residential building which includes features such as secured card-reader corridor and garage access for residents and call-boxes for visitors (see Sheets R-2.11, R-3.10 and R-4.9 in entitlement plans). A condition of approval pertaining to security has been included in the attached Resolution to ensure the safety of the Project’s residents. Condition No. 140 requires the Applicant to provide a multi-layered security system utilizing state of the art technology for the review and approval of the Community Development Director and Chief of Police Services.

Conditions of approval have also been included that would ensure the commercial uses are designed and operated so that neighboring residents are not exposed to offensive noise (especially from traffic, trash collection, or routine deliveries) or adversely impacted by outdoor lighting associated with commercial uses. For example, Condition No. 149 prohibits a use that is immediately adjacent to a residential use from loading or unloading materials, products, and or supplies at the site between the hours of 8 pm and 7 am. Condition No. 21 requires all exterior lights to be focused inward and away from surrounding uses and adjacent residential properties. Condition No. 52 requires the Applicant to submit a Cinema Operation Plan subject to review and approval of the Community Development Director, City Engineer, and Chief of Police Services.

The precise plan, upon approval, must be binding upon all current and future owners and tenants for which the plan is developed. As such, an agreement is required and shall be recorded to evidence the precise plan. Condition No. 79 requires the Applicant to prepare the agreement for final City approval and record prior to the issuance of any certificates of occupancy.

ENVIRONMENTAL REVIEW:

As part of the project's approval, staff is recommending that the City Council and Planning Agency consider the Third Addendum to the previously certified PEIR to serve as the environmental review for the project pursuant to the provisions of the California Environmental Quality Act (CEQA). The Third Addendum was prepared by the applicant and peer-reviewed by the planning and environmental firm MIG on behalf of the City. The City also retained RK Engineering to provide peer review of the Project Traffic and Parking studies. Both firms are satisfied with the review and analysis conducted by the Applicant for the Project.

<u>2009 General Plan Program EIR Discussion</u>
At the conclusion of the City's General Plan update process in 2009, the City prepared the PEIR which addressed the environmental impacts associated with development activity expected under the General Plan including increased development within the UVSP. The General Plan anticipated the following uses and intensities described below:

General Plan 2030 Buildout Scenario

Land Use Type	**Changes Under the General Plan**
Retail	+/- 528,000 square feet
Office	+/- 415,000 square feet
Business	+/- 75,000 square feet
Hotel	250 rooms
Single-Family	7 units
Multi-Family	450 units
Parks and Open Space	+/- 13 acres

The PEIR was certified by the Laguna Hills City Council on July 14, 2009. The City found that some potentially significant impacts would be adequately mitigated and that overriding considerations outweighed the remaining significant, unavoidable impacts. The significant and unavoidable impacts identified in the PEIR were related to air quality, global climate change (greenhouse gas emissions), and public services and utilities (due to the uncertainty of water supplies).

The proposed project represents an increment of the total development anticipated as part of the 2009 General Plan update pursuant to the amended (2011) UVSP and evaluated in the PEIR. As documented in the Third Addendum, staff has determined that the project is a later activity within the scope of the project studied in the PEIR. The project is consistent with the land uses, policies, and development density anticipated in the 2009 General Plan Update and the 2011 UVSP Amendment. There are no substantial changes to the project studied in the PEIR that would require major revisions of the PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There are no substantial changes with respect to the circumstances under which the project studied in the PEIR is being undertaken and implemented which will require major revisions of the PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR was found adequate and/or certified showing: (a) one or more significant effects not discussed in the PEIR; (b) significant effects previously identified will be substantially more severe than shown in the PEIR; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. Therefore, no further environmental review is required.

Transportation and Traffic

A site-specific traffic impact analysis has been prepared to determine and evaluate the potential traffic impacts associated with the proposed Five Lagunas project (Appendix G in Attachment 2) to ensure the Project does not create significant new traffic impacts beyond what was analyzed in the PEIR. The study area included a total of 61 intersections and provided for detailed peak hour traffic impact/level of service (LOS) analysis during the weekday AM and PM, and Saturday midday, peak hours under each of four traffic scenarios: Existing, Existing Plus Project, Year 2018 Cumulative Base, and Year 2018 Cumulative Plus Project.

As previously mentioned, the community's standard for acceptable traffic levels is based on intersection Level of Service. LOS is typically used to describe a ratio of traffic volume moving through an intersection versus an intersection's vehicle capacity (commonly referred to as the volume-to-capacity, or V/C ratio). A letter grade from "A" to "F" is then assigned to describe the level at which an intersection is operating as described by the following table:

Level of Service	Volume to Capacity Ratio	Description
A	0.00 – 0.60	Excellent operation. All approaches to the intersection appear quite open, turning movements are easily made, and nearly all drivers find freedom of operation.
B	0.61 – 0.70	Very good operation. An occasional approach phase is fully utilized. Many drivers feel somewhat restricted within platoons of vehicles
C	0.71 – 0.80	Good operation. Major approach phases fully utilized. Most drivers feel somewhat restricted.

D	0.81 – 0.90	Fair operation. Drivers may have to wait through more than one red signal indication. Queues may develop but dissipate rapidly. Without excessive delays.
E	0.91 – 1.00	Poor operation. Volumes at or near capacity. Vehicle may wait through several signal cycles. Long queues from upstream intersections.
F	> 1.00	Forced flow. Represents jammed conditions. Intersection operates below capacity with low volumes. Queues may block upstream intersections.

Source: City of Laguna Hills Traffic Study Guidelines

Except for a few intersections within the City that are part of a system of arterials under the jurisdiction of the County's Congestion Management Program (CMP) such as intersections along El Toro Road, the City requires intersections to operate at LOS D. According to CMP traffic impact analysis guidelines, LOS E is the minimum acceptable service level at CMP intersections. In addition to using LOS as a determination for significant traffic impacts, the City also determines that an increase in the V/C ratio of 0.01 at an intersection already operating at an LOS E or LOS F is also a significant impact.

Based upon the City's traffic study guidelines, the Intersection Capacity Utilization (ICU) methodology was used to determine the V/C relationship for signalized intersections (based upon the individual volume-to-capacity ratios for key conflicting traffic movements), and corresponding LOS. Additionally, the Transportation Research Board's 2000 Highway Capacity Manual was applied in the analysis of the unsignalized key intersections, the Highway Capacity manual (HCM 2010) operations methodology was applied in the analysis of the project driveway intersections (for queuing analysis, as required by City staff) and all freeway ramp intersections (to address Caltrans traffic impact study requirements). Per Table 5 (Existing 2015 Intersection Peak Hour Levels of Service Weekday Conditions) and Table 6, (Existing 2015 Intersection Peak Hour Levels of Service Saturday Conditions), all 61 key intersections currently operate at acceptable LOS D or better (LOS E or better at CMP intersections) during the AM and PM peak hours of a typical weekday. Staff also requested that the Applicant evaluate weekend traffic given sizable restaurant and entertainment uses proposed for the site. An analysis is also included in the study that evaluated midday peak hour traffic on Saturday.

With the integration of the project traffic-related improvements into the project, which include land geometry, driveway reconfiguration, median modifications, and signalization, the Existing plus project, and Year 2018 Cumulative Plus Project is not expected to cause significant traffic impacts at any of the 61 key intersections under Existing Plus Project and Year 2018 Cumulative Plus Project, and at any of the freeway mainline segments analyzed.

Per the traffic analysis, the new project trips are estimated to be approximately 6,434 daily trips on a typical weekday, of which 558 trips are expected to occur during the AM peak hour, and 569 trips could be generated during the PM peak hour, and 4,919 daily trips on a Saturday, of which 456 trips could occur during the Saturday midday peak hour. The table below describes the anticipated net increase in traffic as a result of the Project during the weekday. Table 10 below summarizes the additional traffic (in total) from the Project.

Table 10 – Project Traffic Summary

	Existing Trips	**Total Project Trips Upon Project Completion**	**Net New Project Trips**
AM Peak	554	1,112	558
PM Peak	2,296	2,865	569
Daily Traffic	24,926	31,360	6,434

At the time that the General Plan Update was adopted in July 2009, it was determined that the UVSP area could accommodate 1,243 additional AM peak hour trips and 2,272 PM peak hour trips. This trip cap was set to ensure that the maximum buildout trip levels evaluated in the PEIR were not exceeded as a result of new development projects within the UVSP. A trip budget assessment was conducted, given the project's location within the UVSP area. After debiting all development projects that have been approved since the June 2009 General Plan Update, the remaining UVSP trip budgets (as of May 2015) corresponds to 1,008 AM peak hour trips and 2,202 PM peak hour trips. Subtracting the net project trips (558 AM peak hour trips and 569 PM peak hour trips) from that yields a residual UVSP trip budget of 450 AM peak hour trips and 1,633 PM peak hour trips.

Table 11 below describes the peak hour trips from new projects that have been approved within the UVSP since 2011:

Table 11 - UVSP Trip Budget Summary

Approval Dates	**Trip Budgets Identified in Program EIR**	**AM Peak Trip Budget**	**PM Peak Trip Budget**
		Urban Village Trip Budget ***1,243***	*Urban Village Trip Budget* ***2,272***
May 2011	Chevron	0	+ 27
June 2011	Taj Majal	- 9	- 44
July 2011	Ashley Furniture / Chick-Fil-A	0	- 12
November 2012	Oakbrook Village Project	- 194	- 44
April 2015	Raising Cane's	- 32	+ 3
	Remaining Trip Budget (Excluding Proposed	**1,008**	**2,202**

	Project)		
2016	*Five Lagunas Project*	*- 558*	*- 569*
	Remaining Trip Budget	**450**	**1,633**

Within the traffic study, a comparison was made between Project trips and the Mall trips accounted for and previously evaluated in the PEIR studies for Year 2008 conditions and Year 2030 conditions. The analysis of these comparisons indicate that the gross project trips estimated are generally less than what have already been studied as part of the 2009 PEIR under Year 2008 and Year 2030 conditions. Table 12 below summarizes traffic analyzed in the PEIR and compares it to traffic from the Project.

Table 12- PEIR and Project Traffic Comparison

	GP PEIR Traffic Model 2008	GP PEIR Traffic Model 2030	Gross Project Trips	Trip Difference (2030)
AM Peak	1,170	2,290	1,183	-1107
PM Peak	4,238	3,974	3,260	-714
Daily Traffic	48,715	42,469	35,201	-7268

The PEIR and the traffic study prepared for the General Plan Update concluded that none of the study intersections were forecast to be deficient with implementation of future development anticipated under the General Plan Update, including the Project.

Although the project would exceed the 200 additional dwelling units anticipated in the land use mix in the UVSP, the UVSP provides for flexibility in development options, so there could be, for example, more residential uses and less retail uses established, or vice-versa, as long as the overall AM and PM peak hour vehicle trip budget is not exceeded. Applicants are permitted to develop to the maximum intensity of their plans only upon verification that trip generation impacts created are within the acceptable levels identified by the General Plan (UVSP – Pp. 36). As described in the Third Addendum (Section 3.16-*Transportation and Traffic*) the UVSP's AM and PM peak hour vehicle trip budget would not be exceeded as a result of the project. Thus, the project is consistent with the development intensity anticipated by the 2009 General Plan Update, the UVSP (as amended), and the PEIR. Moreover, the PEIR and the Housing Element anticipate an influx of residential development both within the UVSP and at the project site, as reflected by the incorporation of the minimum residential density of 30-units per acre within the UVSP, among other factors. Therefore, the project site is capable of supporting the intensity and density proposed by the project.

FISCAL IMPACT:

Public Park In-lieu Fees

Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements applies to the residential development of the project. This requires the developer to pay the City a public park in-lieu fee - currently $10,140 for each residential unit constructed. The fee will be paid on a per unit basis at the time of filing of the final map or, if no final map is filed, prior to issuance of a building permit for each residential unit. Based on the current amount of the in-lieu fee, the Applicant will pay the City $10,018,320 (988 units x $10,140).

Urban Village Traffic Impact Mitigation Fees

The Applicant is required to pay a traffic impact fee in accordance with Chapter 9-102 of the LHMC in the amount of $3,914 for each PM peak hour trip generated as a result of the project. The traffic study for the project shows 569 PM peak trips for the project and will therefore require the developer to pay the City $2,227,066 upon issuance of any permits.

Public Art/Public Art In-Lieu Fee

The developer is required to furnish public art in connection with the project, and/or pay an in-lieu fee, pursuant to the UVSP. Although no specific designs are provided, the developer proposes five art zones with different conceptual pieces of art throughout the site, each representing one of the five Laguna communities. The minimum value for the public art component and/or in-lieu fee shall be one-half percent (0.5%) of the total construction costs of the project. The Applicant will need to submit a Final Public Art Program for Planning Agency review and approval. Condition 77 addresses the Project's Public Art Program.

Recurring Revenues

The Applicant has included a fiscal impact analysis to estimate the increase in recurring revenues to the City once the Project is built out. It is included as Attachment 4. The analysis predicts that the Five Lagunas project will result in an additional $904,000 per year in revenue to the City once the Project is fully operational.

Other Revenues

In addition to one-time and recurring revenues to the City, staff estimates the Saddleback Valley Unified School District will receive approximately $4.3 million in school impact fees from the Project. County road districts and the Transportation Corridor Agency will also receive one-time revenues to fund on-going road enhancements within the area.

CONCLUSION:

The reconstructed mall buildings, commercial out lots, and residential buildings are designed with a strong and appropriately scaled framework of architectural and landscape elements. The building masses and landscaping throughout the project site are designed to create a sense of unity. High-quality development features are provided throughout the project site through site design, architecture, and streetscape elements. Staff believes the Five Lagunas development will be a successful mixed-use development complex providing unique experiences for residents and users unlike any other in South Orange County. Staff supports the proposed project for its excellent design qualities, the many public and quasi-public improvements the development proposes to add to the Urban Village Specific Plan area, and its conformance with the General Plan, the General Plan EIR, and the Urban Village Specific Plan. The project provides various amenities and introduces a type of housing into the area that will enable residents to "live, work, shop, play, and stay" while enjoying the substantial lifestyle amenities that exist in the Urban Village, and that will be available with the completion of the Five Lagunas project. Therefore, approval of SDPA-2-15-3114 is recommended.

CEQA FINDINGS:

The City Council and Planning Agency have independently considered the Third Addendum along with the PEIR. The City Council and the Planning Agency each find that no further environmental review is required. The project is a later activity within the scope of the project studied in the PEIR. It is consistent with the land uses, policies and development density established by the General Plan Update and 2011 UVSP Amendment. There are no substantial changes to the project studied in the PEIR that would require major revisions of the PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There are no substantial changes with respect to the circumstances under which the project studied in the PEIR is being undertaken and implemented which will require major revisions of the PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR was found adequate and/or certified showing: (a) one or more significant effects not discussed in the PEIR; (b) significant effects previously identified will be substantially more severe than shown in the PEIR; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Sections 21166 and CEQA Guidelines Sections 15168, 15162, and 15164.)

ATTACHMENTS:

1. Resolution of Approval
2. Addendum to the City of Laguna Hills General Plan Update EIR - Five Lagunas Project (SCH No. 20080811100) dated March 2016 and Appendices A through K.

A. Program EIR Environmental Impacts and Mitigation Measures Table (Table 2-1 of Program EIR)
B. Air Quality and Greenhouse Gas Emissions
C. Cultural Resources Letter Report
D. Geotechnical Study
E. Water Quality Management Plan and Hydrology and Hydraulic Report
F. Noise Technical Report
G. Traffic Impact Analysis
H. Water Supply Assessment
I. Parking Study
J. Phase I Environmental Site Assessment
K. Biological Resource Tables

3. Art Program Dated March 2, 2016

4. Fiscal Impact Study – October 2015

5. Freeway Sign View Study – Dated March 3, 2016

6. Letter of Justification – March 14, 2016

7. Master Sign Program Dated March 2, 2016

8. Parking Structure Design Options – No Date

9. Plans Booklet Dated March 3, 2016

10. Tenant Sign Criteria - Undated

11. Vesting Tentative Tract Map

12. City of Laguna Hills General Plan Update EIR - (SCH No. 20080811100) dated July 2009/ Addendum No. 1 and Addendum No. 2 (on cd)

13. Laguna Hills Mall Occupancy List - 2011

RESOLUTION NO. PA2016-03-22-X

A JOINT RESOLUTION OF THE PLANNING AGENCY AND CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING A THIRD ADDENDUM TO THE CITY OF LAGUNA HILLS PROGRAM ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 20080811100) AND APPROVING A SITE DEVELOPMENT PERMIT, MASTER SIGN PROGRAM, CONDITIONAL USE PERMIT, PARKING USE PERMIT, VESTING TENTATIVE TRACT MAP, PRECISE PLAN NO. 2-15-3114, A REQUEST BY MERLONE GEIER MANAGEMENT, LLC, TO REDEVELOP THE LAGUNA HILLS MALL SITE LOCATED AT 24155 LAGUNA HILLS MALL, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

The Planning Agency and the City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, on November 26, 2002, the City Council of the City of Laguna Hills adopted the Urban Village Specific Plan ("UVSP"). The UVSP area consists of 240 acres bounded by Paseo de Valencia on the north and west, Los Alisos Boulevard on the south, and I-5 on the east. The UVSP regulates development within the Village Commercial area of Laguna Hills. The purpose of the UVSP is to develop a community core in which a variety of public, regional commercial, recreational, and high density residential uses work in concert to create an "urban village." The UVSP provides for a continuing mixture of land uses, including retail, residential, hotel, medical offices, and general offices. The allowed development intensity in the Urban Village is regulated based upon vehicle trip generation limits, not land use type or size of the project, and the UVSP provides for flexibility in development options and the mixture of land uses, provided established anticipated aggregate vehicle trip limits generated by new development are not exceeded. The City implements this aspect of the UVSP through a vehicle trip budget debiting process, pursuant to which additional peak hour vehicle trips generated by each new development or redevelopment project are subtracted from the current aggregate total additional peak hour vehicle trips available to accommodate future new development in the UVSP area (the "Trip Budget Allocation"). Pursuant to the UVSP, applicants for new development projects are authorized to develop to the maximum intensity of their plans upon verification that the vehicle trip generation impacts created by the new development will not exceed the remaining Trip Budget Allocation. Developments within the UVSP area which seek to incorporate a mix of uses also require approval of a precise plan of development that regulates the exact mix of uses within a development project in order to allow the community to assess potential impacts from the project and to provide a balance of uses and purposes that promote community image, reduce undesirable environmental consequences and improve the fiscal abilities of the city to meet locally expressed needs; and

WHEREAS, in July 2009, the City Council adopted the 2009 Comprehensive General Plan Update ("Update"). The Update identified the UVSP area for expansion/revitalization and increased commercial and residential development; and

WHEREAS, in 2009, in connection with approving the Update, the City prepared a Program Environmental Impact Report entitled "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100" ("PEIR"). On July 14, 2009, the City Council certified the PEIR, adopted a Statement of Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring Program. The City filed a Notice of Determination on July 15, 2009; and

WHEREAS, in April 2011, the City Council adopted the Urban Village Specific Plan Amendment ("UVSP Amendment") in order to implement the Update. The UVSP Amendment updated the UVSP to reflect the development intensification approved in the Update, to modify the Trip Budget Allocation to 1,243 additional AM Peak Hour Trips and 2,272 additional PM Peak Hour Trips consistent with the Update, to modify the development standards in the UVSP in order to integrate and improve internal consistency between the existing commercial and residential development standards, to incorporate the mixed use application process and development standards already contained in the City's Development Code, and to update the Public Art section to clarify the management of the funds collected; and

WHEREAS, on April 12, 2011, the City Council adopted an Addendum to the PEIR in connection with the adoption of the UVSP Amendment (the "First Addendum") finding that: the UVSP amendment constituted a later activity within the scope of the PEIR; that the later activity proposed no substantial changes to the project evaluated in the PEIR that would involve new or more severe significant effects; that no substantial changes had occurred with respect to the circumstances under which the project evaluated in the PEIR would be undertaken, and that there was no new information of substantial importance showing there would be new or more severe significant effects, that mitigation measures or alternatives previously found to be infeasible would be feasible, or that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce significant effects. The City filed a Notice of Determination on April 15, 2011; and

WHEREAS, in 2012, the City Council adopted an Addendum to the PEIR for the Oakbrook Village Residential Project (SCH No. 20080811100), which proposed the redevelopment of a shopping center to the south of the current project site (and also within the UVSP) as part of a two-phased development that will include up to 489 residential units and up to 82,574 square feet of retail space (the “Second Addendum”). On November 27, 2012, the City Council determined that the Second Addendum adequately demonstrated that the Oakbrook Village Residential Project constituted a later activity within the scope of the PEIR and First Addendum; that the later activity proposed no substantial changes to the project evaluated in the PEIR that would involve new or more severe significant effects; that no substantial changes had occurred with respect to the circumstances under which the project evaluated in the PEIR would be undertaken, and that there was no new information of substantial importance showing there would be new or more severe significant effects, that mitigation measures or alternatives previously found to be infeasible would be feasible, or that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce significant effects. The City filed a Notice of Determination on November 28, 2012; and

WHEREAS, Merlone Geier Management, LLC (“Applicant”), has filed an application for the redevelopment of the Laguna Hills Mall property located at 24155 Laguna Hills Mall on behalf of MGP FUND X Laguna Hills, LLC (Owner”); and

WHEREAS, the application SDPA-2-15-3114 includes the following discretionary permits: Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan to redevelop the Laguna Hills Mall site into a mixed-use urban village center branded “Five Lagunas.” Project components include the partial demolition and reconstruction of the southern portion of the central mall building, the demolition and construction of new commercial spaces on development pads, and the development of high-density multifamily dwelling units. In all, the Five Lagunas project (“Project”) includes 616,013 square feet (570,180 square feet gross leasable area) of retail space, 115,354 square feet of restaurants, a 40,102-square-foot health club, a 109,070-square-foot cinema, 45,890 square feet of flex retail/medical office, 988 residential apartments, a multi-level parking structure to accommodate 1,581 parking spaces for a total of,5,757 parking spaces on site, a 9,628-square-foot Village Green (Sycamore Park) and other open space and recreational facilities, several pedestrian paseos and plazas, bicycle lanes, and traffic-related improvements. The Project site is approximately 68 acres on an irregularly-shaped site that is generally bound by Avenida De La Carlota and I-5 to the east, Calle De Los Caballeros and the Oakbrook Village shopping center to the south, the Orange County Transportation Authority (OCTA) Laguna Hills Transportation Center to the southwest, Calle De La Louisa and the Saddleback Memorial Medical Center campus to the west, and El Toro Road and Laguna Hills City Hall to the north. The Project is more fully described in the document entitled "Addendum to the City of Laguna Hills General Plan Update EIR Five Lagunas Project February 2016 ("Third Addendum") which is incorporated by this reference; and

WHEREAS, the redevelopment of the Laguna Hills Mall site is considered a "project" pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.,* and California Code of Regulations, Title 14, Sections 15000 *et seq.* ("CEQA"); and

WHEREAS, the Applicant has prepared and the City has peer-reviewed the Third Addendum to determine: whether the Project constitutes a later activity within the scope of PEIR; whether the later activity proposes substantial changes to the project evaluated earlier that would involve new or more severe significant effects; whether substantial changes have occurred with respect to the circumstances under which the project evaluated earlier would be undertaken; and whether there is new information of substantial importance showing there would be new or more severe significant effects, that mitigation measures or alternatives previously found to be infeasible would be feasible, or that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce significant effects; and

WHEREAS, a duly noticed public hearing regarding the Project was held on March 22, 2016.

NOW, THEREFORE, THE PLANNING AGENCY AND CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DO RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. The Planning Agency and City Council have each independently considered the Third Addendum to the Program Environmental Impact Report (PEIR) prepared by the Applicant, along with the PEIR, and all materials presented to the City by the Applicant and the public with respect to the Project. The Planning Agency and the City Council each find that no further environmental review is required for the Project. The Third Addendum adequately demonstrates the following, as more fully explained in that document. The Project is a later activity within the scope of the project studied in the PEIR. It is consistent with the land uses, policies and development density established by the Update and UVSP Amendment. There are no substantial changes to the project studied in the PEIR that would require major revisions of the PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There are no substantial changes with respect to the circumstances under which the project studied in the PEIR is being undertaken and implemented which will require major revisions of the PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR was found adequate and/or certified showing: (a) one or more significant effects not identified in the PEIR; (b) significant effects previously identified will be substantially more severe than shown in the PEIR; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code Sections 21166 and CEQA Guidelines Sections 15168, 15162, and 15164.)

SECTION 3. All applicable mitigation measures from the PEIR are incorporated into the Project and are included in the conditions of approval for the Project. The Project shall comply with such mitigation measures.

SECTION 4. As a later activity within the program studied in the PEIR, the Five Lagunas project will contribute toward that program's significant and unavoidable impacts relating to Air Quality, Global Climate Change (Greenhouse Gas Emissions), and Public Services and Utilities (Water Supply) (although the Five Lagunas project would not, by itself, cause a significant water supply impact). The Council previously determined that those impacts were overridden by the matters listed in the Statement of Overriding Considerations adopted in connection with the PEIR. The Five Lagunas project will help realize the benefits referenced in that Statement of Overriding Considerations, which continue to apply to the Project. It reflects smart growth principals, sustainable development and environmental protection. It includes 988 new housing units that will contribute to meeting housing needs in the City. It promotes economic development and employment opportunities by providing new and revitalized commercial and retail development. It also implements the overriding consideration to encourages economic growth that recognizes a balance between jobs and housing, by providing 988 units of housing on a site and 855 new permanent jobs.

SECTION 5. The Planning Agency and the City Council hereby adopt the Third Addendum.

SECTION 6. That the required findings by the City for approval of SDPM/MSP/CUP/PUP/TTM/PREC No. 2-15-3114 have been met and made as follows:

<u>Site Development Permit</u>

1. The site design complies with standards of the Development Code in that:

   The Project is located within the Village Commercial zoning district and is subject to the Urban Village Specific Plan (UVSP). As conditioned, the proposed Project will be in conformance with the development standards for properties within the Village Commercial zone and the Urban Village Specific Plan area, including density, building FAR, landscape requirements, parking requirements, setbacks, building height, and other development standards required.

2. The site is suitable for the proposed development in that:

   The site presently consists of an existing regional mall, seven outlying buildings, and surface parking. The Project proposes to reconfigure the commercial development and integrate high-density residential buildings, numerous plazas, and open space areas; and to incorporate a network of pedestrian and bike-friendly paths throughout serving the community's needs. The Project is consistent with the land use concept, design guidelines, and development standards and creates a village identity as envisioned in the UVSP.

   The Project represents an increment of the total development anticipated in the amended UVSP as evaluated in the General Plan Program EIR. From an environmental standpoint, the development is also suitable for the site in that the Project would not result in any new or substantially more severe environmental impacts than those considered and *addressed in the Program EIR. The Project will not result in any new significant impacts to the neighborhoods surrounding the Project. The PEIR studied impacts of a built-out UVSP area and the proposed project does not create impacts that are more severe than those that have already been studied. Additional analysis conducted in the Third Addendum to the EIR determined that impact categories addressing aesthetics, air quality, biological resources, geology and soils, greenhouse gas emissions, hydrology and water quality, noise, transportation and traffic, and utilities and service systems would not result in new significant impacts on the site or surrounding neighborhoods or a substantial increase in previously identified significant impacts. As identified by the Third Addendum, the Project will exceed air quality thresholds of significance for construction established by the South Coast Air Quality Management District (SCAQMD), would exceed SCAQMD operational standards for VOC, and generate GHGs; however, the PEIR determined air quality impacts from construction as a result of build out of the General Plan would be significant and unavoidable, that long-term operation-related air quality impacts would be significant and unavoidable, and that impacts to global climate change would be unavoidable. A Statement of Overriding Consideration that included impacts to air quality, water supply and global climate change was adopted when the PEIR was certified in 2009.*

3. The Project is consistent with the City's General Plan and applicable design guidelines in that:

Within the General Plan, the site is identified "Village Commercial" and is envisioned as a master planned area (USVP area) containing specific design standards and policies that enhance the pedestrian and vehicle circulation within a currently developed area. The intent of this designation is to establish a community core where commercial, civic, and high density residential uses would be appropriate. The area should contain enhanced pedestrian areas that conveniently link commercial, residential, and civic activity areas. Typical uses include those associated with large regional malls, as well as a medical center, financial institutions, institutional and government uses, auto-related services, community facilities, professional offices, and high density residential uses.

The Project implements the General Plan vision for the UVSP by providing for the redevelopment of the existing regional mall with a project that will create new entertainment, retail, restaurants, residential activity, and gathering spaces, with improved pedestrian links that integrate the Civic Center, hospital area, and Laguna Hills Transit Center. The General Plan identifies the subject site as a "future study area" for which intensification and redevelopment was expected to occur. The Project implements the General Plan vision for the area by providing for the redevelopment of the existing site with a mixture of new land uses with various intensities, *without exceeding the AM and PM peak hour vehicle trip budgets established by the UVSP.*

Per the 2014-2021 General Plan Housing Element, the site has been identified as a potential housing development area with development intensity between 30 to 50 dwelling units per acre. As proposed, the 988 residential units comply with the allowed development intensity and with the overall trip budget allocated to the UVSP area.

The proposed commercial buildings illustrate a modern architectural style complementary to the proposed residential contemporary style. Both the proposed commercial and residential buildings will be of quality design, with strong and appropriately scaled framework of architectural and landscape architectural elements and design that conform to the UVSP Design Guidelines. The massing of the buildings and landscaping within the project site will be designed to create a sense of unity. High-quality development features will be provided throughout the project site through site design (e.g., building orientation, screening and placement of service areas), architecture (e.g., mass, scale and form, style, material and color) and streetscape elements (e.g., lighting, paving materials). Development of the Project will enhance and strengthen the character of the existing center through landscaping, hardscape, and other improvements onsite and along the street edges.

4. The site design and structural components are appropriate for the site and function of the proposed uses in that:

The proposed commercial and residential buildings will be of quality contemporary design with a strong and appropriately scaled framework of architectural and landscape architectural elements and design. The new buildings have been placed on the site in ways that meet development standards, while making the best use of available space and maintaining a cohesive 'flow' between old and new portions of the Mall. The massing of the buildings and landscaping within the project site will be designed to create a sense of unity. The parking structure proposed along Calle de la Louisa is six stories in height. The structure incorporates architectural elements and design features that include painted concrete graphics on each parking level and landscaping which provide additional visual elements and reduces the overall massing. High-quality development features will be provided throughout the project site through site design (e.g., building orientation, screening and placement of service areas), architecture (e.g., mass, scale and form, style, material and color) and streetscape elements (e.g., lighting, paving materials). Development of the Project will enhance and strengthen the character of the existing center through the addition of landscaping, hardscape, a network of pedestrian pathways and bicycle lanes, and other improvements onsite and along the street edges.

Master Sign Program

1. That the design and application of the sign criteria required by the development code are satisfied by the proposed sign program.

   The City's Development Code provides for deviations from the standard sign criteria subject to the approval of a Master Sign Program by the Planning Agency. The Project's Master Sign Program ("MSP") proposes a variety of signs and monuments that are unique and both enrich the visual quality of the development and interest to the pedestrian environment. The proposed sizes and locations of the signs reinforce the contemporary character of the mall and are appropriate for this type of development.

2. That the sign program provides a compatible and harmonious design between advertising, landscaping, and building design.

   The MSP is a comprehensive signage program designed to complement the proposed mall redevelopment program by promoting a compatible and harmonious design between advertising, landscaping, and building design. The sign program is an integral part of the Mall site's architectural features and crafted to complement the new buildings and landscaping in a manner consistent with the UVSP.

   Freestanding signs will be finished in materials that are consistent with the major project entry and secondary entry features along El Toro Road in the Urban Village area—complement the buildings on site—and will be placed in landscaped areas that will accent the signs. Wall signs make use of quality materials and construction and are proportional to the building façade to which they are attached. Therefore, the sign program provides a compatible and harmonious design between advertising, landscaping, and building design.

Conditional Use Permit (Health Club)

1. The proposed use is consistent with the General Plan in that:

   The General Plan Land Use designates the site "Village Commercial" and is located within the UVSP. The purpose of the Village Commercial land use designation is to develop a community core in which a variety of public, regional commercial, recreational, and high density residential uses work in concert to create an urban village with uses interconnected through safe pedestrian pathways. A health club facility is consistent with the concept of an integrated urban village wherein residents and visitors engage in recreational activities, and physical exercise. The health club facility promotes interaction among the various surrounding uses and provides an opportunity for residents and visitors to pursue fitness and other health-related activities in the same location where they shop, work, and/or live.

2. The nature, condition and development of adjacent uses, buildings and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures in that:

   The proposed health club would be an integrated component of the Five Lagunas development meeting the needs of both the local residential and business communities. The site design integrates pedestrian pathways providing access to the health club and connectivity to the surrounding areas, contributing to the overall health, vitality, and sense of community. The health club facility, together with other proposed uses, will provide a strong community connection with emphasis on the creation of new community gathering areas and recreational opportunities that contribute to the quality of life for the residents of Laguna Hills and the region. The health club facility will be included within a new building and will not have any adverse effect on, or be materially detrimental to, the adjacent uses, buildings or structures.

3. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity in that:

   The project site is 68 acres in size and involves development of 570,180 square feet of retail, 115,354 square feet of restaurants, a 40,102-square-foot health club, a 109,070-square-foot cinema, 45,890 square feet of flex retail/medical office, 988 residential apartments and associated parking garages, and a multi-level parking structure to accommodate 1,581 parking spaces. All buildings and uses, including the health club, will comply with all design and development standards applicable within the UVSP and Development Code. The health club facility will be connected to surrounding retail, commercial, and residential uses through pedestrian pathways and parking facilities integrating with the existing and planned uses in the vicinity.

4. All required development standards prescribed by the Laguna Hills Development Code can be achieved in that:

   The project site is located within the Village Commercial District. The health club would be consistent with the land use and development standards within UVSP and the applicable development standards of the Development Code. Parking requirements will be satisfied pursuant to a shared parking approach authorized by Chapter 9-44 and Section V of the UVSP.

5. The conditions and limitations placed upon the use are necessary to ensure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare in that:

The health club will comply with the General Plan, the UVSP, and all relevant portions of the Laguna Hills Development Code. The conditions imposed are intended to maintain continued functionality of the health club while ensuring compatibility with adjacent uses and the preservation of the public peace, safety, and welfare.

<u>Parking Use Permit</u>

1. The proposed joint parking permit is consistent with the intent and purpose of the development code in that:

   The purpose and intent of the Development Code (Chapter 9-44) is to ensure that all land uses provide safe access and onsite circulation with adequate off-street parking and loading facilities. By establishing required parking ratios for different types of commercial uses, the Development Code intends to anticipate the amount of parking that will be needed to adequately serve proposed uses, thereby ensuring parking availability and relative ease of parking for patrons, which is consistent with goals of the General Plan. Although slightly fewer parking spaces are proposed to serve the commercial components of the Project than would otherwise be required under a strict application of the parking ratios listed in the Development Code, the Applicant has demonstrated through completion of a shared parking analysis that adequate parking exists for all proposed uses on the site, thereby meeting the intent of the Development Code in establishing parking standards. A total of 3,824 commercial parking spaces are proposed. While strict application of the City parking code ratios would require 3,913 spaces for the proposed commercial uses, existing demand and future development are expected to result in an actual peak demand of 3,788 spaces (occurring at 1:00 P.M.) under weekday conditions and 3,781 spaces (occurring at 2:00 P.M.) under weekend conditions, corresponding to a surplus of 36 and 43 spaces, respectively. Resident-dedicated parking spaces in excess of the number required under the Development Code will be provided in parking structures within each residential building.

2. The joint parking use permit provides a reasonable and enforceable means for all uses to share parking facilities in that:

   Based on Section 9-44.050 of the Municipal Code, and as manifested in the shared parking analysis, the proposal includes 570,180 square feet GLA of retail, 22,524 square feet of fine/casual dining restaurants, 64,267 square feet of family restaurants, 34,888 square feet of fast-food restaurants, a 39,701-square-foot health club, a 106,889-square-foot cinema with 2,068 seats, and 45,431 square feet of medical office (presumed as medical office, but could be used as retail), which will be served by a 1,581 space six-level parking structure, 2,051 parking spaces in numerous parking lots throughout on site, and 192 on-street parking spaces along private mall-owned streets (111 spaces on Calle de la Louisa, 27 spaces on Ronda del Rossmoor, and 54 spaces on Calle de *los Caballeros). In addition, the project includes 1933 residential parking spaces that will be in a gated area to serve exclusively the 988 residential units proposed. Further, to maintain sufficient parking, a condition has been included that requires the Shared Parking Analysis be recalculated in its entirety should the redevelopment expansion result in a change of use to a different land use category.*

3. The requirement for parking established by the joint parking use permit shall assure that parking demands for the participating uses are continually met:

   The parking study conducted for this project demonstrates that with the current proposed mix of uses, there is adequate parking for all uses, even at expected peak periods. With the conditions of approval, any new type of tenant (change of use to a different land use category) must submit an updated Shared Parking model calculation to the Community Development Director to ensure consistency with the established joint use parking permit, thereby assuring that parking demands continue to be met for all uses on the subject site.

4. All the findings in support of a conditional use permit

   (1) The proposed use is consistent with the General Plan in that:

   The General Plan supports shared parking so as to make the most efficient use of available land by integrating multiple uses and creative parking solutions that provide adequate parking for all uses. Further, the General Plan encourages the use of innovative parking management solutions to avoid excessive parking requirements in areas that are highly walkable and well served by transit.

   Per the shared parking analysis prepared by Linscott Law & Greenspan, the Applicant has demonstrated that adequate parking will be provided for all proposed commercial uses on the project site.

   Supplementary to the use of shared parking, the development utilizes innovate parking solutions that incorporates a network of pedestrian and bike-friendly paths throughout to make efficient use of the site with access to surrounding areas. Additionally, the nearby City of Laguna Woods provides shuttle services for their residents to the project site and public transit bus service is provided in the project area by the Orange County Transportation Authority (OCTA). Currently, 10 fixed routes provide bus service to portions of Laguna Hills. All routes, except bus route 70, serve the Laguna Hills Transportation Center, which is located south of the subject site. A park-and-ride facility is also located at the Laguna Hills Transportation Center and in the Laguna Hills Mall parking lot.

(2) The nature, condition and development of adjacent uses, buildings and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures in that:

The shared parking is an integrated component of the project and has been designed to supplement and enhance the multiple commercial uses proposed for the site. Per the shared parking analysis, the Applicant has demonstrated that the proposed site can accommodate enough parking to serve the existing and proposed uses on the subject site. Therefore, the parking use permit will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures.

(3) The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity in that:

The Applicant has demonstrated that the proposed site can accommodate enough parking to serve the existing and proposed uses on the subject site. Furthermore, the parking will not only be sufficient in size, but will be improved in quality due to attractive pedestrian connections, paseos, pedestrian plazas, design, and landscaping.

(4) That all required development standards prescribed by this code can be achieved in that:

The project includes a total of 3,824 shared commercial parking spaces and 1,933 parking spaces strictly for residential uses. (The required residential parking will be gated off from the retail area and is not included in the shared parking request.) The Development Code sets forth parking ratios for individual uses. While the site would be slightly deficient in parking if each commercial use was considered by itself, the Code allows for shared use of parking facilities on sites containing multiple uses such as the mall redevelopment project. Specifically, where more than 20 percent of the GLA within the Laguna Hills Mall property results in restaurant, entertainment, or cinema use, the proposed expansion of existing use, construction of new development, or intensification of existing facilities must apply the shared parking methodology to calculate the required parking. As proposed, the Project's restaurant/entertainment/cinema use comprises 26 percent of the total commercial square footage, thereby requiring that the UVSP shared parking model be applied in estimating the parking needs for the non-residential components of the project. While strict application of the stand-alone parking ratios in the Development Code would require 3,913 parking spaces, the shared parking analysis determined that the future supply of 3,824 spaces for commercial uses will be adequate in meeting the project's non-

residential parking requirements. Further, the analysis determined that peak parking demand would result in a demand for 3,788 spaces (occurring at 1:00 P.M.) under weekday conditions and 3,781 spaces (occurring at 2:00 P.M.) under weekend conditions for non-residential, corresponding to a surplus of 36 and 43 spaces respectively.

(4) The conditions and limitations placed upon the use are necessary to insure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare in that:

The conditions imposed on the parking use permit are intended to maintain continued functionality of the parking use plan thereby insuring compatibility with adjacent uses and the preservation of public peace, safety, and welfare.

<u>Vesting Tentative Tract Map</u>

1. The proposed subdivision is consistent with the General Plan and Urban Village Specific Plan in that:

   The General Plan identifies the subject site as a "future study area," in which intensification and redevelopment were expected to occur, and the site is designated in the General Plan Housing Element as a potential site for housing opportunities. The project implements the General Plan vision for the Future Study Area by redeveloping the existing site with a mixture of new land uses with various intensities, without exceeding the AM and PM peak hour vehicle trip budgets established by the UVSP. Likewise, the project is consistent with the UVSP in that a mixed use development is identified as the preferred land use for the Laguna Hills Mall site in the UVSP. A trip budget assessment was conducted, given the Project's location within the UVSP area. After debiting all development projects that have been approved since the June 2009 General Plan Update, the remaining UVSP trip budgets (as of May 2015) are 1,008 AM peak hour trips and 2,202 PM peak hour trips. Subtracting the net project trips (558 AM peak hour trips and 569 PM peak hour trips) from the available UVSP trip budgets yields a residual UVSP trip budget after implementation of the project of 450 AM peak hour trips and 1,633 PM peak hour trips which is more than enough AM and PM Peak Hour Trips to support the proposed Project.

2. The design or improvement of the proposed subdivision is consistent with the General Plan and Urban Village Specific Plan in that:

   The project includes improvements such as a pedestrian-oriented Main Street promenade, pedestrian plazas and the Village Green (Sycamore Park), several pedestrian paseos and pathways, open space amenities, entry features and signage, public art, architectural design, and landscaping that are consistent with the UVSP Land Use Plan and Design Guidelines. Given the mix of residential and diverse commercial land uses and the project design, the project promotes smart growth and *infill development, which are concepts that have been incorporated into the General Plan.*

3. The site is physically suitable for the type of development in that:

   The site is 68 acres in size, relatively flat and bounded on four sides by two major arterial streets, a private, street, and a private driveway, and is physically suitable for the proposed residential and commercial uses. The site currently consists of an enclosed mall originally developed in 1973, seven outlying commercial buildings, and 4,347 parking spaces. The site is currently underutilized, and the buildings and overall site design do not reflect consumer demand for retail centers. These conditions provide the opportunity for the mall redevelopment project, which will enhance the community character, optimize City investments in infrastructure and community facilities, increase employment opportunities and tax revenues, ensure the long-term viability of the Urban Village, and promote a more a pedestrian-friendly environment.

4. The site is physically suitable for the proposed density of development in that:

   The Project includes the construction of 988 residential dwelling units on three lots (Lots A-C). Lot A is 8.99 acres in size and will have a density of 41.5 dwelling units per acre (DUs/AC), Lot B is 6.23 acres in size and will have a density of 47.7 DUs/AC, and Lot C is 6.37 acres in size and will have a density of 49.9 DUs/AC. The proposed density of development meets the General Plan and the UVSP density standard of 30 to 50 DUs/AC. In addition to allowable density, the project is regulated based upon vehicle trip generation limits to ensure that the City's Mobility Element Level of Service (LOS) Standard "D" is not exceeded at any of the intersections within the area (with the exception of Congestion Management Plan [CMP] intersections for which LOS "E" is the minimum acceptable LOS) and that the project does not exceed the overall A.M. and P.M. peak hour vehicle trips allowed within the UVSP area. With the integration of the project traffic-related improvements designed into the project—which include land geometry, driveway reconfiguration, median modifications, and signalization—the Existing Plus Project and Year 2018 Cumulative Plus Project scenarios are not expected to cause significant traffic impacts at any of the 61 intersections or at any of the freeway mainline segments analyzed. Further, after debiting all development projects that have been approved since the June 2009 General Plan Update, the remaining UVSP trip budgets (as of May 2015) corresponds to 1,008 AM peak hour trips and 2,202 PM peak hour trips. Subtracting the net project trips (558 AM peak hour trips and 569 PM peak hour trips) yields a residual trip budget of 450 AM peak hour trips and 1,633 PM peak hour trips, which is more than enough AM and PM peak hour trips to support the proposed project. All utilities are available to serve the site, and adequate street access is provided.

5. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat in that:

   The project site is developed with commercial/retail uses and building; there is no fish or wildlife habitat on site. City Staff evaluated the potential environmental impacts of the project and concluded in the Third Addendum that the improvements at the site will not result in any new significant impacts, or increase in the severity of previously identified significant impacts, beyond those addressed in the General Plan Update Program EIR, which analyzed the General Plan Update program. No natural biological resources or communities existed on or in the vicinity of the project site in 2009 when the General Plan Update was analyzed under the PEIR, and no such resources exist at the present time since the site conditions have not changed.

6. The design of the subdivision or type of improvements is not likely to cause serious public health problems in that:

   The project improvements have been designed in accordance with all applicable codes. The design of the proposed land division will not cause public health problems since the proposed parcels are similar to other commercial and residential parcels adjacent to the site that are similarly served by existing improved roads and utilities.

7. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision; or, if such easements exist, that alternate easements for access or for use will be provided and that these will be substantially equivalent to ones previously acquired by the public in that:

   The project will impact existing water lines and easements used by the El Toro Water District (ETWD) in providing water to the general area. Conditions of approval require the Applicant to design, relocate, and build these facilities to the satisfaction of ETWD to ensure adequate water service is provided to the project as well as any other areas adjacent to the project that might utilize the existing facilities. Further, prior to the approval of the final map, the applicant is required to design water lines and associated infrastructure in accordance with ETWD standards and specifications.

8. The design of the subdivision, to the extent feasible, does have allowance for future passive or natural heating and cooling opportunities in that:

   The orientation of buildings to be constructed as part of the subdivision improvements provide the opportunity for the future passive or natural *heating and cooling to be provided. Proposed buildings will have substantial vertical and horizontal separation between existing buildings in the area so that the installation of future solar improvements can occur. Buildings with sun-facing exposures are provided shade with canopies. Dwelling unit structures which are part of the subdivision include opportunities for natural ventilation.*

9. The design, density, and configuration of the subdivision strikes a balance between the effect of the subdivision on the housing needs of the region and of public service needs in that:

    The project will result in housing production well in excess of the City's 2014-2021 regional housing needs assessment allocation of two dwelling units. The type of housing stock proposed will increase the supply of studios, one-, two-, and three-bedroom multi-family units for rent, a type of housing in limited availability within the community but in high demand within south Orange County. The project provides a compact mixed-use housing development within an existing underutilized retail shopping center that is already served by existing infrastructure and other public services. The project location and design maximizes the efficiency at which public agencies provide services to the area because of its high-density compact design. The design takes advantage of existing in-place public services and utilities that already serve the area.

10. The discharge of waste from the proposed subdivision into the existing sewer system will not result in violation of existing requirements prescribed by the California Regional Water Quality Control Board in that:

    The conditions of approval for on and off-site improvements will ensure permitted capacity of the public sewer system is not exceeded.

<u>Precise Plan</u>

1. The plan and the uses proposed are consistent with the General Plan in that:

    Within the General Plan, the site is identified "Village Commercial" and is envisioned as a master planned area (USVP area) containing specific design standards and policies that enhance the pedestrian and vehicle circulation within a currently developed area. Typical uses in the Village Commercial land use designation include those associated with large regional malls, as well as a medical center, financial institutions, institutional and government uses, auto-related services, community facilities, professional offices, and residential uses.

    The Applicant proposes to convert what is currently the enclosed Mall into a pedestrian-oriented, open-air experience with connectivity to surrounding commercial and residential uses. A number of additional *uses would also be constructed around the central Mall building. These structures would include additional retail offerings and dining locations. The various structures include sites for large retailers, small retailers, and development pads for future construction. The Project is designed so that pedestrians can traverse the site in order to frequent the various offerings. Approximately 449,611 square feet of existing GFA would be demolished and replaced with roughly 410,528 square feet of various commercial uses. In addition, three apartment-style buildings containing 988 high-density multifamily dwelling units would be constructed on the southerly portion of the site.*

The project implements the General Plan vision for the UVSP by redeveloping the existing regional mall with a project that will create new entertainment, retail, restaurants, residential activity, and gathering spaces, and with improved pedestrian links integrating the Civic Center, hospital area, and the Laguna Hills Transit Center. The General Plan identifies the subject site as a "future study area" in which intensification and redevelopment was expected to occur. The project implements the General Plan vision for the area by redeveloping the existing site with a mixture of various new land uses with various intensities, without exceeding the AM and PM peak hour vehicle trip budgets established by the UVSP.

2. The proposed plan is consistent with adopted development standards for the area in which proposed in that:

   As conditioned, the project meets all of the development standards, including lot size, lot width, lot depth, lot coverage, density, building height, open space and amenities, landscape coverage, parking (with approval of a CUP/PUP), and signage (with approval of a SDP/MSP).

3. The plan promotes community image and enhances compatibility of uses in the plan area in that:

   The proposed buildings will feature quality contemporary design, with strong and appropriately scaled framework of architectural and landscape architectural elements and design. The new buildings have been placed on the site in ways that meet development standards, while making the best use of available space and maintaining a cohesive flow between old and new portions of the Mall. The massing of the buildings and landscaping within the project site will be designed to unify the site. High-quality development features will be provided through site design (e.g., building orientation, screening and placement of service areas), architecture (e.g., mass, scale and form, style, material and color), and streetscape elements (e.g., lighting, paving materials).

   The proposed design of the project will have a consistent application of elements that mimic the natural world of forest and ocean found near Laguna Hills through the use of earthtone color palettes, textured *stonework, wooden plank boardwalk and pavements, use of seashell aggregates, and blue El Dorado stones. Landscaping used in strategic places within the project help define the character of the edges, Main Street, paseos, parking lot, and adjacent roadways. Taken collectively, these architectural and design features of the project promote community image and enhance compatibility of uses in the plan area as envisioned in the UVSP.*

4. The plan will reduce undesirable environmental consequences while improving economic needs of the area and community in that:

   The Laguna Hills mall redevelopment project is an infill project that enhances community character, optimizes City investments in infrastructure and community facilities, supports increased transit use, promotes a more walkable environment within its portion of the UVSP, and implements General Plan and UVSP policies for the area. The project will have approximately 880,596 square feet of commercial spaces that will bring additional revenue and employment opportunities. The Applicant prepared a fiscal impact analysis to estimate the increase in recurring revenues to the City once the Project is built out, which predicts that the Project will result in an additional $2 Million per year in revenue to the City once the Project is fully operational. Additionally, as stated in the General Plan, infill projects reduce vehicle trips and associated air pollution, increase housing diversity, and enhance retail viability. The project will add 988 dwelling units within close proximity to job centers, shopping opportunities, health facilities, and existing transit infrastructure.

5. The plan is sufficiently detailed to ensure design values and controls needed to achieve a balance and integration of uses in that:

   The project as reflected in the proposed precise development plan combines retail, residential, dining, and entertainment that increase the balance of land uses within the project area. By integrating these compatible uses in proximity to one another, the project creates a place for residents of Laguna Hills to live, work, shop, and play. The key to successful mixed-use projects is creating pedestrian-friendly environments, with connections to neighboring uses through the use of trails, pathways, bikeways, and safe crosswalks. The project achieves this by improving the site with a centralized pedestrian plaza area and a village green (Sycamore Park). Additionally, the project includes a number of pedestrian facilities, including Main Street Promenade and a network of paseos that connects the various commercial and residential uses to several smaller public spaces integrated into the mall and outlying areas, as well as to the Civic Center to the north, hospital and medical offices to the west, Oakbrook Village and Villa Valencia to the south, and Avenida de la Carlota to the east.

NOW, THEREFORE, based upon the above findings, the Planning Agency and City Council of the City of Laguna Hills do hereby approve SDPM/MSP/CUP/PUP/TTM/PREC No. 2-15-3114 subject to the following conditions:

General

1. The following Conditions of Approval shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to, each of the following: the project applicant, Merlone Geier Management, LLC., the owner(s) and tenant(s) of the property, and each of their respective successors and assigns.

2. Unless the context dictates otherwise, whenever the term "this Permit" is used in the following Conditions of Approval, it shall collectively refer to the SDPM/MSP/CUP/PUP/TTM/PREC No. 2-15-3114 approved pursuant to this Resolution.

3. Unless the context dictates otherwise, whenever the term "Project" is used in the following Conditions of Approval, it shall collectively refer to the plans, studies and exhibits submitted to the City by the Applicant to depict the improvements to be constructed as part of the Project, as modified by these Conditions of Approval, including but not limited to the following:

   - Addendum to the City of Laguna Hills General Plan Update EIR - Five Lagunas Project (SCH No. 20080811100) dated March 2016 and Appendices A through K
   - Art Program Dated March 2, 2016
   - Fiscal Impact Study – October 2015
   - Freeway Sign View Study – Dated March 3, 2016
   - Master Sign Program Dated March 2, 2016
   - Parking Structure Design Options – No Date
   - Five Laguna's Agency Re-Submittal Package Dated March 3, 2016
   - Tenant Sign Criteria - Undated
   - Vesting Tentative Tract Map

4. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, attorneys, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations,

mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.

5. Approval of this Permit constitutes approval of the proposed Project only to the extent that it complies with the City’s Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the project regarding any other applicable ordinance, regulation, or requirement.

6. Failure to abide by and faithfully comply with any and all conditions of approval set forth herein shall constitute grounds for revocation of this Permit by the Laguna Hills Planning Agency.

7. The Applicant shall agree in writing to these Conditions of Approval within 30 days of the Planning Agency’s approval.

8. Pursuant to City Council Resolution No. 2008-07-08-1, the Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency’s / City Council’s approval.

9. This Permit shall expire and be of no further force or effect if the Permit is not implemented within two years from March 22, 2016.

10. Within 48 hours from Project approval, the Applicant shall submit to the City a check in the amount of $50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Determination.

11. The conditions of Project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d), these conditions constitute written notice of the amount of such fees. The Applicant is hereby notified that the 90-day period in which the Applicant may protest the fees,

dedications, reservations, or exactions imposed on this Project through the Conditions of Approval, commencing from the date of approval of the Project, has begun.

Planning

12. Prior to the commencement of any work, the Applicant shall provide a contact number for the public to call concerning dust, noise, or other construction-related impacts. The information shall also be posted on site in a manner approved by the Community Development Director.

13. The Project shall comply with LHMC Chapter 5-28 (Smoking and Sale of Tobacco Products). Required signage and notices shall be installed prior to the issuance of a Certificate of Use and Occupancy and commencement of any use.

14. Prior to the issuance of any grading permits, the Applicant shall submit the rough and precise grading plans to the Community Development Director for review and approval. Approved grading plans approved architectural site plans shall reasonably match.

15. The Applicant shall maintain the property in compliance with property maintenance standards (LHMC Chapter 9-74). This includes prohibitions on outdoor storage and maintenance of the premises that causes obnoxious odors.

16. Prior to approval of any final landscape and irrigation plan for any building pursuant to Condition of Approval No. 23, the Applicant shall indicate the location of pet waste stations, which shall include bags and disposal containers, adjacent to Project open spaces, to the satisfaction of the Community Development Director. Approved pet waste stations shall be installed prior to the issuance of final occupancy for the building permit associated with the approved final landscape plan.

17. No permanent overhead utilities shall be installed. Existing overhead utilities, if any, shall be placed underground in accordance the LHMC 9-40.200 (Undergrounding of utilities).

18. Prior to issuance of any building permits, the Applicant shall revise the following discrepancies contained in the Five Lagunas Agency Resubmittal Package, dated March 3, 2016, to the satisfaction of the Community Development Director.

    a. Sheet R-1.1: Revise required parking from 1908 to 1910 spaces.

    b. Sheet R-1.1: Revise all residential site plan data to accurately reflect the following number of bedrooms:

    - 63 studio apartments

- 493 one-bedroom apartments
- 407 two-bedroom apartments
- 25 three-bedroom apartments

c. Sheets A2.5, A2.9, A2.10, A2.11, and A2.12: Include "Existing" at T.O. (Top Of) Parapet for JCPenney and Macy's.

d. Sheets A2.6, A2.7, and A2.8: Provide elevation heights to top of trellis structure.

Lighting

19. Prior to the issuance of the first building permit for any building, the Applicant shall submit a final Project lighting and photometric plan to the Community Development Director for review and approval. The plan shall include a phased approach for the installation of approved lighting, which is also subject to the review and approval of the Community Development Director. Generally, it is anticipated that lighting located on or near each building or lot, or the parking areas associated with such building or lot, will be installed in conjunction with construction or improvement of such building and parking areas. Pedestrian and parking lot lighting poles and fixture types shall be consistent with the types depicted in the Urban Village Specific Plan or as otherwise approved by the Community Development Director. The plan shall include a photometric analysis of proposed lighting and shall comply with lighting requirements of the Laguna Hills Municipal Code, including that light and glare shall not be projected beyond the boundaries of the property. Light fixtures used shall be consistent with Project architecture. Approved lighting shall be installed consistent with the approved phased approach described above. The City may withhold issuance of a certificate of occupancy for any building or portion thereof if the lighting associated with such building has not been installed pursuant to the approved phasing plan.

20. Lighted signs shall comply with LHMC 9-42.060 (lighting requirements).

21. Outdoor security and other lighting, including illuminated signs, shall be designed and maintained so as not to illuminate beyond the Project boundary. All exterior lights shall be focused inward and away from surrounding uses and adjacent residential properties.

Landscaping/Hardscape

22. Prior to the issuance of permits for any building, the Applicant shall submit a landscape and irrigation phasing plan to the Community Development Director for review and approval. The plan shall indicate the areas within each phase to be landscaped as build out

of the Project progresses. No building shell final or occupancy for a tenant improvement shall be granted, in any phase where required landscape and irrigation improvements are not completed.

23. Prior to the issuance of a building permit for any building , the Applicant shall submit a final landscape and irrigation plan for the areas, pedestrian paseos, and drive-aisles adjacent to, or associated with, such building (as determined by the Community Development Director) to the Community Development Director for review and approval. The plan shall demonstrate compliance with Laguna Hills Municipal Code Chapter 9-46 (Landscaping Standards and Guidelines) and 9-47 (Landscape Water Efficiency), as amended and restated, including installation of “Smart” landscape irrigation controllers, low precipitation-rate sprinkler heads, and water efficient landscaping, as applicable; and the requirements of the Urban Village Specific Plan (“UVSP”) shall be met. Trees installed shall be a minimum one-inch caliper. Final landscape and irrigation plans shall include information on minimum spacing between all plant materials except for trees which shall be planted as indicted on the preliminary landscape plan at a minimum. Upon final inspection of the installed landscaping, the Applicant shall provide additional plant material as required by the Community Development Director. Final landscape plans shall integrate any approved art pieces or other public art from the Project’s approved Public Art Program, and the use of shade corridors and rest stops as described below:

a. Applicant shall include in the Project final landscape plans additional tree wells for screening the rear of Major A/B from Residential Building B subject to the review and approval of the Community Development Director.

b. Applicant shall include detailed plans identifying the location and finishes or materials to be used at all pedestrian paseos, including pedestrian cross walks located in parking lots and private streets. The installation of enhanced materials may also be required at drive-aisle intersections and drive-aisles between residential buildings, at exits/ entrances with adjoining properties along Calle de Los Caballeros, and on drive-aisles adjacent to Sycamore Park. The Community Development Director may require enhanced paving materials, paving edge conditions, patterns, textures and colors, and color ribbons to be provided consistent with the requirements of the UVSP.

c. Prior to the approval of the final Project landscape plans, the Applicant shall work with the Community Development Director to determine appropriate locations for the use shade corridors and shaded rest stops within the Project parking lots and pedestrian walkways.

24. For each building permit issued, the Applicant shall deposit with the Community Development Department the estimated reasonable cost necessary to retain a qualified landscape professional to review the Applicant's proposed landscape and irrigation plans, and inspect the Applicant-installed landscaping to ensure compliance with the approved landscaped plans. The amount deposited shall be in accordance with a written proposal obtained by the City pursuant to its Purchasing Ordinance. Prior to the issuance of any building shell final or issuance of occupancy for any tenant improvement, the Applicant shall pay the actual cost of landscape plan check and inspection or be entitled to a refund of funds deposited, if any.

25. Prior to the issuance of a precise grading permit for any residential building, the Applicant shall cooperate and work with the Community Development Director and City Engineer to coordinate the design, installation and completion of enhanced pedestrian, bicycle and vehicular access points at existing driveway openings leading to and from the Project at the Project's south property line. Such enhanced improvements may include but not be limited to special paving such as brick or in-laid pavers, extra-width sidewalks, bike lane striping and signage, pedestrian scale lighting, landscaped intersection corners, and wayfinding signage. The Applicant shall not be required to construct any of these enhanced improvements off-site, but shall use best efforts and consult with adjoining property owners in designing and constructing the enhanced improvements, to the extent feasible, in a manner that provides for a seamless transition in the use of colors, materials, and design from the Project to the adjoining properties to the south. Such improvements shall be constructed/installed prior to the issuance of a certificate of occupancy for any residential building.

26. To ensure adequate accessibility, and pedestrian safety and security, for any outdoor dining area, prior to the commencement of a restaurant use with a designated outdoor dining or patio area, the Applicant shall provide an outdoor dining/ patio plan for review and approval by the Community Development Director prior to the issuance of building permits for the use depicting the size of the space, number of chairs and tables, and separation between public areas and the patio area. Where outdoor service of alcohol is proposed, the Applicant shall provide a barrier a minimum of 42-inches in height and of a length necessary to delineate the public areas from the outdoor dining/patio area subject to the approval of the Community Development Director and the Department of Alcoholic Beverage Control ("ABC") prior to commencement of alcohol service in outdoor dining/patio areas. All requirements of the Community Development Director and ABC shall be implemented prior to the commencement of the restaurant use.

27. Prior to the issuance of a certificate of occupancy for the parking structure, the Applicant shall relocate the cross walk located to the west of the southwest corner of the existing Nordstrom Rack tenant space to the north side of the parking structure. Construction plans for any modifications required on Calle de la Louisa such as relocated parking spaces, curb cuts, reconstructed sidewalk, and curb and gutter to relocate the cross walk shall be reviewed and approved by City Engineer. All improvements shall be constructed to the reasonable satisfaction of the City Engineer.

28. Prior to the issuance of a building permit for the parking structure, the Applicant shall prepare and submit to the Community Development Director and the City Engineer for review and approval a report analyzing and assessing the need to rehabilitate the existing private sidewalks, curb and gutters and pavement on Calle de la Louisa in a manner consistent with the City's standard Public Works specifications, other applicable design standards such as the CalTrans Design Manual, and/or recommended practices by professional engineering associations such as the American Association of State and Highway Transportation Officials. Such report shall evaluate providing additional tree wells and landscape planter areas in the private street consistent with the design requirements of the UVSP, consider pedestrian and bicycle access and safety and evaluate the condition of the existing pavement structural section relative to its ability to serve the scheduled and planned bus service on this street. The approved elements of the report shall be incorporated into project improvement plans and constructed prior to the issuance of a occupancy permit for the parking structure. Approved landscape planters and tree wells shall be integrated into the Project's final landscape plan and approved pavement improvement plans shall be incorporated into the Grading Plan.

29. Prior to issuance of a certificate of occupancy for the Parking Structure, all improvements along Calle de la Louisa between Calle de los Caballeros and Rhonda del Rossmoor shall be constructed and completed to the satisfaction of the Community Development Director and City Engineer. The Applicant may be required to provide additional landscape pockets, tree well cutouts, modified bike lane improvements and pavement rehabilitation on Calle de la Louisa as determined the Community Development Director and City Engineer.

30. Prior to the issuance of a certificate of occupancy for the Parking Structure, the Applicant shall design and construct a Secondary Entry Feature for the north entrance off Avenida de la Carlota and at the southeast entrance at Avenida de la Carlota and Calle de los Caballeros as shown on Figures 21 and 24 of the UVSP. Ledgestone used for the project shall be Sepulveda Bear Canyon

ledgestone, or equivalent. Ledgestone shall be installed in a dry-stack application (no visible mortar joints). Construction plans shall denote the approved material. Plans are subject to the review and approval of the Community Development Director and City Engineer.

31. Prior to the issuance of the first building permit for any new building depicted as “Pad”, “Shop”, “Major” or “Residential”, the Applicant shall design and construct a Perimeter Entry Feature plan for the southwest corner of El Toro Road and Avenida de la Carlota and on the second entry drive southbound on Avenida de la Carlota as shown on Figures 21 and 25 of the UVSP. Ledgestone used for the project shall be Sepulveda Bear Canyon ledgestone, or equivalent. Ledgestone shall be installed in a dry-stack application (no visible mortar joints). Construction plans shall denote the approved material. Plans are subject to the review and approval of the Community Development Director and City Engineer.

32. Prior to the issuance of a building permit for any building, the Applicant shall submit a final street furniture plan (site location, specification sheets, dimensions, and materials board) for the areas, and drive-aisles adjacent to, or associated with, such building (as determined by the Community Development Director) to the Community Development Director and City Engineer for review and approval. Such plan shall include benches, water fountains, free standing landscape planters, trash receptacles, tree grates, bike racks, bollards, shade structures, and light poles and fixtures consistent with the UVSP or as otherwise approved.

33. The benches, water fountains, free standing landscape planters, trash receptacles, tree grates, bike racks, bollards, shade structures and light poles identified in an approved final street furniture plan shall be installed to the satisfaction of the Community Development Director and City Engineer prior to issuance of a building shell final, a certificate of occupancy for any portion of a commercial building requiring tenant improvements, or the final residential certificate of occupancy for a residential building, as applicable.

Private Outdoor Residential Amenities:

34. Prior to the issuance of a building permit for residential Buildings A, B, or C, the Applicant shall provide final details and specifications identifying the amenities of all outdoor landscaped courtyards and pool courtyard to the Community Development Department for review and approval. The plan shall label the location of pools, spas, cabanas, barbeques, fire pits, wet bars, and seating areas as depicted by the plans submitted in support of the Project.

Architectual Requirements

35. During the building permit plan check process for any new or existing building, where the Community Development Director determines that additional architectural detail is required on approved exterior elevations for any building, prior to the issuance of a building permit, the Community Development Director may require the additional following architectural enhancements: vertical or horizontal changes in exterior materials, belt courses, copings, moldings, ornamental bands, or other in-laid material that delineates a change in exterior wall finishes, use of metal control or expansion joints, enhanced architectural exterior materials (such as ledgestone, tile, marble, brick, etc.) and architectural detailing (such as arches, columns, posts, wall mounted metal lattice work, wall moldings, belt courses, window treatments with decorative or ornamental casements, crown moldings, cornices, and use of decorative wall patterns). Any of these materials and treatments may be combined to achieve a cohesive architectural design consistent with the Urban Village Specific Plan. Plans shall be revised prior to the issuance of a building permit and installed prior to the issuance of a building shell permit or occupancy for any tenant improvement, or issuance of occupancy for a residential building.

36. To ensure a variety of exterior building light fixtures are utilized on store fronts, the Applicant shall provide an exterior building light fixture plan to be reviewed and approved by the Community Development Director at each increment of development. If required, plans shall be revised prior to the issuance of a building permit and installed prior to the issuance of a building shell permit or occupancy for any tenant improvement, or issuance of occupancy for a residential building. Lighting fixtures shall be consistent with building architecture.

37. All pad buildings (Pads A-E) and Shops C shall each be subject to architectural and final site plan review through the City's Site Development Permit process (and other entitlements as required by the UVSP) prior to the issuance of a precise grading plan or building permits for the specific pad or shop building.

38. The Applicant shall implement "Option 3" of the parking garage elevations and include a Five Lagunas-themed ornamental motif (using cast concrete relief moldings or similar materials) at varied intervals around the exterior perimeter of the structure. Use of the moldings shall be focused in areas where pedestrian access or public spaces are located in close proximity or adjacent to the parking structure, where the structure may be visually prominent from public spaces or plazas, from adjacent properties, or where advantageous to provide additional visual relief. The Community Development Director shall prioritize the use of the treatment for the

Applicant prior to the issuance of a building permit for the structure. The exterior treatment shall be applied to the reasonable satisfaction of the Community Development Director. At the sole discretion of the Community Development Director, the Applicant may be required to plant additional landscaping, trees, or climbing vines attached to vertical screen walls up to 20 feet in width and 30 feet in height to provide additional screening ("green screen").

Screening

39. Prior to the issuance of any building permit, the Applicant shall provide evidence to the reasonable satisfaction of the Community Development Director that all equipment, including roof and ground mounted, will be completely screened from view as seen from the parking lot of the subject property, the centerline of adjacent rights of way contiguous to the site and residential building windows for the following improvements:

    a. Except for any solar panels installed in the retail project parking structure, new roof-top HVAC equipment, vents and other mechanical equipment shall be screened by building parapet walls. Parapet walls shall be at least as high as the equipment and vents installed on each building.

    b. Mechanical equipment, storage, trash areas, and utilities shall be architecturally screened by a solid material from public view to the reasonable satisfaction of the Community Development Director. The method of screening shall be architecturally compatible in terms of materials, color, shape, and size. The screening design shall blend with the building design and include landscaping when on the ground.

Project WIFI

40. Prior to issuance of certificates of occupancy for the shell building for Majors A and B, Shops H, J1, and J2, and the cinema, the Applicant shall provide free public Wi-Fi service within the in-line retail shops.

Operational Parking and Access

41. If future activity or expansion at the Project site results in a change of use (switches to a different land use category), the LLG Shared Parking model dated November 13, 2015, must be recalculated in its entirety. The resultant parking demand identified from a singular Shared Parking calculation must never be automatically used as a "baseline" value to debit or credit another (or future) project's incremental parking requirements. If at any time in the future the Community Development Director determines, in his or her sole discretion, that a parking and circulation study is necessary to address parking and/or circulation issues relative to any change in

any use or any portion of any use (i.e., change in tenant mix) in the shopping center, the Applicant shall, at its sole cost and expense, be responsible for the cost of a parking and circulation study prepared by a licensed consultant selected by the City. The Applicant shall, at its sole cost and expense, be responsible for implementation costs of any reasonable mitigation measures deemed appropriate by the Community Development Director related to such impacts based on the findings of such study.

42. Prior to the issuance of a building permit for Majors A and B, Shops H, J1, and J2, and the cinema, the Applicant shall prepare and submit to the Community Development Director for review and approval a study to analyze and assess the appropriate number of Electric Vehicle Charging Stations that should be provided in the commercial and residential parking structures and surface parking lots over a 10 year horizon. Project plans shall include the infrastructure necessary to accommodate the charging stations in the future if not installed during the Project's opening year. A minimum of one percent of the total number of parking spaces in the Project shall be available for Electric Vehicles within 5 years of Project build out.

43. Prior to the issuance of the first building permit for any new buildings depicted as "Pad", "Shop", "Major" or "Residential", the Applicant shall provide a Parking Management Plan subject to the review and approval of the Community Development Director and City Engineer. The Parking Management Plan shall be consistent with the recommendations included in the Project Parking Study, and shall include at a minimum the following:

- Valet service;
- Signage prohibiting hospital and other medical office parkers from parking on site;
- Identify potential off-site parking for employees during peak shopping season in July and December;
- Designated pick-up/drop-off areas on site;
- Designated shuttle stops on site (that serve Laguna Woods, Laguna Hills Transportation Center, hospital, and medical office);
- Designated electric charging stations for both commercial and residential parking spaces;
- Designated public safety parking spaces;
- Provisions for bicycle racks and bike-share facilities on site;
- Electronic parking data display board at each entrance of the commercial parking structure identifying available parking spaces (equipment for this requirement shall be shown on the parking structure plans approved as part of the issuance of a building permit and completed prior to the issuance of occupancy for the Parking Structure); and

- Assignment of residential covered parking spaces.

44. The Parking Structure shall be designed to include pavement treatments/materials that reduce noise generated by automobile tire squeal.

45. Prior to the issuance of a building permit for any building, all vehicle and pedestrian gates associated with such building shall be reviewed and approved by OCFA and OCSD for conformance with the respective agencies' requirements for limited access devices.

46. Prior to the issuance of a grading permit, the Applicant shall prepare and submit a parking lot renovation plan for review and approval of the Community Development Director and City Engineer. Such plan shall include a final landscape and irrigation plan for the trees and landscaping to be included in the surface parking lots. Parking lot areas shall be renovated and landscaped in accordance with the phasing schedule included in the approved plan and all such renovations and landscaping shall be completed and installed prior to the issuance of a final inspection for the shell building for Majors A and B, Shops H, J1, and J2, and the cinema. All parking lots shall be refurbished, striped, and, at a minimum, slurry sealed. Deteriorated pavement shall be removed and replaced with new asphalt concrete, as needed, prior to placement of the slurry seal. The Applicant shall maintain the number of parking stalls as approved per approved Project plans.

<u>Construction Parking and Access</u>

47. Prior to the issuance of any demolition, grading, building or other permit for any increment of development, the Applicant shall submit a construction staging plan identifying areas to be used for equipment and material storage, placement of construction trailers, portable restrooms, delivery areas for loading and unloading of materials and equipment, construction waste diversion processing, and construction employee parking. Appropriate pedestrian and vehicular safety barriers shall be installed in all areas as required by the Building Official or his designee prior to the issuance of permits. City requests to modify any element of an approved construction staging plan shall be made within 24 hours, or as soon as possible as determined by the Building Official or his designee. In addition, prior to the issuance of any permits for any construction phase, an on-site pedestrian and vehicle parking circulation plan shall be submitted to the City for review and approval identifying pedestrian and vehicle access, including temporary parking for disabled patrons for businesses that will remain open during construction.

48. During construction, adequate emergency access for police, fire, and paramedic vehicles, to the standards of the Orange County Fire Authority, shall be maintained on the site at all times.

49. During construction, the Applicant shall maintain adequate site vehicular and pedestrian ingress and egress for customers and utilize temporary directional signage as needed as directed by the City Engineer in compliance with standard City specifications and including but not limited to the CalTrans design manual, Manual of Uniform Traffic Control Devices, or as recommended by the American Association of State Highway and Transportation Officials (AASHTO).

50. Prior to the issuance of any demolition permits, the Applicant shall implement the use of temporary “mini-bus” loading/ unloading zones during each phase of construction for businesses that will remain open during construction and shall submit an interim loading plan to the Community Development Director and City Engineer for review and approval . The plan shall be updated as required prior to the issuance of a building permit for each phase of construction.

Loading Area Plan

51. Prior to the issuance of a building permit for any building, the Applicant shall prepare and submit a loading dock/loading space/loading area plan for the building for the review and approval of the Community Development Director and City Engineer.

Cinema Operation Plan

52. Prior to the issuance of a building permit for tenant improvements for the approved cinema, the Applicant shall prepare and submit a proposed Cinema Operation Plan for the review and approval of the Community Development Director, City Engineer, and Chief of Police Services. The cinema operator shall implement the plan as approved. In the event the City requests modifications to the plan, the Applicant shall revise the plan to the reasonable satisfaction of Community Development Director, City Engineer, and Chief of Police Services and implement the revised plan within 30 days of any approved revision.

El Toro Water District

53. Prior to either the approval of any final map or the issuance of any grading or building permits for the Project, whichever occurs first, the Applicant shall obtain a “Will Serve” letter from the El Toro Water District (ETWD). The Applicant shall provide to the City evidence of ETWD’s issuance of a “Will Serve” letter for the Project prior to the issuance of the permits. Existing water lines and sewer line easements on the site shall be relocated to the satisfaction of the El Toro Water District in accordance with the approved Will Serve letter from the El Toro Water District.

54. Prior to the issuance of any grading or building permit, the Applicant shall confer with the El Toro Water District to identify all required

water and sewer improvements for each grading or building permit requested. Prior to the issuance of said permit, the Applicant shall provide evidence of design approval of said improvements from the El Toro Water District to the City.

55. The Applicant shall design, relocate and build water facilities to the satisfaction of the El Toro Water District to ensure adequate water service is provided to the Project as well as any other areas adjacent to the Project that might utilize the existing facilities. Prior to the approval of a final map, the Applicant shall provide evidence that it has complied with all requirements for water and sewer lines for the El Toro Water District. Or if no final map is recorded, the Applicant shall provide evidence of compliance with all requirements of the El Toro Water District prior to the issuance of grading permits.

56. Prior to the issuance of any building shell final or occupancy for any tenant improvement permit, or occupancy for any residential building, all water and sewer improvements necessary to serve the development for which building permits are requested shall be designed to the satisfaction of the El Toro Water District. Prior to the issuance of any building shell final, occupancy for any tenant improvement, or residential building occupancy, all water and sewer improvements shall be constructed to the satisfaction of the El Toro Water District.

57. Water lines shall be sized to accommodate the total domestic requirements and fire-flow requirements of OCFA.

Solid Waste

58. Prior to the issuance of any building permits for the Project, the Applicant shall submit plans and specifications for the collection and diversion of solid waste, recycling, and organics at the Project. The plan shall be reviewed and approved by the Community Development Director and shall demonstrate conformance with the requirements of the City's Municipal Code and state law and specifically address AB939, AB 341 and AB 1826 state-mandated waste diversion requirements. The plan shall include locations and dimensions of recycling and trash storage areas. The areas shall have adequate space to accommodate containerization of the projected levels of the three materials streams generated by the Project (recyclables, food scraps, and municipal solid waste). The plan shall include projected weights and volumes of generation for each business type at the Project (retail, restaurant, and residential) calculated using the generation and density factors shown in Tables 1 and 2 below. In addition, using the factors in Tables 1 & 2 below, the plan shall show adequate dedicated space in the recyclable and trash storage areas to ensure that all applicable state mandated diversion requirements are met.

Table 1.
Generation Rates and Material Stream Percentages per Business Type

	Project Generation Rates	**Waste Generation Rates by Material Stream***		
		MSW	**Recyclables**	**Food Scraps**
For retail establishments*:	3,250 lbs. per 1000 sq. ft. per year	25%	70%	5%
For restaurants*:	6,483 lbs. per employee per year	20%	35%	45%
For residential housing units:**	2,278 lbs. per unit per year	35%	45%	20%

Table 2: Density Factors for Material Streams (used to convert weight to volume)

Density Factors (in lbs. per cubic yard)***	
Dry MSW - retail	80
MSW - residential	100
Commercial Mixed Recycling	40
Residential Mixed Recycling	45
Food Scraps	600
Green waste	108

Sources:
*CalRecycle Targeted Statewide Waste Characterization Study: Waste Disposal and Diversion Findings for Selected Industry Groups;
**Multi-family generation rates found in multi-family units in Mission Viejo;
***CR&R 2015 annual route audit results in Laguna Hills and weigh-based field audits;

59. Applicant shall demonstrate in its waste management plan that any recycling and/or trash areas used on site to consolidate materials shall provide adequate clearance within the recycling/ trash area to safely service receptacles, and that will not require staging or handling of materials that may obstruct pedestrian walkways, bike paths, on-site vehicle circulation, or otherwise create adverse conditions on the Project resulting from the handling of containers outside of enclosure areas resulting in noise disturbances, odors, or outdoor storage.

60. For enclosures that are only servicing recyclable materials (excluding food scraps) and Solid Waste, the construction must be built to the minimum dimensions described below.

Estimated Weekly Generation*	Enclosure Size Required (width X depth)
2 cu. yds.	10' X 6'
4 cu. yds.	16' X 6'
8 cu. yds.	16' X 7'
12 cu. yds. Or more	16' X 9'

61. For enclosures servicing all three material streams (MSW, Recyclable Materials, food scraps, and a cooking oil/grease tank if the location generates oil and grease), the table below provides a listing of the size of enclosure required to house containers and bins necessary to serve the Project. The waste management plan shall also incorporate the ability to accommodate seasonal changes and any future changes in types of tenants that may increase the amount of material generated.

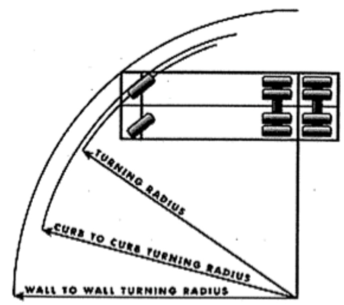
Estimated Weekly Generation *	Enclosure Size Required (width x depth)	Sample Diagram**	Containers Required
2 cu. yds.	7' x 8'	E. Extra Small Food Enclosure	1, 95-gal MSW Cart 1, 95-gal Recyclable Materials Cart 3, 65-gal Compostables Carts
4 cu. yds.	12' x 12'	F. Small Food Enclosure	2, 95-gal MSW Carts 2, 95-gal Recyclable Materials Carts 6, 65-gal Compostables Carts
8 cu. yds.	24' x 7'	G. Medium Food Enclosure***	1, 2 yd. MSW Bin 1, 2 yd. MSW Bin 6, 65-gal Compostables Carts 2X/wk.
12 cu. yds. or more	24' x 8'	H. Large Food Enclosure***	1, 3 yd. MSW Bin 1, 3 yd. Recycle Bin 9, 65-gal Compostables Carts 2X/wk.

62. To ensure service vehicles can access Project waste facilities, service areas intended to be serviced by vehicles shall provide the following turning radius requirements and be able to accommodate the following truck dimensions:

- The turning radius shall be adequate for a 3-axle truck. The overall length, including the forks is 36 feet. Construction plans shall include the appropriate details prior to the issuance of building permits.

- The following truck turning dimensions shall be used as depicted in the diagram below.

TURNING RADIUS



Description	Dimension (inches)
Turning radius	37.39
Curb to curb turning diameter	76.86
Wall to wall turning diameter	85.04

*Note: the numbers above are a compilation of maximum numbers for the fleet.

63. The Project shall provide adequate space for both the receiver and the compaction equipment. The chart below provides the clearances required for compactors.

Required Clearances for Compactors	
Vertical (Approach & Exit)	14’ high
Vertical (Rails raised w/compactor)	25’ high
Lateral	2’ around compactor
Service Area Length	75’ long

64. For all compactors used on-site, the Applicant shall meet the manufacturer’s recommended specifications for minimum dimensions required to operate the equipment. If none are listed, the Applicant may use the following as a guide subject to the review and approval of the Community Development Director:

Front Load Truck Emptied Compactor Dimensions*			
Compactor Size	**Height**	**Width**	**Depth**
2 yds.	8.5’	8’	5’
3 yds.	7’	8’	7’
4 yds.	8’	8’	9’

65. In addition to the City's standard requirements that provide for trash enclosures to be covered, the Applicant shall ensure that enclosure roof heights do not obstruct direct collection truck access to bins.

66. Applicant shall install signage in all enclosures and on 1-CY bins to indicate the type of material that can be disposed of in the bin.

67. Applicant will reasonably cooperate with the City in providing information for the City's annual reporting to CalRecycle on the Project's collective recycling programs and efforts.

Signs

68. Any residential or commercial sign proposed subsequent to the approval of the Master Sign Plan shall require a Master Sign Plan amendment, and any wall sign proposed for the residential buildings shall require an amendment to the Master Sign Program.

69. Prior to the issuance of a permit for sign A14-9 (Primary Vehicular Directional sign), the Applicant shall revise the Master Sign Program to relocate sign A14-9 to the intersection of Calle de los Caballeros and the westerly driveway of Oakbrook Village at a location to be determined by the Community Development Director. The revised location shall be integrated with the layout pedestrian walkways located between Residential Buildings A and B.

70. Prior to the issuance of a permit for sign A17-9 (Pedestrian Directory sign), the Applicant shall revise the Master Sign Program to relocate sign A17-9 to the intersection of Calle de los Caballeros and the driveway with Villa Valencia at a location to be determined by the Community Development Director. The revised location shall be integrated with the layout of pedestrian walkways located between Residential Buildings B and C.

71. The reference to Sign A17-10 (Pedestrian Directory sign) shall be omitted from the Master Sign Program prior to the approval of the final Project landscape plan.

72. Sign A14-6 (Primary Vehicular Directional sign) shall be omitted from the Master Sign Program prior to the approval of the final Project landscape plan.

73. Prior to the issuance of any sign permit, final sign locations shall be subject to the review and approval of the Community Development Director for consistency with the Master Sign Program prior to the issuance of permits for the specific sign.

74. The Applicant shall submit any cinema box office signage proposed to indicate movie showtimes for review and approval prior to the

issuance of building permits for the Major A/B building. Cinema/theatre box office signage shall not exceed 150 square feet.

75. The Community Development Director shall have the authority to resolve internal inconsistencies between the Project Master Sign Program text and graphics.

76. Prior to the issuance of any permits for Signs A14 (Primary Vehicular Directional sign) and A17 (Pedestrian Directory sign) the Applicant shall revise the Master Sign Program to indicate that signs within 50 feet of the Project boundary shall not be eligible for an optional advertising panel.

Public Art

77. In accordance with the UVSP, the Applicant shall provide public art as part of the Project and/or contribute to the City's Public Art In-Lieu Fund in a combined minimum amount of one-half percent (0.5 %) of the total construction costs of the Project. A minimum of $300,000 shall be paid to the City in the form of a contribution to the City's Public Art Fund prior to issuance of the first building permit for the Project. The remainder of Applicant's UVSP public art obligation may be satisfied by the Applicant, at Applicant's option, through the design and construction of approved public art, contribution to the City's Public Art Fund, or both. Prior to the issuance of a grading permit for any portion of the Project, the Applicant shall submit a proposed Final Public Art Program (the Program) to the Planning Agency for review and approval. The Program shall include, without limitation, a description of the proposed artists and their qualifications and detailed plans and specifications, schematics, and descriptions of the type, size, medium/material, location, content, and value of the proposed public art. The Applicant shall install all approved public art approved by the Planning Agency prior to the issuance of occupancy for the Parking Structure. Should the combined value of the approved public art component and the Applicant's initial $300,000 payment total less than one-half percent (0.5 %) of the total construction costs of the Project, as determined by the Community Development Director, the Applicant shall pay the remaining balance as a contribution to the City's Public Art Fund prior to the issuance of a certificate of occupancy for the Parking Structure.

Phasing

78. Phasing
   a. Prior to the issuance of a building shell final, or certificate of occupancy for any portion of Major A/B or the Cinema, all improvements for Sycamore Park, the pedestrian plazas, "Main Street", pedestrian paseos, and the Parking Structure shall have been completed to the reasonable satisfaction of the Community

Development Director and City Engineer.

b. A certificate of occupancy for Residential Building B shall not be issued unless and until a building shell final (or equivalent) has been issued for each of the following buildings: Major A, Major B, Major C, Major D, Major E, the Cinema, Shops H, Shops J1, Shops J2, and the Parking Structure and Sycamore Park, the pedestrian plazas, “Main Street”, and pedestrian paseos identified on the approved final landscape plan have all been completed.

c. No permits of any kind for Residential Building C shall be issued until and unless the a building shell final, or a certificate of occupancy for any portion of, Major A/B and the Cinema building has been issued by the City.

<u>Vesting Map</u>

79. The approved Project is a single, integrated mixed-use development consisting of a mix of residential, retail, restaurant, health club, cinema, and office uses, and related interconnected vehicular and pedestrian facilities, parking facilities, public plazas and open spaces, landscape areas, water features, and public art pieces, on approximately 68 acres of property comprised of several contiguous, but separate, legal parcels and includes approval of a precise plan of development for the entire 68 acre development in accordance with the requirements of the Urban Village Specific Plan. Accordingly, prior to the issuance of any certificate of use or occupancy for any aspect of the Project, Merlone Geier Management, LLC and/or any successor owner of any portion of the Project site shall enter into and record a single Covenant Agreement (or other appropriate document acceptable to the City) with the City in a form approved by the City Attorney and City Manager. The City Manager shall be authorized to execute the Covenant Agreement on behalf of the City. The Covenant Agreement shall be recorded prior to the issuance of any certificates of occupancy. Evidence of the recordation of the agreement shall be provided to the City prior to the issuance of any occupancy. The Applicant shall provide City with a current title report and/or other evidence satisfactory to the City evidencing title ownership of any portion of the Project site at the time of recordation of the Covenant Agreement. The Applicant shall reimburse the City for all legal costs incurred by the City associated with implementation of and/or compliance with this condition.

At a minimum, the Covenant Agreement shall:

- Run with the land and be binding upon all current and future owners and tenants of any portion the Project site and their respective heirs, successors, and assignees;

- Evidence and provide record notice of the approved precise plan for development of all portions of the Project site as depicted on the plans and specifications submitted to the City in conjunction with this Permit;
- Require all portions of the Project site to be developed, used, and maintained in a manner consistent with this Permit, as it may be amended from time to time, and the pertinent specifications and standards contained in these Conditions of Approval, the Urban Village Specific Plan, and the City's Development Code;
- Provide for, or reference and incorporate, all current or future reciprocal access and parking easements between and amongst the various parcels on the Project site that are necessary to implement the integrated mixed-use development reflected in the approved precise plan of development;
- Establish maintenance standards acceptable to the City for all exterior Project components and areas of the Project site, including, but not limited to, vehicular and pedestrian facilities, parking facilities, public plazas and open spaces, landscape areas, water features, public art pieces, utilities, sanitary sewer facilities, and storm water drainage devices and provide for the allocation of responsibility for maintenance of such components and areas in compliance with such standards and the funding thereof;
- Include provisions identifying an entity or entities responsible for ongoing implementation and funding of the Operations and Maintenance (O&M) Plan associated with the Water Quality Management Plan (WQMP) for the Project and compliance with the LHMC Chapter 5-36 and other applicable National Pollutant Discharge Elimination System (NPDES) regulations;
- Provide that the Covenant Agreement may not be substantively amended or terminated without prior written City approval;
- Provide that the City may, but shall not be obligated to, enforce the provisions of the Covenant Agreement; and
- Address and assign responsibility for compliance with Covenant Agreement should portions of the Project site be, or in the future come, under separate ownership.

80. The UVSP requires a minimum of 10% of a residential lot be utilized for open space and amenities. No Final Map for any Residential building lot shall be approved until and unless the Applicant demonstrates to the satisfaction of the Community Development Director that the ten percent requirement for open space and amenities has been satisfied. Pursuant to the UVSP, open space and amenities requirement may incorporate (but is not limited to) open space, landscape/hardscape features, pools, spas and play

courts, or similar improvements.

81. No building permits for any construction shall be issued until Final Map approval by the City Council and evidence of Final Map recordation has been provided to the City, and other applicable conditions have been met. Notwithstanding the foregoing, subject to the authority of the Building Official, building permits may be issued for construction prior to Final Map approval upon the following conditions, which the Applicant expressly agrees to in consideration of this accommodation:

   - Issuance of any such building permit(s) does not confer upon Applicant any vested right or entitlement to issuance of certificates of occupancy for any building. In no case, shall any certificates of occupancy be issued until and unless all dedications and/or irrevocable offers of dedication shown on the Vesting Tentative Map or otherwise required by these Conditions of Approval have been made, a Covenant Agreement has been approved by the City and recorded in accordance with Condition of Approval No. 79, and all other applicable Conditions of Approval have been satisfied, the City Council has approved the Final Map, and evidence of Final Map recordation has been provided to the City.

   - If a Final Map is not recorded prior to December 31, 2016, the Applicant shall offer for dedication through a separate instrument, the right of way for Avenida de la Carlota, from El Toro Road to the southerly property boundary at Oakbrook Village, for the enhanced parkway improvements described herein to the satisfaction of the City Attorney and City Engineer.Prior to the issuance of a certificate occupancy for any residential building, including Building A, the Applicant shall record a final map. Evidence of the recordation of a final map shall be provided to the City prior to the issuance of certificates of occupancy for the residential buildings.

82. At the time of building permit issuance for any residential structure, the Applicant shall comply with the Park Dedication and In-lieu Fee Requirements per LHMC Chapter 8-06 and pay the fee as established by City Council Resolution No. 2015-09-08-1.

Building

83. The Applicant shall be responsible for ensuring all applicable building permits are obtained, as required by section 103 of the 2013 CA Building Code prior to commencement of any work for which a permit is required.

84. Any required documents submitted for the purpose of building permit issuance shall be accurately labeled and reflect all work, as required by section 107 of the 2013 CA Building Code.

85. Prior to building permit issuance, the Applicant shall submit to the Building Department all required approvals from the Orange County Health Department.

86. Prior to issuance of building permits Applicant shall submit approvals from the Orange County Fire Authority or provide verification of plan submittal.

87. Prior to issuance of building permits Applicant shall submit approvals from AQMD or provide verification of plan submittal.

88. At time of permit issuance the Applicant shall submit Construction and Demolition Waste Recycling Program paperwork, if applicable, as required by City Ordinance No. 2003-9 and to comply with mandates of the California Integrated Waste Management Board (CIWMB).

89. Applicant shall comply with all construction water quality regulations, as required by the State General Construction Permit and the provisions of the LHMC.

90. Applicant shall comply with California Disabled Accessibility requirements, as required by Chapter 11 of the California Building Code at the time of application for any permit. Additionally, existing site conditions shall comply or be made to comply with applicable requirements.

91. The Applicant shall demonstrate Project compliance with all requirements of the California Energy Commission at the time of issuance of any permit.

92. All construction shall comply with the 2013 CA Building, Plumbing, Mechanical, Electrical, and Green Building Codes with regard to the appropriate occupancies for each permit requested.

Public Services

93. Project Improvement plans and related documents shall be reviewed and approved by the City Engineer; said plans shall be prepared by a State of California Registered Civil Engineer and shall conform to City standards.

94. No work shall be performed within the public right-of-way by the Applicant or his or her agents until a public property encroachment permit is issued by the City Engineer and applicable fees have been paid.

95. Construction traffic shall not access or depart the Project site during morning or evening peak periods, which are 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday. The Applicant shall provide a construction vehicle routing plan for approval by the City Engineer prior to any demolition, grading or construction work. The El Toro Road at I-5 Interchange shall not be utilized as a primary access point for construction vehicles. El Toro Road shall not be utilized as a project access by any construction equipment usage. No work that may interfere with traffic flow along El Toro Road and/or access to the I-5 shall occur during the month of December of each calendar year.

96. It shall be the Applicant's responsibility to protect-in-place existing public improvements. Applicant shall repair or replace, to the satisfaction of the City Engineer, any public improvements that are damaged, removed or destroyed as a result of the proposed construction. Such replacement or repair work shall be implemented within 10 working days of notice by City.

97. All public improvements shall be constructed and completed to the reasonable satisfaction of the City Engineer prior to the recordation of a Final Map or issuance of the first certificate of occupancy for any new buildings depicted as "Pad", "Shop", "Major" or "Residential", or the Applicant shall enter into a Subdivision Improvement Agreement, including the posting of securities to guarantee the completion of the public improvements on a schedule as approved by the City Engineer, as approved by the City Attorney and City Engineer.

98. Final Maps shall be prepared in accordance with City, County, and State requirements and standards. No more than three (3) Final Maps may be recorded in substantial accordance with the approved tentative map. The Applicant shall submit each Final Map for plan check to both the City Engineer and County Surveyor and pay all applicable plan check fees to both agencies. The Applicant shall submit a current title report, supporting documents, and traverse closure calculations for plan check. Following the recordation of each Final Map, the Applicant shall provide the City with a duplicate Mylar of the recorded document.

99. Any existing monumentation disturbed, destroyed, or removed during construction shall be restored by a California Licensed Land Surveyor, and Corner Records shall be filed with the City Engineer and County Surveyor, within 180 days of disturbance of the monument.

100. The Applicant shall submit Rough and Precise Grading Plans, Drainage Improvement Plans, Site Improvement Plans and Storm Water Pollution Prevention Plan/Erosion Control Plans on 24"x 36"

sheets at a scale acceptable to the City Engineer. Final plan sheets shall be printed on Mylar. Upon completion of construction, the plans shall be amended to represent Drawings of Record.

101. The grading plans shall show street, sewer, water, storm drain facilities, and all proposed grading. The plans shall show the extent of topography of the grading plan and shall be sufficient to determine drainage impacts to the surrounding and adjacent areas. All grading shall be designed and constructed in accordance with the City's Grading and Excavation Code and grading plan checklist. The applicable grading plan shall be approved by the City Engineer prior to the issuance of any building permits for any new buildings depicted as "Pad", "Shop", "Major" or "Residential".

102. A separate grading plan with related documents shall be required for each phase of development, as determined by the City Engineer.

103. A separate hydrology and hydraulic analysis report shall be provided in accordance with the current County of Orange Hydrology Manual. The Drainage Plan shall provide 100 year storm protection at one foot below all finished floor elevations, collect 25 year storm flows in sump conditions into drainage devices and collect 10 year storm flows in all other cases into drainage devices, not including the required hydromodification retention of flows. During 100 year storm events, one travel lane in each direction on primary internal access roads shall be free of inundation, open and passable as approved by the City Engineer. No onsite development shall impede the functionality of any existing drainage devices in the public right of way. The hydraulic analysis shall demonstrate the above specifications are met. No concentrated drainage shall be allowed onto public driveways or sidewalks and shall be conveyed to the storm drain system prior to the public right of way.

104. Prior to the issuance of any grading permit, all existing private storm drain pipes of 18" diameter or greater shall be inspected, photographed/videotaped and logged as to their condition, including but not limited non-destructive testing, to confirm their ability to support live and dead loads of the planned development and identify the long term viability of the existing drainage systems to function as designed. The design Civil Engineer and/or Soils/Materials Engineer shall attest to the condition of these drainage systems and submit their findings to the City Engineer for review. Any storm drain pipes determined to not meet current standards shall be removed and replaced, or rehabilitated, to the satisfaction of the City Engineer.

105. The Applicant shall demonstrate that adequate building setbacks have been provided allowing construction excavation/access to, and maintenance of, private storm drains ranging from 15' to 25' in width,

depending upon the size and depth of the storm drain pipes, to the satisfaction of the City Engineer.

106. The Applicant shall submit a final geotechnical report prepared by a Registered Engineering Geologist for approval by the City Engineer. The report shall include an evaluation of area geology, onsite soils, and earthquake potential and provide recommendations on pavement sections, building foundations, and a discussion of the functionality of the water quality features relating to infiltration rates.

107. All new parking lots and drives shall be constructed of asphalt concrete over crushed aggregate base over subgrade, or equal, and compacted to a relative compaction of 95% or equivalent. The structural pavement thickness shall be no less than 4” AC over 6” AB, or more, for drive aisles, and 4” AC over 4” AB for all other areas, or more, as required by the project soils engineer and approved by the City Engineer.

108. Prior to issuance of any commercial building permit, the Applicant shall pay a traffic impact mitigation fee in accordance with Chapter 9-102 of Laguna Hills Municipal Code in the amount of Three Thousand Nine Hundred Fourteen Dollars ($3,914.00) per each new PM peak hour trip generated as a result of the commercial land use, as determined by the City Engineer based upon the traffic study attached as Appendix G in the Addendum.

109. Prior to issuance of any residential building permit, the Applicant shall pay a traffic impact mitigation fee in accordance with Chapter 9-102 of Laguna Hills Municipal Code in the amount of Three Thousand Nine Hundred Fourteen Dollars ($3,914.00) per each new PM peak hour trip generated as a result of the Residential Land Use, as determined by the City Engineer based upon the traffic study attached as Appendix G in the Addendum.

110. Prior to the issuance of each building permit, the Applicant shall pay, and provide City with evidence of payment of, all fees required by public agencies other than the City, whether or not collected by the City, including, but not limited to, the fees imposed pursuant to the County of Orange’s CARITS program, the fees imposed pursuant to the County of Orange’s major thoroughfare and bridge fee programs for the Moulton Parkway/Laguna Niguel area, fees imposed by the San Joaquin Hills Transportation Corridor Agency, and Saddleback Valley Unified School District fees.

111. Prior to issuance of each grading permit, the Applicant shall submit for approval by the City Engineer a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used on-site to control predictable pollutant run-off. This WQMP shall identify Low Impact Development (LID) BMPs and

routine structural and non-structural measures specified in the current Orange County Drainage Area Management Plan (DAMP) and the San Diego Regional Water Quality Control Board requirements applicable to each parcel under development. This WQMP must also:

a. Address site design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, conserving natural areas, preserving trees, and retaining existing site hydrology to the maximum extent practicable;

b. Replicate the pre-development hydrologic functions through site preservation, infiltration, retention, detention, evapotranspiration, and filtration treatment systems (hydromodification).

c. Incorporate applicable routine source control BMPs as defined in the DAMP and provide a detailed description of their implementation;

d. Incorporate applicable treatment control BMPs as defined in the DAMP;

e. Implement Low Impact Development (LID) BMPs to reduce runoff to the maximum extent practicable.

f. Include an Operation and Maintenance (O & M) plan that identifies the mechanism(s) by which long-term O & M of all post construction BMPs will be provided and funded, the schedule for O & M and the responsible party for the O & M.

112. Prior to issuance of any grading permits, the Applicant shall submit a copy of the State issued Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the Public Services Department. Projects subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the Project site and be available for City review on request. In addition, the Applicant shall include notes on the grading plans indicating that the Project will be implemented in compliance with the Statewide Permit for General Construction Activities.

113. The Applicant shall comply with and/or implement all hydromodification criteria, hydrologic control measures, performance measures, management measures, and other requirements of the Hydromodification Management Plan or Interim Hydromodification Criteria, as applicable, developed in accordance with Section F.1.h

of Order No. R9-2009-0002 (NPDES Permit No. CAS0108740), or any subsequent Order adopted by the California Regional Water Quality Control Board, San Diego Region, and shall provide all necessary related calculations with submission of the Grading Plans applicable to each parcel under development.

114. The Applicant shall deposit with the City funds sufficient for the City to update debris gates, of the type specified by the City Engineer, to fit into existing catch basins, for all catch basin inlets along Avenida De La Carlota and El Toro Road. Also, the Applicant shall incorporate debris gates into all private catch basin inlets within the Project site and include the maintenance of these private devices in the WQMP.

115. The Applicant shall design and construct during the construction of public improvements, to the reasonable satisfaction of the City Engineer, storm drain connections, inlets, and/or other improvements necessary to eliminate all cross-gutter drainage across any public street access into the project site. No cross-gutters shall be used at the above-described intersections.

116. Any new traffic signals proposed by the Applicant along Avenida de la Carlota shall only be authorized and approved for installation upon the submission of a Traffic Signal Warrant Analysis, by a Registered Civil Engineer or Traffic Engineer, documenting the traffic signal meets one or more of said Warrants, as approved by the City Engineer.

117. The design of any new traffic signals shall be to the standards of the City of Laguna Hills and shall include City required LED illuminated street name signs, hard wire interconnection and communication equipment to all adjacent traffic signals, City selected traffic signal controller, City selected video detection equipment and City selected emergency vehicle preemption equipment. Upon request of the City, Applicant shall deposit with the City funds sufficient for the City's purchase of the traffic signal controller, video detection equipment and emergency vehicle preemption equipment.

118. All approved new traffic signals proposed and/or required in conjunction with the Project shall be designed, constructed, and installed by the Applicant prior to issuance of the first residential building certificate of occupancy.

119. Prior to issuance of the first residential building certificate of occupancy, the Applicant shall deposit with the City funds sufficient for the City's purchase and installation of vehicular video detection equipment for retrofit of the Avenida de la Carlota at Plaza Lane traffic signal.

120. The Applicant shall be responsible for funding the full cost for the replacement of any illuminated street name signs on existing traffic signals serving the Project, which is requested by the Applicant and approved by the City Council. Such illuminated street name signs shall be replaced with LED illuminated street name signs as selected by City.

121. The Applicant shall be responsible for the full cost of replacement of any City Wayfinding signage that is requested by the Applicant to be modified from “Laguna Hills Mall” to “Five Lagunas” at any location at which the name change is required. The Applicant shall deposit with the City the full estimated cost of manufacture and installation of any such signs prior to their order.

122. The project southerly driveway access to Avenida de la Carlota (the extension of Calle de Los Caballeros, a private drive) shall be established as a right turn in and right turn out only driveway. No left turn access at this location shall be allowed.

123. As reflected on the submitted tentative tract map, the Applicant is dedicating to City, in fee, the public right of way necessary to accommodate the future enhanced parkway along the project limits on the westerly side of Avenida de la Carlota, from El Toro Road to the southerly property boundary at Oakbrook Village, consisting of a 12’ width parkway from the westerly curb face to the back edge of the parkway to the satisfaction of the City Engineer and City Attorney. Such dedication shall be reflected on the applicable Final Map.

124. Prior to the issuance of the first residential building certificate of occupancy, the Applicant shall design and construct the enhanced parkway, consisting of a 5.5’ wide landscaped area adjacent to the curb and a 6’ wide sidewalk area adjacent to the landscaped area, from El Toro Road to Plaza Lane, to the City’s standards and specifications. This construction shall include, as needed, the construction of retaining walls and pedestrian barriers at the top of wall and the modification, relocation and/or addition of SCE street lighting to the satisfaction of the City Engineer, including the payment of fees to SCE. The design and construction of these improvements shall maintain the current OCTA bus stop within the limits of this work. The Project landscaping improvements located adjacent to Avenida de la Carlota from El Toro Road to the southerly boundary of Oakbrook Village shall be constructed to the reasonable satisfaction of the Community Development Director and City Engineer and shall be maintained by the Applicant.

125. Prior to the issuance of any building permits or the recordation of any Final Maps, whichever occurs first, the Applicant shall enter into

a Subdivision Improvement Agreement and post securities with the City, to the satisfaction of the City Attorney and City Engineer, to guarantee the construction of the enhanced parkway improvements along the westerly side of Avenida de la Carlota, from Plaza Lane to the southerly property boundary at Oakbrook Village, including the modification, relocation and/or addition of street lighting, including payment of fees to SCE, to the standards and specifications of the City. Such improvements shall be constructed within 180 days of the completion of the shifting of the westerly side of Avenida de la Carlota by the I-5 Widening Segment 3 project being implemented by Caltrans as determined by City or, if said I-5 Widening Segment 3 project does not proceed, within five years of the approval of the Project. The construction of the improvements shall be to the satisfaction of the City Engineer. The landscaping improvements shall be constructed to the satisfaction of the Community Development Director and City Engineer and shall be maintained by the Applicant.

126. As reflected on the submitted tentative tract map, the Applicant is dedicating a landscape maintenance easement to City to coincide with and matching the rear curbline of the entry monuments at the project entrance on the southerly side of El Toro Road at Regional Center Drive. Such dedication shall be reflected on the applicable Final Map or in a separate dedication document in a form as approved by the City Attorney and City Engineer that is recorded prior to the issuance of the first commercial or residential building certificate of occupancy.

127. The project site improvements shall reserve a future public right of way along Avenida de la Carlota necessary to accommodate the widening of Interstate 5 as defined in the State approved Planning And Environmental Document (PAED) and Project Report for the project, as may be modified by the final design (State designation: I-5 Widening 12-231-0K0200). No buildings or structures shall be constructed in this future public right of way and all on site buildings shall be set back in accordance with City Zoning Code as measured from the future public right of way line.

128. All of the existing and new Project entrances along Avenida De La Carlota shall be reconstructed/constructed to current ADA ramp and sidewalk standards to the satisfaction of the City Engineer utilizing Armor Tile blue cast-in-place detectable warning surfaces at ramps.

129. Prior to issuance of the first commercial or residential building certificate of occupancy, any existing or project related damaged curb and gutter or sidewalk along El Toro Road and Avenida de la Carlota shall be removed and replaced to the reasonable satisfaction of the City Engineer.

130. Upon completion of the Avenida de la Carlota enhanced parkway improvements described in Condition 125, the Applicant shall construct a Type II Rubberized Emulsion Asphalt Slurry (REAS) over the entire width of Avenida de la Carlota, from El Toro Road to the southerly property boundary at Oakbrook Village, and provide and implement striping plans as designed by a registered Civil Engineer or Traffic Engineer to the satisfaction of the City Engineer. The Applicant may, at its option, provide funding to City, meeting the City's requirements, to have this work accomplished by City.

131. No excavations, for any reason, shall be permitted onto El Toro Road.

132. Prior to Grading Plan approval, the Applicant shall provide an Americans with Disabilities Act (ADA) site review of all existing and planned pathways, sidewalks and access ramps for public street to on-site access, internal access and adjacent to the site access along the accessible pathways. The accessible pathway shall not include a path within any drive aisle, except as necessary to cross a drive aisle at 90° to the drive aisle. The report shall be prepared by a professional whose expertise lies in the field and shall include an implementation plan to correct all deficiencies noted as approved by the City Engineer and Community Development Director. Any sidewalk or pathway not in compliance with ADA standards shall be reconstructed.

133. Prior to Grading Plan approval, the Applicant shall demonstrate to the City Engineer that all on-site access routes are capable to accommodate truck access and truck turning radii.

134. Prior to Grading Plan approval, the Applicant shall work with the Orange County Transportation Authority (OCTA) and provide bus stops along Calle de la Louisa, as requested by OCTA or City. Bus stop locations for OCTA facilities shall be constructed in accordance with the OCTA standards. The Applicant shall provide bus stop furniture to the City's satisfaction to include, but not be limited to, benches, trash receptacles and shade opportunities that will be maintained by the Applicant.

135. Prior to issuance of a grading permit, the Applicant shall prepare and submit plans for the review and approval of the Community Development Director and the City Engineer that demonstrate the ability of the Project to provide improvements for private bus services to access the Project site with internal bus stops and provide bus stop furniture to include, but not be limited to, benches, trash receptacles and shade opportunities that will be maintained by the Applicant. Approved features shall be installed prior to the issuance of a certificate occupancy for the Parking Structure.

136. Prior to the issuance of a grading permit, the Applicant shall indicate on the proposed Project grading plan, the location of bicycle pathways throughout the Project site as depicted on the bicycle connectivity exhibit as part of the Project plans with connectivity to Oakbrook Village as approved by the City Engineer and Director of Community Development. Approved pathways shall be constructed to the reasonable satisfaction of the City Engineer and completed prior to the issuance of occupancy for the Parking Structure.

137. Prior to the grading permit close out, the Applicant shall demonstrate compliance with the WQMP in a manner meeting the satisfaction of the City Engineer, including:

a. Demonstrates that all structural BMPs described in the Project WQMP have been implemented, constructed, and installed in conformance with approved plans and specifications;

b. Demonstrates that the Applicant has complied with and/or is prepared to implement all non-structural BMPs described in the Project WQMP;

c. Demonstrates that an adequate number of copies of the project's approved Project WQMP are available for the future occupants;

d. Demonstrates that the Applicant has agreed to and recorded CC&R's, an agreement, or another legal instrument approved by the City Attorney that shall require the property owner, successors, tenants (if applicable), and assigns to fund, operate and maintain in perpetuity the post-construction BMPs described in the Project WQMP.

e. The Community Development Department and Public Services Department shall determine whether any proposed change in use requires an amendment to an approved Project WQMP and/or recorded document or agreement.

138. Trash/recycling enclosures shall be provided on-site and shall be constructed per the City of Laguna Hills Covered Trash Enclosure Detail and City standards, including a solid roof and sewer drain connection. Architectural features of the enclosure may be retained provided they can be made to comply with the City's standards for size and dimension.

139. Any grading, site or public improvement work requiring inspection services during non-standard City working hours and days, shall require the payment of a daily fee for each day of the work prior to the work being performed, subject to the availability of inspection personnel to provide the necessary inspection, to the satisfaction of the City Engineer.

Police Services

140. Prior to the issuance of any permits for any new buildings depicted as “Pad”, “Shop”, “Major” or “Residential”, at each increment of building permit issuance requested by the Applicant, the Applicant shall provide a multi-faceted security plan for the Project site that addresses security issues for both residential and commercial land uses for the review and approval of the Community Development Director and Chief of Police Services. The security plan shall include but is not limited to manned and roving security provisions, property surveillance, public policing sub-station facilities, as well as, those security directives implemented in conjunction with the multifamily housing.

The following mitigation measures were included in the 2009 General Plan Program EIR. They are included as additional Conditions of Approval.

The following mitigation measures/conditions relate to air quality impacts:

141. During grading activities, all rubber-tired dozers and scrapers (2: 50 horsepower) shall be CARB Tier 3 Certified or better. Additionally, the maximum (actively graded) disturbance area shall not exceed four acres per day.

142. The Applicant shall apply the following measures, as applicable, during construction of the Project to reduce the amount of fugitive dust in accordance with SCAQMD Rule 403:

- Dust suppression at construction sites using vegetation, surfactants, and other chemical stabilizers
- Wheel washers for construction equipment
- Watering down of all construction areas
- Limit speeds at construction sites to 15 miles per hour
- Covering of aggregate or similar material during transportation of material

143. The Applicant shall implement the following measures, as applicable, during construction of the Project to reduce exhaust emissions from construction equipment:

- Commercial electric power shall be provided to the project site in adequate capacity to avoid or minimize the use of portable gas-powered electric generators and equipment.
- Where feasible, equipment requiring the use of fossil fuels (e.g., diesel) shall be replaced or substituted with electrically driven

equivalents (provided that they are not run via a portable generator set).

- To the extent feasible, alternative fuels and emission controls shall be used to further reduce exhaust emissions.

- On-site equipment shall not be left idling when not in use.

- The hours of operation of heavy-duty equipment and/or the amount of equipment in use at any one time shall be limited.

- Staging areas for heavy-duty construction equipment shall be located as far as possible from sensitive receptors.

- Before construction contracts are issued, the project Applicant shall perform a review of new technology, in consultation with the SCAQMD, as it relates to heavy-duty equipment, to determine what (if any) advances in emissions reductions are available for use and are economically feasible. Construction contract and bid specifications shall require contractors to utilize the best available and economically feasible technology on an established percentage of the equipment fleet. It is anticipated that in the near future, both NOx and PM10 control equipment will be available.

144. Activities involving idling trucks shall be oriented as far away from and downwind of existing or proposed sensitive receptors as feasible. Strategies shall be incorporated to reduce the idling time of main propulsion engines though alternative technologies such as IdleAire, electrification of truck parking, and alternative energy sources for transport refrigeration units (TRUs) to allow diesel engines to be completely turned off.

145. The Applicant shall develop a Construction Traffic Emission Management Plan for the proposed project. The Plan shall include measures to minimize emissions from vehicles including: scheduling truck deliveries to avoid peak hour traffic, consolidating truck deliveries, and prohibiting truck idling in excess of five minutes. Other measures include: use electricity or alternate fuels for on-site mobile equipment instead of diesel equipment to the extent feasible; maintain construction equipment by conducting regular tune ups and retard diesel engine timing; use electric welders where electricity is available; use on-site electricity rather than temporary power generators where electricity is available; evaluate the feasibility of retrofitting the large off-road construction equipment; use alternative diesel fuels, if commercially available; and suspend the use of all construction activities during first stage smog alerts.

The following mitigation measures/conditions relate to both air quality and greenhouse gas emissions impacts:

146. Prior to building permit final, the Applicant shall provide bike support facilities (e.g., bicycle racks) to encourage bicycle riding as a transportation mode. Prior to installation, a plan for such amenities shall be submitted to the Community Development Director for his or her review and approval.

147. At a minimum, the Applicant shall implement the following "green" building practices:

   - The apartment units shall feature dual pane low E vinyl windows, low flow toilets, low flow showerheads, low flow faucets, Energy Star appliances, energy efficient lighting, reflective white PVC "cool" roof membrane, programmable thermostats, and high efficiency HVAC condensing units.

   - Project irrigation shall utilize Smart irrigation technology.

   - The "green" 2010 Cal Green Building Code shall be implemented into building design.

   - Individual identification of gas, electricity, and water consumption shall be available to give resident awareness of consumption.

The following mitigation measures/conditions relate to hazardous building materials impacts:

148. All demolition activities shall comply with the SCAQMD's Rule 1403, which requires that buildings undergoing demolition or renovation be surveyed for asbestos-containing materials (ACM) prior to any demolition or renovation activities.

The following mitigation measures/conditions relate to noise impacts:

149. Delivery or service hours for stores and businesses with loading areas, docks, or trash bins that gain access on driveways next to residential and other noise sensitive areas shall take place between the hours of 7:00 a.m. and 10:00 p.m. No use that is immediately adjacent to a residential use shall produce loading or unloading of materials, products, and or supplies at the site between the hours of 8:00 p.m. and 7:00 a.m. The City shall only approve exceptions if full compliance with the nighttime limits of the noise regulations is achieved.

150. Trucks associated with construction activities shall follow designated truck routes, where appropriate.

151. Noise sources associated with construction, repair, remodeling, or grading of any real property, shall not take place between the hours

of 8:00 p.m. and 7:00 a.m. on weekdays, 8:00 p.m. and 8:00 a.m. on Saturday, or at any time on Sunday or a federal holiday.

152. Heating ventilation and air conditioning (HVAC) units shall be installed in compliance with the provisions of Chapter 5-24 (Noise Control) of the City's Municipal Code.

153. Prior to the issuance of building permits, the Applicant shall submit a final acoustical report prepared to the Satisfaction of the Community Development Director indicating compliance with the state's interior noise standard of 45 dB CNEL for multiple-family residential land use. The Applicant shall increase the recommended STC ratings of windows/ doors, exterior wall and/or roof assemblies for the project as recommended by the final acoustic report and include any such requirements in project building plans.

The following mitigation measures/conditions relate to public services and utilities impacts:

154. The project shall be connected to the public sewer.

155. The project shall comply with all federal, state, and local statutes and regulations related to solid waste. The project shall comply with the City's established reduction, reuse, and recycling programs.

PASSED, APPROVED, AND ADOPTED this 22nd day of March 2016.

BARBARA D. KOGERMAN, CHAIR/MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. PA2015-03-22-X adopted by the Planning Agency of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 22nd day of March 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
MELISSA AU-YEUNG, CITY CLERK

Laguna Hills Mall Redevelopment (Five Lagunas)
SDP/MSP/CUP/PUP/TTM/PP-2-15-3114

24155 Laguna Hills Mall
Laguna Hills, CA 92653
APN: 621-051-33

Date Submitted: February 13, 2015

Applicant: Merlone Geier Management, LLC

Planner: Julie Molloy, David Chantarangsu, 949-707-2671

Public Hearing Scheduled For: March 22, 2016

Project Documents

1 - Five Lagunas Project Plans
1a - Five Lagunas Project Plans_Low_Resolution
2 - Five Lagunas Master Sign Program
3 - Five Lagunas Art Program
4 - Five Lagunas Tenant Signage Criteria
5 - Five Lagunas Freeway Pylon Sign Study
6 - Project Phasing Exhibit
7 - Parking Structure Design Options
8 - Fiscal Impact Study
9 - Residential Building A
10 - Residential Building B
11 - Residential Building C
12 - Residential Building B-C
13 - Letter of Justification
14 - Laguna Hills Occupancy List 2011

CEQA Documents

Addendum Five Lagunas
APPENDIX A
APPENDIX B
APPENDIX C
APPENDIX D
APPENDIX E
APPENDIX F
APPENDIX G
APPENDIX H
APPENDIX I
APPENDIX J
APPENDIX K

Five Lagunas Movie Clip

Five Lagunas Movie Clip_MPEG

The documents listed above may be accessed on the City's website at:

http://www.lagunahillsca.gov/176/Planning-Projects-New-Developments

A copy of the Vesting Tentative Tract Map is available in the Community Development Department.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MARCH 22, 2016

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: EVALUATION OF ALTERNATIVE SERVICE DELIVERY OPTIONS FOR ANIMAL CONTROL AND SHELTER SERVICES - PROPOSAL FROM THE CITY OF MISSION VIEJO

RECOMMENDATION: THAT THE CITY COUNCIL DIRECT STAFF TO FINALIZE ALL PERTINENT AGREEMENTS WITH THE CITY OF MISSION VIEJO FOR REVIEW AND APPROVAL AT THE APRIL 12, 2016, CITY COUNCIL MEETING CONSISTENT WITH COST PROPOSAL SCHEME NO. 2.

SUMMARY:

The City is faced with a major, long-term decision regarding animal control and sheltering services. Should the City stay the course with the County of Orange (County) and participate in the cost to construct a new shelter? Or, should the City switch animal control and sheltering services to a new contract with the City of Mission Viejo (Mission Viejo)? Mission Viejo has submitted cost proposal information to the City based on contracting alone and contracting along with the City of Rancho Santa Margarita (RSM). Staff has analyzed both cost proposals and compared them with continuing to contract with the County. Based on this analysis and an evaluation of the arguments for contracting with Mission Viejo and for contracting with the County, staff is recommending that the City Council approve contracting with Mission Viejo for animal care services and sheltering as long as RSM also agrees to contract with Mission Viejo. This recommendation is based on the following reasons:

1. After the first year's capital contribution, the cost differential is a modest increase at 14-15%.
2. It is staff's opinion that Mission Viejo is in a better position to control costs over the long run.

3. Mission Viejo has a solid track record and is able to provide a high quality level of service in a more convenient location for residents.

Should the City Council agree with staff's recommendation, and should RSM agree to contract with Mission Viejo as well, staff would come back to the City Council with executable agreements to effectuate the service delivery change at the April 12, 2016, City Council meeting. The transition to Mission Viejo would take effect January 1, 2017. Should the City Council decide to stay with the County, or should RSM decide to stay with the County, then staff would come back to the City Council with executable agreements to effectuate a ten-year arrangement with the County at the April 12, 2016, City Council meeting.

BACKGROUND:

At the October 27, 2015 City Council meeting, staff provided the City Council with an update on the accelerated schedule of the OC Animal Care's new shelter. The new schedule showed a groundbreaking in June of 2016 and a grand opening in September of 2017. In order to meet this new schedule, the County has asked that cities make a ten-year commitment by April 1, 2016. In response, the City Council directed staff to make an inquiry with Mission Viejo to see if they would be interested in providing animal care services to Laguna Hills. Mission Viejo provided a preliminary order of magnitude cost proposal and also answered a series of questions. An evaluation of this initial response was presented to the City Council at the January 12, 2016, City Council meeting.

In staff's evaluation it was pointed out that Mission Viejo's preliminary order of magnitude numbers did not include RSM as a potential contract partner even though Mission Viejo was actively working on providing RSM with a formal proposal. We pointed out that if Mission Viejo made co-proposals to both cities they could potentially achieve economies of scale that would lower the costs for not only Laguna Hills and RSM, but also for Mission Viejo and their current contract partners Laguna Niguel and Aliso Viejo. Staff further advised that we had already started discussions with RSM and Mission Viejo regarding a co-proposal option. Given this information, City Council supported having staff continue investigating the co-proposal option.

After a series of meetings and discussions with RSM and Mission Viejo, including one meeting with Laguna Niguel and Aliso Viejo, the Mission Viejo staff brought an agenda item to the Mission Viejo City Council on March 8, 2016, entitled: "Animal Services Proposals for the Cities of Rancho Santa Margarita and Laguna Hills." The recommended action was to "Authorize City Staff to send the Draft Agreement, MOU, and Cost Analysis Proposal for Animal Services to the Cities of Rancho Santa Margarita and Laguna Hills respectively for review and consideration." A copy of Mission Viejo's staff report, cost proposal, MOU, and draft agreement, along with a cover letter, is attached to this staff report as Exhibit A, hereafter "the Proposal."

The Proposal from Mission Viejo is for an initial seven-year term and includes costs for Laguna Hills under two scenarios: without RSM and with RSM. Staff has conducted an analysis of the preliminary numbers from Mission Viejo and compared them to the latest cost and revenue figures with the County under both schemes. Staff's analysis is based on the following methodology and assumptions:

1. Even though the contract with Mission Viejo wouldn't be effective until January 1, 2017, staff's analysis annualizes all numbers for ease of comparison. Some of the capital expenses would be incurred prior to the start date. The net cost to Laguna Hills in the Proposal is based on this current fiscal year. Accordingly, staff used this figure and the County's updated 2015-16 Notice of Intent figure of $135,808 as base-year figures to project a cost differential over the next five years.

2. Net costs are projected to increase 3% annually for both Mission Viejo and the County, except in year 2 with Mission Viejo where the increase is 2% to account for some one-time operating costs in the first year.

3. The net cost for operating/capital under the County has an additional $20,000 increase in year 1 to account for filling vacant positions, salary increases, conversion to cash basis accounting, and some program procedural improvements.

4. The capital contributions for both Mission Viejo and the County occur in 2016-17, even though the City has the option to pay the County over a ten-year period with a fixed interest rate of 0.77%.

5. The new shelter contribution is based on the most recent figures provided by the County. Laguna Hills share is based on a maximum shelter cost of $35 million with the County contributing $5 million and the 18 contract cities contributing a proportionate share of the remaining $30 million. Based on the past 5 years average of animal charge days, Laguna Hills contribution is $222,122.

6. Mission Viejo does not charge its contract cities annually for one-time capital contributions or vehicle replacement costs. Their practice is to charge those items when they occur. The base year net cost to Laguna Hills in the Proposal does not include any capital expenditures. To account for this, Exhibit E assumes that Laguna Hills would set-aside $15,000 annually into an internal capital replacement fund.

7. The focus of the 5-year cost differential analyses is net cost to the City.

Cost Proposal Scheme No. 1 (without RSM)

Exhibit B to this report contains staff's analysis of the cost differential to contract with Mission Viejo without RSM over five years. In the first year, the cost differential is $231,192, or 61%. Going forward, the annual differential is in the mid-fifty thousand, or a 33% increase over the County. The initial capital contribution of $347,600 is for a building addition, interior building modifications, office furniture, workstations, and radios. The City would also be required to pay for one new truck ($65,000). It should be noted that when compared to the same analysis at the January 12, 2016, City Council meeting, the 5-year cost differential has decreased from $630,065 to $458,244. Even so, it needs to be pointed out that for Mission Viejo and their current contract partners, Laguna Niguel and Aliso Viejo, bringing on Laguna Hills will increase their net cost by a total of $133,454 (see page 3 of the cost proposal in Exhibit A). This added cost does not come without benefit though. By adding one more city, Mission Viejo will be adding a 3rd shift and increasing the number of animal control officers. It is not clear that Mission Viejo would approve an agreement with Laguna Hills without RSM. Given the increased cost to the City, the uncertainty that Mission Viejo would ultimately agree to contract with Laguna Hills alone, and the time constraint to commit to the County, staff is recommending that the City Council not consider contracting with Mission Viejo under this cost scheme.

Cost Proposal Scheme No. 2 (with RSM)

Exhibit C to this report contains staff's analysis of the cost differential to contract with Mission Viejo with the assumption that RSM also decides to contract with them. In the first year, the cost differential is $198,851, or 52%. Going forward, the annual differential is in the mid-twenty thousand, or a 14-15% increase. The initial capital contribution of $345,700 is for a building addition, interior building modifications, office furniture, workstations, and radios. The cost is essentially the same as under scheme 1. If Mission Viejo brings on both cities, there are additional building modifications that are not required under scheme 1. The City would also be required to pay for one new truck ($65,000). The total 5-year cost differential is $295,999.

As staff suspected back in January, co-proposals to Laguna Hills and RSM achieve an economy of scale that has the effect of lowering on-going operating costs for all five cities (see page 3 of the cost proposal in Exhibit A). The cost differential under scheme 2 is at a point where the decision to stay with the County or contract with Mission Viejo can be weighed based on other important factors.

Arguments for Contracting with Mission Viejo

- With an overall euthanasia rate below 10% (Mission Viejo has reported to staff a 7% rate), Mission Viejo is technically considered a "no-kill shelter." While the euthanasia rate in 2014 with the County for dogs from Laguna Hills was 6%, the rate for cats was 48%, and the overall rate for all animals was 32%. Going forward, there is likely to be mounting pressure on the County to move in the direction of a "no-kill" shelter. To the extent that the County yields to this pressure, costs will increase.

- Mission Viejo's method of allocating net cost among its contract partners based on population provides greater predictability and guards against the annual cost fluctuations that occur under the utilization method employed by the County.

- On-going operating costs with Mission Viejo are expected to remain stable. Operating costs with the County may experience greater increases than staff is projecting. The County has hired a consultant to evaluate operations and procedures in response to recent Grand Jury Reports and an internal performance audit. The consultant's recommendations are likely to have associated cost impacts that are unknown at this time.

- In the future, should Mission Viejo increase animal related fees, the potential revenue growth could substantially lower projected net costs to Laguna Hills. Fees are currently substantially lower than those charged by the County. In the Proposal, Mission Viejo estimates revenue from Laguna Hills in the amount of $103,669. In 2014-15, revenue from Laguna Hills under the County's fee structure was $163,608.

- On the flip side to the point above, Laguna Hills residents and pet related businesses will see a decrease in fees of about $60,000.

- The Mission Viejo Shelter is closer. From the Community Center (central point in Laguna Hills) the Mission Viejo Shelter is 6.6 miles away. The new County shelter location in Tustin is 15.3 miles away.

- The number of animal control officers per capita under the Mission Viejo proposal is one officer per 41,594. The number of officers under the County contract is one per 58,768.

- The Mission Viejo shelter has greater volunteer opportunities for Laguna Hills residents and is a more convenient location for volunteers.

- The Mission Viejo shelter works closely with a non-profit organization, the Dedicated Animal Welfare Group (DAWG), which raises money to pay for extraordinary medical expenses for animals in jeopardy of euthanasia and training for new pet owners.

Arguments for Staying with the County

- The majority of complaints and issues with the County have pertained to the dilapidated County shelter. The County will be opening a new, state of the art facility in the latter half of 2017.

- The indemnification clause in the County's contract provides greater protections to the City than the indemnification clause in the Mission Viejo contract.

- Under the County in 2014-15, the City represented 0.74% of shelter operations and 1.92% of field operations. Under an agreement with Mission Viejo, that includes RSM, Laguna Hills would represent 10.4% of the total operation. As a result, we could have greater exposure to any unforeseen or extraordinary increases in the cost of operations or capital outlay under a contract with Mission Viejo.

- The County provides services for equestrian and farm animals; Mission Viejo does not. Laguna Hills currently has four commercial stables in the City that have a permit with the County. Altogether, staff estimates that there are up to 175 horses in the City, though this number cannot be verified. Unlike the County, Mission Viejo does not handle any equestrian or farm animal related activities. As such, these services may have to be contracted with a separate provider. Another issue is the evacuation of large animals in an emergency. The County is equipped to handle this where Mission Viejo is not.

Conclusion

Based on the most recent discussions with the County, it is apparent that cities wanting to continue contracting with the County will have to make a commitment by signing a new ten-year services agreement and a shelter participation agreement in April. The City Council has two viable options: stay with the County or contract with Mission Viejo as long as RSM also agrees to contract with Mission Viejo. In staff's opinion, either option will serve the long-term interests of the City. Staff is recommending that the City Council approve contracting with Mission Viejo for animal care services and sheltering as long as RSM also agrees to contract with Mission Viejo (Cost Proposal Scheme No. 2). This recommendation is based on the following reasons:

1. After the first year's capital contribution, the cost differential is a modest increase at 14-15%.

2. It is staff's opinion that Mission Viejo is in a better position to control costs over the long run.

3. Mission Viejo has a solid track record and is able to provide a high quality level of service in a more convenient location for residents.

Next Steps/Timing

Given the County's new shelter schedule, time is of the essence. RSM has this same item on their March 23rd agenda (Wednesday night). If the City Council approves staff's recommendation, and if RSM agrees to contract with Mission Viejo the following night, then final contract documents can be prepared and presented to the Laguna Hills City Council on April 12, 2016, and the RSM City Council on April 13, 2016. These contract documents would then be approved by the Mission Viejo City Council at their April 26, 2016 meeting.

If the Laguna Hills City Council decides to stay with the County, or if the RSM City Council decides to stay with the County, then we will need to approve a shelter agreement and a new, ten-year services agreement with the County at the April 12, 2016 meeting. Should the path toward contracting with Mission Viejo occur, then between now and January 1, 2017, the City will also need to amend its animal control Ordinances to conform to Mission Viejo's.

FISCAL IMPACT:

Regardless of which public agency the City contracts with, the 2016-17 budget for animal services in the amount of $102,500 will have to be increased for both capital contribution and operating expenditures. To off-set first year costs under a contract with Mission Viejo, staff recommends that the City defer Capital Improvement Project No. 301, the Alicia Parkway Median Island Landscape Rehabilitation, which has a General Fund appropriation in FY 2016-17 in the amount of $980,000. This project can be deferred for re-consideration during the FY 2017-19 biennial budget process next spring.

ATTACHMENTS:

- Exhibit A – Mission Viejo Proposal to provide Animal Control and Sheltering Services
- Exhibit B – 5-Year Cost Differential Analysis (without RSM)
- Exhibit C – 5-Year Cost Differential Analysis (with RSM)

EXHIBIT A

Proposal from the City of Mission Viejo

To Provide Animal Control and Sheltering Services

May 9, 2016

City of Mission Viejo

Office of the City Manager

Frank Ury
Mayor

Wendy Bucknum
Mayor Pro Tem

Greg Raths
Council Member

Edward Sachs
Council Member

Cathy Schlicht
Council Member

March 9, 2016

Mr. Bruce Channing
City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

Re: Transmittal of Documents for the Mission Viejo Animal Services Center

Dear Bruce:

At the March 8, 2016 City Council Meeting the City Council authorized Staff to send the City of Laguna Hills a copy of the Staff Report, Cost Proposal, Memorandum of Understanding and the Draft Agreement with the Mission Viejo Animal Services Center. These documents are for your use in presenting the information to your City Council. Should you have any questions or need clarification please feel free to contact myself or Dennis Wilberg.

Please let us know your progress and when you think you may have a decision by your Council so we can begin to prepare our staff reports. The Mission Viejo City Council meeting dates are as follows: (March 22, 2016, April 12, 2016 and April 26, 2016).

Sincerely,

W. Keith Rattay
Assistant City Manager/Director of Public Services

Enclosures: Staff Report
Cost Proposal
Memorandum of Understanding
Draft Agreement for Animal Control and Shelter Services

200 Civic Center • Mission Viejo, California 92691
http://www.cityofmissionviejo.org

949/470-3051
FAX 949/859-1386

AGENDA REPORT	Meeting Date 3/8/2016

Prepared By: Keith Rattay, Director of Public Services
Budgetary Review By: Cheryl Dyas, Director of Administrative Services / City Treasurer
Submitted By: Dennis Wilberg, City Manager

Agenda Title
Animal Services Proposals for the Cities of Rancho Santa Margarita and Laguna Hills

Recommended Action
Authorize City Staff to send the Draft Agreement, MOU, and Cost Analysis Proposal for Animal Services to the Cities of Rancho Santa Margarita and Laguna Hills respectively for review and consideration.

Executive Summary

History

On November 10, 2015 City Staff presented a report to the City Council which included a letter from the City of Rancho Santa Margarita (RSM). The letter requested the City of Mission Viejo consider adding RSM to the Animal Services Program. The report also made reference of a similar verbal request from the City of Laguna Hills. At that meeting, the Council authorized City Staff to send a preliminary cost proposal to Rancho Santa Margarita and respond to the questions from the City of Laguna Hills. Both Cities have expressed genuine interest in continuing on with the discussion and receiving a formal cost proposal and draft agreement from the City of Mission Viejo.

Background

The Orange County Animal Services Center is in the process of considering the relocation of the current shelter located in the City of Orange. The new location would be in the City of Tustin on the Marine Base near the "District" commercial area. The current Animal Shelter is in deteriorating shape and will be torn down long term. The new facility in Tustin will require a long term commitment and capital contribution by each of the current City Members that receive Animal Services from the County of Orange. The participating Cities have been given an April deadline to commit to a ten (10) year contract with the County of Orange. RSM and Laguna Hill have both reached out to Mission Viejo, asking the City to consider adding them to the Mission Viejo Animal Services Program. Quality of service and convenient location are two key factors in their request.

Analysis

Annual Subsidy

This report includes a Cost Study Proposal that was completed on January 25, 2016 that provides the full analysis. In summary, City Staff developed cost models for each City independently and one cost model if both RSM and Laguna Hills were to be added to the Animal Services Program. All of the cost models are based on the 2016 budget. Adding only Rancho Santa Margarita would provide a modest reduction in our annual subsidy in the range of 3.7% or approximately $21,600. If Mission Viejo would add only Laguna Hills to the program, Mission Viejo's annual subsidy would increase by 6% or $35,683. If Mission Viejo was to consider adding both Laguna Hills and RSM the Mission Viejo annual subsidy would be reduced by roughly 10% or $58,546.

Staffing

The Mission Viejo Animal Services staffing consists of various staff positions required to run the shelter. Below is a summary of existing staffing levels and proposed staffing levels for one city and then staffing levels if both RSM and Laguna Hills are added to the program. Staffing levels are critical to keeping the quality of service consistent while adding potential cities to the program. When the shelter was initially developed the staffing level was considered adequate but very lean. In 2009 when Aliso Viejo was added to the program, staffing levels were adjusted to compensate for increases in service calls. However, the City was still able to provide after-hours services on an "On-Call" basis by just adding one Animal Services Officer at that time.

The City of Mission Viejo is recommending that, by adding the fourth and/or fifth city it will require increased staffing, primarily with Animal Services Officers. This increase will allow the City to run a third shift (Graveyard). The Officers assigned to this shift will be stationed at the shelter as a regular shift providing a more reliable 24 hour response. Providing more depth in staffing levels will reduce staffing fluctuations during vacations, pregnancies and sustained illness among the Officers.

Title	Current	*One City	*Two Cities
Animal Services Supervisor	1.00	1.00	1.00
Senior Animal Services Officer	1.00		
Animal Services Officer	4.00	1.00	2.00
Animal Services Assistant	4.00	1.00	1.00
Animal Services Volunteer Coordinator	0.75	0.25	0.25
Animal Services Licensing Representative	1.75	0.25	0.75
Animal Services Representative	2.00		
Finance Licensing Account Clerk	1.00	0.50	0.75
Animal Services Manager	1.00		

*Add to the current positions

Population Projection Data

The cost proposal considers the projected population of each city to assist in determining the annual subsidy for each city. Below are the population projections as of January 1, 2015.

Populations as of 1/1/15	Existing Service MV/LN/AV		With RSM		With LH		With RSM & LH	
Mission Viejo (MV)	96,652	45.7%	96,652	37.1%	96,652	39.9%	96,652	33.2%
Laguna Niguel (LN)	64,836	30.6%	64,836	24.9%	64,836	26.8%	64,836	22.3%
Aliso Viejo (AV)	50,204	23.7%	50,204	19.2%	50,204	20.7%	50,204	17.2%
Rancho Santa Margarita (RSM)			49,125	18.8%			49,125	16.9%
Laguna Hills (LH)					30,344	12.5%	30,344	10.4%
Totals	211,692	100%	260,817	100%	242,036	100%	291,161	100%

Cost Analysis Proposal

A detailed cost analysis has been included in the attachments to this report. Below is a summary report that outlines the projected revenue, cost and subsidy levels for the existing three (3) city program and then for a four (4) and five (5) city program. The cost model is based primarily on taking all of the combined potential revenues (dog licenses, citations, donations, etc.) and all of the combined program expenses (wages, maintenance, vehicle repairs, gas, supplies, food, medical care, etc.). The difference between the combined revenue and combined expenses is the annual subsidy which is divided between the various cities based on the annual projected population.

PROPOSAL SUMMARY

		City Subsidies				
		MV	LN	AV	RSM	LH
Current Operations (MV/LN/AV)						
Total Revenue	774,600					
Total Expenditures	2,060,550					
Net Operating Loss	(1,285,950)	584,650	395,000	306,300	-	-
RSM Proposal (MV/LN/AV/RSM)						
Total Revenue	926,597					
Total Expenditures	2,445,899					
Net Operating Loss	(1,519,302)	563,014	377,680	292,447	286,161	-
One Time Operating Capital:						
Office furniture for 2 employees					4,000	
Computer workstations for 2 employees					11,600	
Radios for 2 employees					12,000	
One Time Capital Buy In:						
Interior modifications to existing building					320,000	
ASO Truck					65,000	
Net increase/(decrease) in cost to current subsidies		**(21,636)**	**(17,320)**	**(13,853)**		
RSM Yr 1 Cost with one-time capital					**698,761**	
LH Proposal (MV/LN/AV/LH)						
Total Revenue	878,269					
Total Expenditures	2,431,708					
Net Operating Loss	(1,553,438)	620,333	416,131	322,220	-	194,754
One Time Operating Capital:						
Office furniture for 2 employees						4,000
Computer workstations for 2 employees						11,600
Radios for 2 employees						12,000
One Time Capital Buy In:						
Interior modifications to exisiting building						320,000
ASO Truck						65,000
Net increase/(decrease) in cost to current subsidies		**35,683**	**21,131**	**15,920**		
LH Yr 1 Cost with one-time capital						**607,354**
RSM and LH Proposal (MV/LN/AV/RSM/LH)						
Total Revenue	1,030,267					
Total Expenditures	2,615,408					
Net Operating Loss	(1,585,141)	526,194	352,981	273,321	267,447	165,199
One Time Operating Capital:						
Office furniture for 3 employees					3,000	3,000
Computer workstations for 3 employees					8,700	8,700
Radios for 3 employees					9,000	9,000
One Time Capital Buy In:						
Building addition and interior modifications					325,000	325,000
ASO Truck					65,000	65,000
Net increase/(decrease) in cost to current subsidies		**(58,456)**	**(42,019)**	**(32,979)**		
RSM and LH Yr 1 Cost with one-time capital					**678,147**	**575,899**
Net increase/(decrease) in cost to RSM & LH subsidies w/ both cities					**(18,714)**	**(29,555)**

Capital Contribution

The one-time Capital Contribution is also added into the overall cost proposal and is considered a "Buy-in" into the Animal Services Program. Each City would be required to purchase an additional Animal Services vehicle at the estimated cost of $65,000. Additionally, modifications will need to be made to the current Animal Services Administrative Building to accommodate the increased staff. The capital contributions are outlined below.

Capital Contributions	One City	Two Cities
Animal Services Vehicle	$65,000	$65,000 (each City)
Renovation to the existing building to increase the efficiency of the interior space and add a space for an enlarged freezer	$320,000	
Increase the existing administrative building by approx. 500 s.f. to accommodate the additional staffing needs, add fire sprinklers to the existing facility and modifications to the interior of the existing building to increase efficiency		$650,000

Fiscal Impact:

Amount Requested $
Sufficient Budgeted Funds Available?: (If no, see attached fiscal analysis)
Prog/Fund # Category: Pers. Optg. Cap. -or- CIP# Fund#

Previous Relevant Council Actions for This Item
November 10, 2015 Staff Report

Attachments
Exhibit A - Cities of Rancho Santa Margarita (RSM) and Laguna Hills Cost Study Proposal
Exhibit B – Rancho Santa Margarita Draft Agreement
Exhibit C – Laguna Hills Draft Agreement

City of Mission Viejo

Mission Viejo Animal Services

Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Proposal

January 25, 2016

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

The following information presents estimates for the expansion of Mission Viejo Animal Services to the cities of Rancho Santa Margarita ("RSM") and Laguna Hills. Estimates are provided separately for each city as stand alone projections in addition to a proposal that includes expanding services to both RSM and Laguna Hills at the same time. Information is presented as follow:

The projections were generated by utilizing the adopted Mission Viejo Animal Services (MVAS) budget for FY 2015-16 and projecting additional revenue and expenditures for each proposal. Mission Viejo estimates that to provide services for one additional city, an additional 4.0 FTE would be needed to provide adequate Animal Services Officer patrols for four cities, as well as additional support at the Animal Services facility. If service is provided to two additional cities, an additional 5.75 FTE would be needed. These positions include:

	1 City	2 Cities
Animal Services Supervisor	1.00	1.00
Animal Services Officer	1.00	2.00
Animal Services Assistant	1.00	1.00
Animal Services Volunteer Coordinator	0.25	0.25
Animal Services Licensing Representative	0.25	0.75
Finance Licensing Account Clerk	0.50	0.75
Total Additional FTE's	4.00	5.75

Information for population of each city, projected license count for both RSM and Laguna Hills and the Mission Viejo license fee used in this proposal is located under Projection Data on page 3. Other measures to project additional costs for each proposal are located in the notes column within each of the three proposals. Each proposal has been prepared by analyzing each line item contained in the MVAS adopted budget and carefully considering those items expected to increase by adding to the MVAS service area. After projecting the total revenue and expenditures for each proposal, the net cost (subsidy) for each city was determined by allocating the amount of expenditures over revenue under each proposal among the cities based on population. This calculation provides the estimate for the annual operating cost for each city year over year and is consistent with the current cost sharing method in allocating costs among all MVAS participant cities.

Also added to each proposal is the estimated one-time operating and capital contributions needed by RSM and Laguna Hills in the first year of their contract to provide for adequate equipment and facility space for the additional employees needed to expand services to each of these cities. These costs are itemized with the Proposal Summary on page 4.

In conclusion, these projections are estimates and based on information provided by the County of Orange which may contain inaccuracies. Actual cost to each city will be based on actual revenue received and actual expenditures incurred by MVAS on an annual basis.

PROJECTION DATA

Populations as of 1/1/15	Existing Service MV/LN/AV		With RSM		With LH		With RSM & LH	
Mission Viejo (MV)	96,652	45.7%	96,652	37.1%	96,652	39.9%	96,652	33.2%
Laguna Niguel (LN)	64,836	30.6%	64,836	24.9%	64,836	26.8%	64,836	22.3%
Aliso Viejo (AV)	50,204	23.7%	50,204	19.2%	50,204	20.7%	50,204	17.2%
Rancho Santa Margarita (RSM)			49,125	18.8%			49,125	16.9%
Laguna Hills (LH)					30,344	12.5%	30,344	10.4%
Totals	211,692	100%	260,817	100%	242,036	100%	291,161	100%

Assumption Data:

MV dog license fee	$ 20		Spayed license fee. 84% of MVAS animals are spayed or neutered.
	RSM	LH	
Dog licenses	5,443	3,483	Licence assumption calculation: Based on compliance formula provided by the American Veterinary Medical Association, using number of households in community (17,260 for RSM and 11,046 for LH), % of households with dogs (36.5%), average dogs per household with dogs of 1.6, and a MVAS license compliance rate of 54%.

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

PROPOSAL SUMMARY

		City Subsidies				
		MV	LN	AV	RSM	LH
Current Operations (MV/LN/AV)						
Total Revenue	774,600					
Total Expenditures	2,060,550					
Net Operating Loss	(1,285,950)	584,650	395,000	306,300	-	-
RSM Proposal (MV/LN/AV/RSM)						
Total Revenue	926,597					
Total Expenditures	2,445,899					
Net Operating Loss	(1,519,302)	563,014	377,680	292,447	286,161	-
One Time Operating Capital:						
Office furniture for 2 employees					4,000	
Computer workstations for 2 employees					11,600	
Radios for 2 employees					12,000	
One Time Capital Buy In:						
Interior modifications to existing building					320,000	
ASO Truck					65,000	
Net increase/(decrease) in cost to current subsidies		**(21,636)**	**(17,320)**	**(13,853)**		
RSM Yr 1 Cost with one-time capital					**698,761**	
LH Proposal (MV/LN/AV/LH)						
Total Revenue	878,269					
Total Expenditures	2,431,708					
Net Operating Loss	(1,553,438)	620,333	416,131	322,220	-	194,754
One Time Operating Capital:						
Office furniture for 2 employees						4,000
Computer workstations for 2 employees						11,600
Radios for 2 employees						12,000
One Time Capital Buy In:						
Interior modifications to exisiting building						320,000
ASO Truck						65,000
Net increase/(decrease) in cost to current subsidies		**35,683**	**21,131**	**15,920**		
LH Yr 1 Cost with one-time capital						**607,354**
RSM and LH Proposal (MV/LN/AV/RSM/LH)						
Total Revenue	1,030,267					
Total Expenditures	2,615,408					
Net Operating Loss	(1,585,141)	526,194	352,981	273,321	267,447	165,199
One Time Operating Capital:						
Office furniture for 3 employees					3,000	3,000
Computer workstations for 3 employees					8,700	8,700
Radios for 3 employees					9,000	9,000
One Time Capital Buy In:						
Building addition and interior modifications					325,000	325,000
ASO Truck					65,000	65,000
Net increase/(decrease) in cost to current subsidies		**(58,456)**	**(42,019)**	**(32,979)**		
RSM and LH Yr 1 Cost with one-time capital					**678,147**	**575,899**
Net increase/(decrease) in cost to RSM & LH subsidies w/ both cities					**(18,714)**	**(29,555)**

3/22/2016 ITEM NO. 6.2.1

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

RSM PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM	Proposed Total	Notes		
Revenue:							
4351	Dog License - Regular	500,000	108,862	608,862	Based on license count and fee under assumptions		
4358-5444	Other Revenue	214,800	43,135[2]	257,935	Includes: Impound, adoption and vaccination fees as well as other misc fees.		
5447	Admin Citation Fines	20,000		20,000			
5600	Rents & Concessions	18,600		18,600			
5950	Donations	10,000		10,000			
5970	Misc Rev-Taxable	1,200		1,200			
5500	Interest	10,000	-	10,000			
	Revenue subtotal	**774,600**	**151,997**	**926,597**			
Expenditures:							
Treasury:							
	Existing Personnel (1.1 FTE)	74,874	-	74,874			
	New Personnel (0.5 FTE Acct Clerk)	-	29,796	29,796			
6521	Banking and Financial Services	20,300	4,409	24,709	Credit card/lockbox fees	0.81	per licence
6555	Other Admin Svcs-Private	7,320	1,089	8,409	Mailing services @	0.20	per licence
7101	Small Office Equipment < $2K	100	-	100			
7120	Functional Supplies	1,300	925	2,225	Tags	0.17	per tag
7430	Postage	17,340	2,667	20,007		0.49	billing/license renewal
7500	Repair and Maint-Equip	1,800	272	2,072	Copier charge	0.05	billing/license renewal
7625	Outside Printing	3,200	490	3,690	Envelopes	0.09	billing/license renewal
7705	Training and Education	1,500	-	1,500			
	Treasury expenditure subtotal	127,734	39,648	167,382			

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

RSM PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM	Proposed Total	Notes		
IT:							
6524	Software Licensing	20,400	3,840	24,240	Licencing software	960	per station
7400	Telephone	7,300	914	8,214	Wireless cards	457	per yr per ASO
7500	Repair and Maint-Equip	4,500	-	4,500			
8450	Computer Hardware	5,000	-	5,000			
	IT expenditure subtotal	37,200	4,754	41,954			
Fleet Maintenance:							
7150	Gasoline	25,000	5,000	30,000	Add 1 ASO truck	5,000	avg cost per ASO truck
7510	Repair & Maint-Vehicles	12,500	2,083	14,583	Add 1 ASO truck	2,083	avg cost per vehicle
	Fleet expenditure subtotal	37,500	7,083	44,583			
Park Maintenance:							
6560	Pks/Lndscp Maint-Mo Contract	57,444	-	57,444	No increase anticipated under this program.		
6561	Pks/Landscp Maint/Repair-Other	25,000	-	25,000			
7123	Minor Fixtures/Imp(nonCIP<$2K)	1,000	-	1,000			
7215	Water	26,000	-	26,000			
7500	Repair and Maint-Equip	7,000	-	7,000			
7650	Transportation Services	59	-	59			
	Park Maint expenditure subtotal	116,503	-	116,503			
Facility Maintenance:							
7122	Small Tools/Equipment <2K	500	112	612	Increase of 3.5 FTE	32	per FTE
7140	Facilities Maint Supplies	7,800	1,757	9,557		502	per FTE
7500	Repair and Maint-Equip	5,200	-	5,200	Mainly A/C repair. No increase anticipated.		
7520	Repairs & Maint-Facilities	39,907	2,023	41,930	Plumb./incidental rep.=$9,000	578	per FTE
	Facility Maint expenditure subtotal	53,407	3,892	57,299			

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

RSM PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM	Proposed Total	Notes
Animal Services:					
	Existing Personnel (15.55 FTE)	1,355,924		1,355,924	
	New Personnel (1.0 FTE ASO)	-	87,728	87,728	
	New Personnel (1.0 FTE AS Assist)	-	60,048	60,048	
	New Personnel (1.0 FTE AS Super.)	-	91,611	91,611	
	New Personnel (0.25 FTE Vol. Coord.)	-	20,561	20,561	
	New Personnel (0.25 FTE Lic. Rep.)	-	20,691	20,691	
6505	Spay/Neuter Surgeries WOAN073	18,000	2,000	20,000	Estimate per County records of # of dogs and cats
6506	Veterinarian Services	28,000	5,000	33,000	Estimate per County records of # of domestic animals and wildlife
6535	Other Prof/Tech Svcs-Private	14,600	12,600	27,200	Animal disposal/trapping/medical waste/rabies awareness 800 per month for deceased animal disposal + $3,000 for rabies awareness program.
6555	Other Admin Svcs-Private	10,000	2,000	12,000	Citation processing and collection thru Data Ticket. Estimate per County records for field related stats.
7100	Office Supplies	2,600	585	3,185	Increase of 3.5 FTE 167 per FTE
7101	Small Office Equipment < $2K	2,000	-	2,000	
7102	Small Office Furnishings <$2K	2,000	-	2,000	
7120	Functional Supplies	57,500	7,500	65,000	Pet food/medications/vaccinations/ kennel cleaning and supplies. Est. per County animal intake records.
7121	Safety Supplies/Equipment	750	2,000	2,750	ASO saftey equipment 1,000 per ASO Amount will decline after 1st year.
7122	Small Tools/Equipment <2K	2,000	-	2,000	
7140	Facilities Maint Supplies	6,000	1,348	7,348	Increase of 3.5 FTE 385 per FTE
7145	Uniforms/Protective Clothing	3,000	2,800	5,800	ASO uniforms 1,400 per ASO Amount will decline after 1st year.
7200	Utilities-General	1,080	-	1,080	
7210	Electricity	25,600	2,048	27,648	8% increase for additional employee and animal consumption.
7215	Water	9,000	720	9,720	8% increase for additional employee and animal consumption.
7220	Natural Gas	4,700	376	5,076	8% increase for additional employee and animal consumption.
7300	Rent-Furnishings/Equip	1,800	-	1,800	
7430	Postage	7,000	8,457	15,457	Notice letter to all households (17,260) 0.49 per letter Amount will decline in yr 2 and then again in yr 3
7500	Repair and Maint-Equip	6,000	300	6,300	Nominal 5% increase for copier maintenance charges
7520	Repairs & Maint-Facilities	2,000	-	2,000	
7620	Advertising	1,800	-	1,800	

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

RSM PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM	Proposed Total	Notes
7625	Outside Printing	8,000	-	8,000	
7640	Dues and Memberships	600	-	600	
7645	Publications & Subscriptions	300	-	300	
7655	Mileage-Private Auto	300	-	300	
7705	Training and Education	5,000	1,600	6,600	Training for 2 ASO's and 1 ASA
7932	Licenses and Permits	50	-	50	
7960	Depreciation	114,000	-	114,000	
8100	Improvements	28,000	-	28,000	
8350	Vehicles	35,000	-	35,000	
	Animal Services expenditure subtotal	1,752,604	329,972	2,082,576	
	Total Expenditures	**2,124,948**	**385,349**	**2,510,297**	
	Net Operating Loss	(1,350,348)	(233,352)	(1,583,700)	
	Costs paid with donations/reserves	64,398	-	64,398	
	Net Operating Loss Allocated to Cities	**(1,285,950)**	**(233,352)**	**(1,519,302)**	

(1) Data is from FY 15/16 adopted budget
(2) Based on County records including number of animals impounded, returned to owner, kennel permits and inspections, bite/quarantine fees, vicious dog declaration fees

LH PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	LH	Proposed Total	Notes		
Revenue:							
4351	Dog License - Regular	500,000	69,669	569,669	Based on license count and fee under assumptions		
4358-5444	Other Revenue	214,800	34,000[2]	248,800	Includes: Impound, adoption and vaccination fees as well as other misc fees.		
5447	Admin Citation Fines	20,000		20,000			
5600	Rents & Concessions	18,600		18,600			
5950	Donations	10,000		10,000			
5970	Misc Rev-Taxable	1,200		1,200			
5500	Interest	10,000	-	10,000			
	Revenue subtotal	**774,600**	**103,669**	**878,269**			
Expenditures:							
Treasury:							
	Existing Personnel (1.1 FTE)	74,874	-	74,874			
	New Personnel (0.5 FTE Acct Clerk)	-	29,796	29,796			
6521	Banking and Financial Services	20,300	2,822	23,122	Credit card/lockbox fees	0.81	per licence
6555	Other Admin Svcs-Private	7,320	697	8,017	Mailing services @	0.20	per licence
7101	Small Office Equipment < $2K	100	-	100			
7120	Functional Supplies	1,300	592	1,892	Tags	0.17	per tag
7430	Postage	17,340	1,707	19,047		0.49	billing/license renewal
7500	Repair and Maint-Equip	1,800	174	1,974	Copier charge	0.05	billing/license renewal
7625	Outside Printing	3,200	314	3,514	Envelopes	0.09	billing/license renewal
7705	Training and Education	1,500	-	1,500			
	Treasury expenditure subtotal	127,734	36,101	163,835			

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

LH PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	LH	Proposed Total	Notes		
IT:							
6524	Software Licensing	20,400	3,840	24,240	Licencing software	960	per station
7400	Telephone	7,300	914	8,214	Wireless cards	457	per yr per ASO
7500	Repair and Maint-Equip	4,500	-	4,500			
8450	Computer Hardware	5,000	-	5,000			
	IT expenditure subtotal	37,200	4,754	41,954			
Fleet Maintenance:							
7150	Gasoline	25,000	5,000	30,000	Add 1 ASO truck	5,000	avg cost per ASO truck
7510	Repair & Maint-Vehicles	12,500	2,083	14,583	Add 1 ASO truck	2,083	avg cost per vehicle
	Fleet expenditure subtotal	37,500	7,083	44,583			
Park Maintenance:							
6560	Pks/Lndscp Maint-Mo Contract	57,444	-	57,444	No increase anticipated under this program.		
6561	Pks/Landscp Maint/Repair-Other	25,000	-	25,000			
7123	Minor Fixtures/Imp(nonCIP<$2K)	1,000	-	1,000			
7215	Water	26,000	-	26,000			
7500	Repair and Maint-Equip	7,000	-	7,000			
7650	Transportation Services	59	-	59			
	Park Maint expenditure subtotal	116,503	-	116,503			
Facility Maintenance:							
7122	Small Tools/Equipment <2K	500	112	612	Increase of 3.5 FTE	32	per FTE
7140	Facilities Maint Supplies	7,800	1,757	9,557		502	per FTE
7500	Repair and Maint-Equip	5,200	-	5,200	Mainly A/C repair. No increase anticipated.		
7520	Repairs & Maint-Facilities	39,907	2,023	41,930	Plumb./incidental rep.=$9,000	578	per FTE
	Facility Maint expenditure subtotal	53,407	3,892	57,299			

LH PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	LH	Proposed Total	Notes
Animal Services:					
	Existing Personnel (15.55 FTE)	1,355,924		1,355,924	
	New Personnel (1.0 FTE ASO)	-	87,728	87,728	
	New Personnel (1.0 FTE AS Assist)	-	60,048	60,048	
	New Personnel (1.0 FTE AS Super.)	-	91,611	91,611	
	New Personnel (0.25 FTE Vol. Coord.)	-	20,561	20,561	
	New Personnel (0.25 FTE Lic. Rep.)	-	20,691	20,691	
6505	Spay/Neuter Surgeries WOAN073	18,000	1,200	19,200	Estimate per County records of # of dogs and cats
6506	Veterinarian Services	28,000	3,000	31,000	Estimate per County records of # of domestic animals and wildlife
6535	Other Prof/Tech Svcs-Private	14,600	12,600	27,200	Animal disposal/trapping/medical waste/rabies awareness 800 per month for deceased animal disposal + $3,000 for rabies awareness program.
6555	Other Admin Svcs-Private	10,000	1,200	11,200	Citation processing and collection thru Data Ticket. Estimate per County records for field related stats.
7100	Office Supplies	2,600	585	3,185	Increase of 3.5 FTE 167 per FTE
7101	Small Office Equipment < $2K	2,000	-	2,000	
7102	Small Office Furnishings <$2K	2,000	-	2,000	
7120	Functional Supplies	57,500	3,500	61,000	Pet food/medications/vaccinations/ kennel cleaning and supplies. Est. per County animal intake records.
7121	Safety Supplies/Equipment	750	2,000	2,750	ASO saftey equipment 1,000 per ASO Amount will decline after 1st year.
7122	Small Tools/Equipment <2K	2,000	-	2,000	
7140	Facilities Maint Supplies	6,000	1,348	7,348	Increase of 3.5 FTE 385 per FTE
7145	Uniforms/Protective Clothing	3,000	2,800	5,800	ASO uniforms 1,400 per ASO Amount will decline after 1st year.
7200	Utilities-General	1,080	-	1,080	
7210	Electricity	25,600	2,048	27,648	8% increase for additional employee and animal consumption.
7215	Water	9,000	720	9,720	8% increase for additional employee and animal consumption.
7220	Natural Gas	4,700	376	5,076	8% increase for additional employee and animal consumption.
7300	Rent-Furnishings/Equip	1,800	-	1,800	
7430	Postage	7,000	5,413	12,413	Notice letter to all households (11,046) 0.49 per letter Amount will decline in yr 2 and then again in yr 3
7500	Repair and Maint-Equip	6,000	300	6,300	Nominal 5% increase for copier maintenance charges
7520	Repairs & Maint-Facilities	2,000	-	2,000	

3/22/2016 ITEM NO. 6.2.1

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

LH PROPOSAL

Account #	Account Description	MV/LN/AV Total (1)	LH	Proposed Total	Notes
7620	Advertising	1,800	-	1,800	
7625	Outside Printing	8,000	-	8,000	
7640	Dues and Memberships	600	-	600	
7645	Publications & Subscriptions	300	-	300	
7655	Mileage-Private Auto	300	-	300	
7705	Training and Education	5,000	1,600	6,600	Training for 2 ASO's and 1 ASA
7932	Licenses and Permits	50	-	50	
7960	Depreciation	114,000	-	114,000	
8100	Improvements	28,000	-	28,000	
8350	Vehicles	35,000	-	35,000	
	Animal Services expenditure subtotal	1,752,604	319,328	2,071,932	
	Total Expenditures	**2,124,948**	**371,158**	**2,496,106**	
	Net Operating Loss	(1,350,348)	(267,488)	(1,617,836)	
	Costs paid with donations/reserves	64,398	-	64,398	
	Net Operating Loss Allocated to Cities	**(1,285,950)**	**(267,488)**	**(1,553,438)**	

(1) Data is from FY 15/16 adopted budget
(2) Based on County records including number of animals impounded, returned to owner, kennel permits and inspections, bite/quarantine fees, vicious dog declaration fees

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

RSM-LH PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM-LH	Proposed Total	Notes		
Revenue:							
4351	Dog License - Regular	500,000	178,532	678,532	Based on license count and fee under assumptions		
4358-5444	Other Revenue	214,800	77,135[2]	291,935	Includes: Impound, adoption and vaccination fees as well as other misc fees.		
5447	Admin Citation Fines	20,000		20,000			
5600	Rents & Concessions	18,600		18,600			
5950	Donations	10,000		10,000			
5970	Misc Rev-Taxable	1,200		1,200			
5500	Interest	10,000	-	10,000			
	Revenue subtotal	**774,600**	**255,667**	**1,030,267**			
Expenditures:							
Treasury:							
	Existing Personnel (1.1 FTE)	74,874	-	74,874			
	New Personnel (0.75 FTE Acct Clerk)	-	44,695	44,695			
6521	Banking and Financial Services	20,300	7,231	27,531	Credit card/lockbox fees	0.81	per licence
6555	Other Admin Svcs-Private	7,320	1,785	9,105	Mailing services @	0.20	per licence
7101	Small Office Equipment < $2K	100	-	100			
7120	Functional Supplies	1,300	1,518	2,818	Tags	0.17	per tag
7430	Postage	17,340	4,374	21,714		0.49	billing/license renewal
7500	Repair and Maint-Equip	1,800	446	2,246	Copier charge	0.05	billing/license renewal
7625	Outside Printing	3,200	803	4,003	Envelopes	0.09	billing/license renewal
7705	Training and Education	1,500	-	1,500			
	Treasury expenditure subtotal	127,734	60,852	188,586			

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

RSM-LH PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM-LH	Proposed Total	Notes		
IT:							
6524	Software Licensing	20,400	4,800	25,200	Licencing software	960	per station
7400	Telephone	7,300	1,371	8,671	Wireless cards	457	per yr per ASO
7500	Repair and Maint-Equip	4,500	-	4,500			
8450	Computer Hardware	5,000	-	5,000			
	IT expenditure subtotal	37,200	6,171	43,371			
Fleet Maintenance:							
7150	Gasoline	25,000	10,000	35,000	Add 2 ASO truck	5,000	avg cost per ASO truck
7510	Repair & Maint-Vehicles	12,500	4,166	16,666	Add 2 ASO truck	2,083	avg cost per vehicle
	Fleet expenditure subtotal	37,500	14,166	51,666			
Park Maintenance:							
6560	Pks/Lndscp Maint-Mo Contract	57,444	-	57,444	No increase anticipated under this program.		
6561	Pks/Landscp Maint/Repair-Other	25,000	-	25,000			
7123	Minor Fixtures/Imp(nonCIP<$2K)	1,000	-	1,000			
7215	Water	26,000	-	26,000			
7500	Repair and Maint-Equip	7,000	-	7,000			
7650	Transportation Services	59	-	59			
	Park Maint expenditure subtotal	116,503	-	116,503			
Facility Maintenance:							
7122	Small Tools/Equipment <2K	500	160	660	Increase of 5.0 FTE	32	per FTE
7140	Facilities Maint Supplies	7,800	2,385	10,185		502	per FTE
7500	Repair and Maint-Equip	5,200	-	5,200	Mainly A/C repair. No increase anticipated.		
7520	Repairs & Maint-Facilities	39,907	4,546	44,453	Plumb./incidental rep.=$9,000	578	per FTE + $150/mo for build. maint. due to increase in sq. footage
	Facility Maint expenditure subtotal	53,407	7,090	60,497			

RSM-LH PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM-LH	Proposed Total	Notes
Animal Services:					
	Existing Personnel (15.55 FTE)	1,355,924		1,355,924	
	New Personnel (2.0 FTE ASO)	-	175,457	175,457	
	New Personnel (1.0 FTE AS Assist)	-	60,048	60,048	
	New Personnel (1.0 FTE AS Super.)	-	91,611	91,611	
	New Personnel (0.25 FTE Vol. Coord.)	-	20,561	20,561	
	New Personnel (0.75 FTE Lic. Rep.)	-	51,428	51,428	
6505	Spay/Neuter Surgeries WOAN073	18,000	3,200	21,200	Estimate per County records of # of dogs and cats
6506	Veterinarian Services	28,000	8,000	36,000	Estimate per County records of # of domestic animals and wildlife
6535	Other Prof/Tech Svcs-Private	14,600	12,600	27,200	Animal disposal/trapping/medical waste/rabies awareness 800 per month for deceased animal disposal + $3,000 for rabies awareness program.
6555	Other Admin Svcs-Private	10,000	3,200	13,200	Citation processing and collection thru Data Ticket. Estimate per County records for field related stats.
7100	Office Supplies	2,600	835	3,435	Increase of 5.0 FTE 167 per FTE
7101	Small Office Equipment < $2K	2,000	-	2,000	
7102	Small Office Furnishings <$2K	2,000	-	2,000	
7120	Functional Supplies	57,500	11,000	68,500	Pet food/medications/vaccinations/ kennel cleaning and supplies. Est. per County animal intake records.
7121	Safety Supplies/Equipment	750	3,000	3,750	ASO saftey equipment 1,000 per ASO Amount will decline after 1st year.
7122	Small Tools/Equipment <2K	2,000	-	2,000	
7140	Facilities Maint Supplies	6,000	1,925	7,925	Increase of 5.0 FTE 385 per FTE
7145	Uniforms/Protective Clothing	3,000	4,200	7,200	ASO uniforms 1,400 per ASO Amount will decline after 1st year.
7200	Utilities-General	1,080	-	1,080	
7210	Electricity	25,600	2,048	27,648	8% increase for additional employee and animal consumption.
7215	Water	9,000	720	9,720	8% increase for additional employee and animal consumption.
7220	Natural Gas	4,700	376	5,076	8% increase for additional employee and animal consumption.
7300	Rent-Furnishings/Equip	1,800	-	1,800	
7430	Postage	7,000	13,870	20,870	Notice letter to all households (17,975) 0.49 per letter Amount will decline in yr 2 and then again in yr 3
7500	Repair and Maint-Equip	6,000	300	6,300	Nominal 5% increase for copier maintenance charges
7520	Repairs & Maint-Facilities	2,000	-	2,000	

City of Mission Viejo
Mission Viejo Animal Services
Cities of Rancho Santa Margarita (RSM) and Laguna Hills (LH) Cost Study
January 25, 2016

RSM-LH PROPOSAL

Account #	Account Description	MV/LN/AV Total [1]	RSM-LH	Proposed Total	Notes
7620	Advertising	1,800	-	1,800	
7625	Outside Printing	8,000	-	8,000	
7640	Dues and Memberships	600	-	600	
7645	Publications & Subscriptions	300	-	300	
7655	Mileage-Private Auto	300	-	300	
7705	Training and Education	5,000	2,200	7,200	Training for 3 ASO's and 1 ASA
7932	Licenses and Permits	50	-	50	
7960	Depreciation	114,000	-	114,000	
8100	Improvements	28,000	-	28,000	
8350	Vehicles	35,000	-	35,000	
	Animal Services expenditure subtotal	1,752,604	466,579	2,219,183	
	Total Expenditures	**2,124,948**	**554,858**	**2,679,806**	
	Net Operating Loss	(1,350,348)	(299,191)	(1,649,539)	
	Costs paid with donations/reserves	64,398	-	64,398	
	Net Operating Loss Allocated to Cities	**(1,285,950)**	**(299,191)**	**(1,585,141)**	

(1) Data is from FY 15/16 adopted budget
(2) Based on County records including number of animals impounded, returned to owner, kennel permits and inspections, bite/quarantine fees, vicious dog declaration fees

DRAFT

NON BINDING MEMORANDUM OF UNDERSTANDING FOR FUNDING THE INTERIOR RENOVATION & EXPANSION OF THE MISSION VIEJO ANIMAL SERVICES ADMINISTRATION BUILDING

1. PARTIES AND DATE

This Memorandum of Understanding for Funding the Interior renovation and expansion of the animal services administration building ("MOU") is entered into on this ____ day of __________, 2016, by and between the City or Cities of _____________; a municipal organization(s) organized under the laws of the State of California with its principal place of business at ____________________________ ________________________________, California and the City of Mission Viejo, a municipal organization organized under the laws of the State of California with its principal place of business at 200 Civic Center, Mission Viejo, California 92691 ("Mission Viejo"). _____________________ and Mission Viejo are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. INTENT OF THE PARTIES

2.1 The Parties have entered into or about certain Agreement(s) for Animal Control and Shelter Services to become effective on or about January 1, 2017 whereby Mission Viejo is to perform contractually defined animal control and shelter services for ______________ ("Service Agreement").

2.2 Mission Viejo has determined that it's necessary to perform interior renovation and to expand Mission Viejo Animal Services Administration Building located at 28095 Hillcrest, Mission Viejo, California 92691, in order to accommodate administrative needs and to adequately serve the animal control and shelter needs of the residents.

2.3 The Parties desire to enter into this MOU to provide a general concept of the expansion and renovation improvements of the Mission Viejo Administration Building and the funding for same and understand that this MOU is neither a binding nor permanent expression of obligations and/or responsibilities with respect to the expansion of the Mission Viejo Animal Services Administration Building. The parties further understand and agree that the parties will continue to discuss and negotiate expansion of the City facilities and agreement of terms and conditions shall be memorialized in a separate, binding agreement.

3. ANTICIPATE TERMS AND ISSUES

3.1 Expansion/Rehabilitation. The Parties agree that the following areas of the Mission Viejo Animal Services Administration Building need to be renovated and expanded to provide additional capacity in connection with Mission Viejo's provision of animal control and shelter services to ___________.

3.1.1 Add approximately 300 sq. ft. to existing administration structures to provide additional staff space

3.1.2 Install fire sprinklers into existing campus facilities per code

3.1.3 Modify building to consolidate rooms (treatment room and separate staffing functions)

The Parties agree that it is necessary to expand these areas by an approximate area of 300 square feet ("Expansion") and renovate interior space.

3.2 Improvements. The Parties agree that it is also necessary to undertake the following improvements ("Improvements") relating to the Mission Viejo Animal Services Administration Building expansion.

3.2.1 Site improvements including hardscape, landscape and irrigation;

3.2.2 Modifications to existing Heating, Ventilation and Air Conditioning ("HVAC") units to accommodate existing system; and

3.2.3 Replace or repair certain items due to normal wear and tear.

3.3 Maintenance and Operation of Administration Building. Mission Viejo shall maintain responsibility for the operation and maintenance of the Mission Viejo Administration Building, its equipment and all its contents.

3.4 Anticipated Payment for Administration Building Expansion and Improvements. ______________________ is expected to be responsible for the funding, individually or in the aggregate of one half of the costs attributed to the Section 3.1 Expansion and the 3.2 Improvements, as and when determined by Mission Viejo. The City of Mission Viejo preliminary estimates the costs attributable to Section 3.1 and 3.2 to Six Hundred fifty thousand dollars ($650,000). This preliminary estimate is conceptual and will change. The actual final costs and allocation of the same between the Parties will be memorialized and made binding in a separate contract by and between the Parties. It is anticipated that the monies due from the respective parties will be due and payable, in full, upon phased completion of the Section 3.1 and 3.2 activities, however, payment schedules are to be negotiated, together with customary and routine construction, operational and management terms and conditions.

3.5 Governing Law. This MOU shall be governed and construed in accordance with the laws of the State of California.

3.6 Attorneys' Fees. If any legal proceeding, including an action for declaratory relief, is brought to enforce or interpret provisions of this MOU, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the party may be entitled.

3.7 Notices. All notices authorized or required by this MOU shall be deemed effective when reduced to writing and deposited in the United States mail, certified, and addressed as follows:

MISSION VIEJO: City Manager
City of Mission Viejo
200 Civic Center
Mission Viejo, CA 92691

____________:

3.8 Effective Date. The effective date of this MOU shall be ______________, 2016.

CITY OF MISSION VIEJO	CITY OF ________________
______________________ Frank Ury, Mayor	______________________ ****, Mayor
ATTEST:	ATTEST:
______________________ Karen Hamman, City Clerk	______________________ ****, City Clerk
APPROVED AS TO FORM:	APPROVED AS TO FORM:
______________________ William P. Curley, III City Attorney	______________________ **** City Attorney

DRAFT

AGREEMENT FOR ANIMAL CONTROL AND SHELTER SERVICES

THIS AGREEMENT for animal control and animal shelter services ("Agreement") is entered into by and between the City of Mission Viejo, a general law city, and the City of LAGUNA HILLS, California ("LAGUNA HILLS"), a California general law city, and is effective on the commencement date set forth in Section 1.

WITNESSETH:

1. LAGUNA HILLS desires to contract with MISSION VIEJO for the performance of the hereinafter-described animal control and animal shelter services.

2. MISSION VIEJO is willing and able to render animal control and shelter services on the terms and conditions hereinafter set forth.

NOW THEREFORE, IT IS MUTUALLY AGREED as follows:

1. TERM

   This Agreement shall become effective on January 1, 2017, and shall continue in effect until June 30, 2024, (7 years), unless terminated as provided for in Paragraphs 2 and 5. This Agreement shall also have an extension term allowing this Agreement to be extended for one additional, consecutive five year term.

2. TERMINATION

   A. Either party may terminate this Agreement by providing written notice of said termination to the other party as provided hereafter. The written notice of termination must be given not less than one (1) calendar year in advance of the date the termination is to be effective as defined in Section 2B below.

   B. Upon provision of the written notice of termination provided for in subparagraph 2A, this Agreement shall terminate on the next June 30 that occurs not less than one (1) year after the date of said notice of termination.

3. SERVICES

   A. MISSION VIEJO agrees to provide in its reasonable discretion animal control services within the corporate limits of LAGUNA HILLS. The level of animal control and animal shelter services to be provided under this Agreement shall be substantially the same as that customarily provided to residents of MISSION VIEJO. Services provided by MISSION VIEJO shall include the enforcement of State of California statutes deemed applicable to LAGUNA HILLS by MISSION VIEJO in its sole discretion. MISSION VIEJO will not be obligated to enforce any ordinances adopted by LAGUNA HILLS except those adopted in compliance with Paragraph 5 of this Agreement. Services shall be provided in the following three categories:

(1) FIELD SERVICES: MISSION VIEJO shall be responsible for and provide all animal control field services in LAGUNA HILLS. Field services shall be reasonably provided seven days a week, 24 hours per day, 365 days a year. Field services shall include, but not limited to: patrol of assigned area; impounding of stray dogs; field release to owner; transportation of all injured impounded animals to a veterinarian for emergency care; impounding and disposal of stray and owner deceased animals; pick-up of injured or deceased wildlife; cruelty investigations; bite investigations; quarantine reports; vicious dog investigations; nuisance animal investigations; animal facility inspections and permits; special animal event inspections and permits; enforcement of state and local laws and regulations, and issuance of citations; and public information and education services regarding domestic animals, wildlife, and general animal related regulations. Routine field services shall generally be provided between the hours of 8:00am and 5:00pm. Telephone service request lines shall be answered between 8:00am and 5:00pm Monday through Saturday, except Holidays, Wednesdays 9:00am to 6:00pm, and Sunday, noon-3:00pm. For emergency and non-emergency field services between 5:00pm and 8:00am, staff will respond to emergency field services through an automated answering system, all non-emergency messages will be returned the following business day.

(2) SPECIAL SERVICES: MISSION VIEJO shall be responsible for and provide all pet licensing and license renewals, gaining compliance of delinquent pet license, and animal facility licensing and inspection in LAGUNA HILLS. New pet licenses shall be available at the Mission Viejo Animal Services Center, at the Mission Viejo City Hall, and in the field through Animal Services Officers. Pet license renewals shall be processed by mail or through an automated online renewal system. MISSION VIEJO will process renewals and answer questions regarding pet licensing requirements in-person or by telephone. MISSION VIEJO Animal Services Officers shall issue an administrative citation for a pet license, but only after prior notifications have not been successful.

All animal related businesses in LAGUNA HILLS will be inspected annually and in response to any complaints to assure that facilities meet required laws and standards. MISSION VIEJO shall provide advance notification of such inspections to LAGUNA HILLS animal related business owners.

Low cost vaccination clinics will be held four times a year at the Mission Viejo Animal Services Center for pet owners in LAGUNA HILLS. Mission Viejo Animal Services will attend low cost vaccination clinics within LAGUNA HILLS when requested to issue pet licensing to LAGUNA HILLS residents.

(3) SHELTER SERVICES: MISSION VIEJO shall be responsible for and provide animal shelter services to LAGUNA HILLS. Services shall be provided at the Mission Viejo Animal Services Center, 28095 Hillcrest, Mission Viejo ("Center). The Center will be open to the public to locate lost pets or for pet adoption seven days per week, Monday through Sunday, except holidays. Public hours may vary from day to day, but shall generally be between 11am and 4pm.

The Center shall retain dogs and cats that have owner identification for ten (10) calendar days for the purpose of owner redemption. The shelter shall retain dogs and cats without owner identification for five (5) calendar days for owner redemption. Animals will be kept on public display to allow owner identification and redemption. When animals are wearing identification, owners will be contacted by telephone, mail and/or field notice at the election of Mission Viejo. After the owner redemption holding period, the Center shall retain all healthy, non-vicious dogs and cats indefinitely for public adoption.

MISSION VIEJO agrees to maintain the Center in a humane manner and keep said premises in a clean condition at all times in accordance with the policies and the budget approved by MISSION VIEJO for the shelter, and that all services furnished by it hereunder shall be in accordance with the laws of the State of California, and that it will give required notices and use humane methods of care and destruction of any animal coming under its jurisdiction pursuant to its policies.

The decision to euthanize any animal will be based on a complete evaluation of an animal's overall health, temperament, age and adoptability with due consideration of the welfare of the animal. The decision to euthanize will be made by the Animal Services Manager or designee, which will include input from one or more of the following: a) a licensed Veterinarian; b) a designated volunteer member of the non-profit group DAWG (Dedicated Animal Welfare Group); c) a certified Dog Trainer; d) Mission Viejo Animal Services staff. The Mission Viejo Animal Services Center will prepare documentation for each animal that is euthanized explaining how and why the decision for euthanasia was reached. Each member that was included in the decision process will sign this documentation.

B. MISSION VIEJO shall furnish and supply all necessary labor, supervision, equipment and supplies to provide the services described in this Agreement in Section 3. In all instances wherein special supplies, stationery, notices, forms and the like are desired to set forth the name, logo, or other mark of LAGUNA HILLS, the same shall be supplied from time to time by LAGUNA HILLS at its own expense.

C. The method by which services are provided, the standard of performance, any other matters incidental to the performance of such services, and the control of personnel so employed, shall be determined by MISSION VIEJO. In the event of a dispute between the parties as to the extent of the duties and functions to be provided hereunder, or the level and manner of such services, the parties shall meet in good faith to resolve their differences. In the event of an impasse, the decision of the City Manager of MISSION VIEJO shall be final.

D. To facilitate the performance of services hereunder, MISSION VIEJO shall be provided the unrestricted cooperation and assistance of and from LAGUNA HILLS, its officers, agents and employees.

E. Upon the mutual written agreement of the parties, additional services may be rendered by MISSION VIEJO and paid for by LAGUNA HILLS.

4. STATUS OF CONTRACTOR

Although the services herein described are municipal functions, all persons employed by MISSION VIEJO to provide said services shall be MISSION VIEJO employees; no person employed hereunder shall have the right to any LAGUNA HILLS pension or civil service status. When performing services under this Agreement and for the purpose of giving official status to the performance therefore where necessary, but not for the purpose of liability or indemnification, every MISSION VIEJO officer or employee shall be deemed to be an officer or agent of LAGUNA HILLS.

5. CONFORMITY OF LAGUNA HILLS ORDINANCES WITH MISSION VIEJO ORDINANCES

A. LAGUNA HILLS has adopted ordinances concerning animal control. MISSION VIEJO shall review the LAGUNA HILLS ordinances relative to the MISSION VIEJO ordinances and regulations and the City Manager of MISSION VIEJO shall advise LAGUNA HILLS as to whether LAGUNA HILLS needs to amend or repeal any of its ordinances and/or whether LAGUNA HILLS needs to adopt any new ordinances or regulations, including related fees. If LAGUNA HILLS fails to take the requested action within one hundred eighty (180) days of receiving written notice from the City Manager of MISSION VIEJO, MISSION VIEJO may, in its discretion, automatically terminate this Agreement, notwithstanding Section 2 of this Agreement.

MISSION VIEJO may adopt new animal control ordinances and/or regulations in the future or amend or repeal its existing ordinances and/or regulations. If MISSION VIEJO takes any such action, the City Manager of MISSION VIEJO may request that LAGUNA HILLS take all or some of the same actions. If LAGUNA HILLS fails to take such requested action within one hundred eighty (180) days of receiving written notice from the City Manager of MISSION VIEJO, MISSION VIEJO may, in its discretion, automatically terminate this Agreement, notwithstanding Section 2 of this Agreement.

B. LAGUNA HILLS shall maintain all ordinances, resolutions or other regulations necessary to enable MISSION VIEJO personnel to enforce the ordinances and laws within the corporate jurisdiction of LAGUNA HILLS.

6. PREPARATION OF ANNUAL BUDGET

MISSION VIEJO agrees that the City Manager of LAGUNA HILLS shall have the right to review the preparation of Mission Viejo's Animal Service Program budgets for fiscal years in which this Agreement remains in effect.

7. PAYMENTS

A. BASIS FOR PAYMENT FOR MISSION VIEJO PERFORMANCE AS DEFINED IN SECTION 7B

LAGUNA HILLS shall pay MISSION VIEJO for the actual costs of providing animal control and animal shelter services to the areas within the corporate limits of LAGUNA HILLS in accordance with Subsections B. through F.

B. PAYMENT METHOD

(1) LAGUNA HILLS shall make quarterly provisional payments to MISSION VIEJO in an amount equal to twenty-five percent (25%) of the estimated Provisional Payment, defined below, for the then applicable fiscal year. The estimated Provisional Payment for each fiscal year shall be determined by mutual agreement during MISSION VIEJO's annual budget preparation process for that fiscal year provided for in Paragraph 6. In the event the parties do not reach agreement upon the amount of the Provisional Payment for a fiscal year by July 1 for that fiscal year, then the Provisional Payment for the immediately preceding fiscal year shall be used, each party recognizing that the Actual Costs of the services provided for that fiscal year shall be determined pursuant to Paragraph 7C. Each quarterly payment shall be due thirty (30) days after the end of the quarter in which services were provided ("due date").

(2) If a payment is not received by MISSION VIEJO within thirty (30) days after the due date, MISSION VIEJO may cease providing any further service under this Agreement to LAGUNA HILLS and may satisfy the indebtedness in any manner prescribed by law and Section 2 of this Agreement.

(3) Exceptions to payment to MISSION VIEJO: LAGUNA HILLS shall not be called upon to assume any economic responsibility for:

(a) direct payment of any salaries, wages or other compensation to any MISSION VIEJO personnel performing services pursuant to this Agreement;

(b) any expenditure of costs other than specifically provided for in Paragraph 7 of this Agreement except as the same may arise under Paragraph 12; and

(c) compensation or indemnity to any MISSION VIEJO employee for injury or sickness arising out of his or her employment while performing services pursuant to this Agreement; provided, however, the costs of such expenses described in this subparagraph shall be considered expenditures for the Animal Services program and shall be allocated pursuant to the terms of Paragraph 7C of this Agreement.

C. DETERMINATION OF ACTUAL COST OF SERVICES

(1) MISSION VIEJO shall collect and maintain expenditure and workload data to be used to determine the Actual Cost of the animal control and shelter services provided to LAGUNA HILLS for each fiscal year during the term of this Agreement.

(2) LAGUNA HILLS's Actual Cost of Animal Services shall be determined for each fiscal year. This shall be done by applying LAGUNA HILLS's percentage of the total population of the total pool of all participating cities of LAGUNA HILLS, LAGUNA NIGUEL, ALISO VIEJO and MISSION VIEJO to the Net Cost for the Animal Services program. Net Cost shall be calculated by subtracting the total fiscal year revenues from the expenditures for animal services. Population shall be based on the State Controller's population estimate for each City for the January 1 immediately preceding the applicable fiscal year.

(3) Any monetary donations received by MISSION VIEJO or LAGUNA HILLS shall be placed in dedicated Animal Services budgets. Funds shall be used, as determined by MISSION VIEJO and in consultation with the Dedicated Animal Welfare Group, to fund extraordinary care of the animals and or one time capital expenses to aid in improving the care of the animals sheltered at the Center.

D. FEE REVENUE

(1) MISSION VIEJO shall have all powers of LAGUNA HILLS and shall receive all cooperation possible from LAGUNA HILLS to enable efficient enforcement of fee collection. MISSION VIEJO shall retain all fees and revenue derived from the enforcement of the LAGUNA HILLS ordinances pertaining to the animal control services provided by MISSION VIEJO, provided that such fees and revenues will be included in the calculation of Net Cost, as described in Section 7C(2).

(2) MISSION VIEJO agrees to keep a record of all license revenue collected from residents of LAGUNA HILLS, and all fee revenue generated from animals received from LAGUNA HILLS residents or impounded within the corporate limits of LAGUNA HILLS.

E. ADJUSTMENTS TO PROVISIONAL PAYMENT

(1) MISSION VIEJO agrees to complete the calculation of the Actual Cost of Service for animal shelter services for a fiscal year, on or before the December 31 immediately following the end of the fiscal year.

(2) If the Actual Cost of Service for any fiscal year is greater than the Provisional Payments for a fiscal year, then MISSION VIEJO shall invoice LAGUNA HILLS for the difference. If payment of the difference is not received by MISSION VIEJO within sixty (60) days after the invoice is submitted, MISSION VIEJO may satisfy the indebtedness in any manner prescribed by law and, in its sole election, may discontinue services to LAGUNA HILLS under this

Agreement. If the Actual Cost of Service for any fiscal year is less than the provisional payments for a fiscal year, MISSION VIEJO will credit or refund the difference within sixty (60) days of the determination of the Actual Cost of Service.

F. PROHIBITION ON RECOUPMENT OF INITIAL SHELTER COSTS

MISSION VIEJO agrees that LAGUNA HILLS shall not be expected or required to make any payment or provide any reimbursement to MISSION VIEJO for MISSION VIEJO'S animal services and shelter program start-up costs and capital investment, including but not limited to, costs for land acquisition, shelter design and construction, and the purchase of vehicles, furniture, fixtures and equipment.

Depreciation is an allowable expense under Section 7C(2) for the purpose of replacement and rehabilitation of capital assets. Depreciation is not considered recouping the original cost of a capital asset but rather funding the replacement and rehabilitation cost of that capital asset.

G. ANIMAL SERVICES CAPITAL ASSETS

OWNERSHIP: Capital assets, including but not limited to, costs for land, animal shelter facilities, vehicles, furniture, fixtures and equipment shall be owned by MISSION VIEJO.

FINANCING ACQUISITION OF CAPITAL ASSETS: LAGUNA HILLS's share of the cost of capital assets shall be determined in the same manner that LAGUNA HILLS's Actual Cost of Service is determined as set forth in Section 7C(2).

FINANCING THE REPLACEMENT OR REHABILIATION OF CAPITAL ASSETS: The cost of capital assets will be depreciated on a straight line basis over their useful lives. This depreciation calculation will increase expenditures in Section 7C(2). Accumulated depreciation will be used to help finance the replacement and rehabilitation of capital assets.

MISSION VIEJO and LAGUNA HILLS will enter into separate agreements for new capital improvement projects relating to non-operating capital expenses.

H. In the event that this Agreement shall be terminated by either party, both parties agree to meet in good faith to equitably split the unspent revenues after all costs have been covered by the CITY OF MISSION VIEJO for current year operating expenses and capital expenses in the process of construction.

I. In the event that this Agreement shall be terminated by either party, both parties agree to meet in good faith to equitably split the balance of the depreciated capital for those items LAGUNA HILLS has been paying for through the depreciation calculation.

8. BINDING ARBITRATION

Any dispute arising with respect to Section 7(H) and (I) that cannot be settled by good faith negotiation shall be settled by binding arbitration in accordance with the Rules of the American Arbitration Association. Arbitrators shall be selected from the list of retired judges of the Orange County Superior Court or any California appellate court. The arbitration shall be held in Orange County, California. Any decision or award rendered by the arbitrator shall be in writing stating a factually detailed, reasoned opinion of the arbitrator's findings of fact and conclusions of law, and shall be signed by the Arbitrator. The Arbitrator, in deciding any dispute under Section 7(H) and (I), shall base his or her decision or award on the record, shall have no power or authority to award special, consequential, punitive, or exemplary damages, and shall look to the substantive laws, and not the laws of conflicts, of the State of California for the resolution of the Dispute. Both parties reserve the right to conduct full discovery pertinent to California Code of Civil Procedure, Section 1283.05. Any costs for said Arbitration shall be borne equally by both parties.

9. CONSULTATION

MISSION VIEJO agrees to consult with LAGUNA HILLS during the consideration of, and prior to any final decision and/or implementation of the following:

A. The Animal Services annual operating budget and capital improvement program for each fiscal year this Agreement is in effect.

B. Any proposed change in the level of service, staffing, days or hours of operation of field services, special services or shelter services.

C. Any proposal to offer or contract for the provision of animal control and shelter services to another public agency.

D. Any change in the method by which MISSION VIEJO determines general administrative costs, general overhead costs, indirect costs, depreciation of capital assets or insurance costs with respect to the allocation to the Animal Services program budget.

E. Any proposed changes to MISSION VIEJO ordinances, regulations, and fees concerning animal control services that MISSION VIEJO would propose be adopted by LAGUNA HILLS.

F. Any proposed changes in insurance coverage for the animal control operations and/or any potential change in costs for such coverage.

G. MISSION VIEJO on or about March 1 of the year in which MISSION VIEJO begins preparation of the two-year budget cycle shall submit a draft budget to the City Manager of LAGUNA HILLS for review and comment prior to processing the final document and presenting it to the City Council of MISSION VIEJO for adoption.

10. RECORDS

All records created or received by MISSION VIEJO in accordance with this Agreement shall be MISSION VIEJO records. MISSION VIEJO agrees to keep such books and records in such form and manner as the Director of Administrative Services of MISSION VIEJO shall specify. Said books shall be open for examination by LAGUNA HILLS at all reasonable times.

11. CAPITAL ASSETS AND DEPRECIATED ITEMS

MISSION VIEJO shall provide LAGUNA HILLS, upon request, with a list of capital assets and depreciated items with respect to the provision of services under this Agreement at the time it provides a budget for approval by the City Council of MISSION VIEJO.

12. ALTERATION OF TERMS

This Agreement fully expresses all understandings of MISSION VIEJO and LAGUNA HILLS with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition, or alteration, of the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

13. INDEMNIFICATION

A. That neither MISSION VIEJO nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by LAGUNA HILLS under or in connection with any work, authority or jurisdiction delegated to LAGUNA HILLS under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, LAGUNA HILLS shall fully defend, indemnify and hold MISSION VIEJO harmless from any liability imposed for injury (as defined by Government Code Section 810.8), including attorney's fees and costs, occurring by reason of anything done or omitted to be done by LAGUNA HILLS under or in connection with any work, authority or jurisdiction delegated to LAGUNA HILLS under this Agreement.

B. That neither LAGUNA HILLS nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done be MISSION VIEJO under or in connection with any work, authority or jurisdiction delegated to MISSION VIEJO under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, MISSION VIEJO, shall fully defend, indemnify and hold LAGUNA HILLS harmless from any liability imposed for injury (as defined by Government Code Section 810.8), including attorney's fees and costs, occurring by reason of anything done or omitted to be done by MISSION VIEJO under or in connection with any work, authority or jurisdiction delegated to MISSION VIEJO under this Agreement.

14. BREACH OF AGREEMENT

Except as provided in Section 2, if either MISSION VIEJO or LAGUNA HILLS defaults in the performance of the terms or conditions of the Agreement, it shall have thirty (30) days after service upon it of a written notice of default in which to cure the default by rendering satisfactory performance. In the event that a party fails to cure its default within such period of time, the other party shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity, or under this Agreement. The failure of either party to object to any default in the performance of the terms and conditions of this Agreement shall not constitute a waiver of either the term or condition, or of any other term or condition of this Agreement.

15. ATTORNEY'S FEES

If any legal proceeding, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the party may be entitled.

16. NOTICES

Unless the persons or addresses are otherwise identified by notice given in the manner specified by this paragraph, all notices authorized or required by this Agreement shall be deemed effective when reduced to writing and deposited in the United States mail, certified, and addressed as follows:

To MISSION VIEJO:	City Manager City of Mission Viejo 200 Civic Center Mission Viejo, CA 92691
To LAGUNA HILLS:	City Manager City of Laguna Hills 12 Journey, Suite 100 Aliso Viejo, CA 92656

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MISSION VIEJO

Frank Ury, Mayor

ATTEST:

Karen Hamman, City Clerk

APPROVED AS TO FORM:

William P. Curley III, City Attorney

CITY OF LAGUNA HILLS

Barbara Kogerman, Mayor

ATTEST:

Peggy J. Johns, City Clerk

APPROVED AS TO FORM:

Gregory E. Simonian, City Attorney

EXHIBIT B

5-Year Cost Differential Analysis

(without the City of Rancho Santa Margarita)

EXHIBIT B
LAGUNA HILLS WITHOUT RSM

	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5	5-Year Totals
Mission Viejo							
Net Cost Operating*	$ 194,754	$ 200,597	$ 204,609	$ 210,747	$ 217,069	$ 223,581	
Initial Capital Contribution	$ -	$ 347,600	$ -	$ -	$ -	$ -	
Vehicle	$ -	$ 65,000	$ -	$ -	$ -	$ -	
Capital Replacement Fund	$ -	$ -	$ 15,000	$ 15,000	$ 15,000	$ 15,000	
Total Costs	$ 194,754	$ 613,197	$ 219,609	$ 225,747	$ 232,069	$ 238,581	$ 1,529,202
County of Orange							
Net Cost Operating/Capital*	$ 135,808	$ 159,882	$ 164,679	$ 169,619	$ 174,708	$ 179,949	
New Shelter Contribution	$ -	$ 222,122	$ -	$ -	$ -	$ -	
Total Costs	$ 135,808	$ 382,004	$ 164,679	$ 169,619	$ 174,708	$ 179,949	$ 1,070,959
Cost Differential to Contract with Mission Viejo		**$ 231,192**	**$ 54,930**	**$ 56,128**	**$ 57,362**	**$ 58,632**	**$ 458,244**
Percentage Difference		**61%**	**33%**	**33%**	**33%**	**33%**	

* Assumes a 3% annual increase, except in year 2 for Mission Viejo which assumes a 2% increase to accommodate for one-time expenses in year 1 and an additional $20K in year 1 under the County to accommodate for increased costs.

EXHIBIT C

5-Year Cost Differential Analysis

(with the City of Rancho Santa Margarita)

EXHIBIT C
LAGUNA HILLS WITH RSM

	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5	5-Year Totals
Mission Viejo							
Net Cost Operating*	$ 165,199	$ 170,155	$ 173,558	$ 178,765	$ 184,128	$ 189,652	
Initial Capital Contribution		$ 345,700	$ -	$ -	$ -	$ -	
Vehicle		$ 65,000	$ -	$ -	$ -	$ -	
Capital Costs	$ -	$ -	$ 15,000	$ 15,000	$ 15,000	$ 15,000	
Total Costs	**$ 165,199**	**$ 580,855**	**$ 188,558**	**$ 193,765**	**$ 199,128**	**$ 204,652**	**$ 1,366,957**
County of Orange							
Net Cost Operating/Capital*	$ 135,808	$ 159,882	$ 164,679	$ 169,619	$ 174,708	$ 179,949	
New Shelter Contribution	$ -	$ 222,122	$ -	$ -	$ -	$ -	
Total Costs	**$ 135,808**	**$ 382,004**	**$ 164,679**	**$ 169,619**	**$ 174,708**	**$ 179,949**	**$ 1,070,959**
Cost Differential to Contract with Mission Viejo		**$ 198,851**	**$ 23,879**	**$ 24,146**	**$ 24,420**	**$ 24,703**	**$ 295,999**
Percentage Difference		**52%**	**15%**	**14%**	**14%**	**14%**	

* Assumes a 3% annual increase, except in year 2 for Mission Viejo which assumes a 2% increase to accommodate for one-time expenses in year 1 and an additional $20K in year 1 under the County to accommodate for increased costs.