# CITY OF LAGUNA HILLS
# CITY COUNCIL/PLANNING AGENCY
# REGULAR MEETING AGENDA
# NOVEMBER 26, 2013

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

**Barbara D. Kogerman, Mayor**
**Andrew Blount, Mayor Pro Tempore** — **Melody Carruth, Council Member**
**Randal Bressette, 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

### ANNOUNCEMENT OF CLOSED SESSION ITEMS

### A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code Section 54957(b)(1)
Public Employee Title: City Manager - Annual Performance Evaluation

**PUBLIC COMMENT ON CLOSED SESSION ITEMS**

**ADJOURN TO CITY COUNCIL CONFERENCE ROOM**

**CONVENE INTO CLOSED SESSION**

**RECONVENE TO CITY COUNCIL CHAMBER**

**RECESS**

**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 BRESSETTE**

**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 KERSTYN GONZALES.

1.2 CERTIFICATE OF RECOGNITION, JANELL KEIDER, PET THERAPY PROGRAM

RECOMMENDATION: THAT MAYOR KOGERMAN PRESENT A CERTIFICATE OF RECOGNITION TO JANELL KEIDER, ALONG WITH THERAPY DOG JENNA, RECOGNIZING THEIR SERVICE AND CONTRIBUTIONS TO THE COMMUNITY THROUGH THE PET THERAPY PROGRAM.

1.3 PRESENTATION FROM THE TRANSPORTATION CORRIDOR AGENCIES REGARDING THE TOLL ROAD EXPRESS ACCOUNT

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE A PRESENTATION FROM NEIL PETERSON, WITH THE TRANSPORTATION CORRIDOR AGENCIES, ON THE PLANNED REMOVAL OF CASH TOLL COLLECTION FROM THE TOLL ROADS.

## 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 NOVEMBER 12, 2013

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MINUTES OF THE NOVEMBER 12, 2013, REGULAR MEETING.

3.3 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED NOVEMBER 26, 2013

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $1,024,171.17.

3.4 PROGRESS PAYMENT NO. 28, FINAL, FOR LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 28, FINAL, IN THE NET AMOUNT OF $8,811.37, TO SEMA CONSTRUCTION, INC., FOR THE LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159, AND AUTHORIZE THE FILING OF THE NOTICE OF COMPLETION AND SUBSEQUENT RELEASE OF RETENTION IN 35 DAYS, IF NO LIENS HAVE BEEN FILED.

3.5 PARTICIPATION IN THE COUNTYWIDE PUBLIC MASS NOTIFICATION SYSTEM - "ALERTOC"

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF ORANGE AND THE CITY OF LAGUNA HILLS FOR USE OF THE COUNTYWIDE EMERGENCY PUBLIC MASS NOTIFICATION SYSTEM, "ALERTOC," AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE MEMORANDUM OF UNDERSTANDING.

**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 NOVEMBER 12, 2013

RECOMMENDATION: THAT THE PLANNING AGENCY APPROVE THE MINUTES OF THE NOVEMBER 12, 2013, REGULAR MEETING.

4.4 ADMINISTRATIVE REPORTS

4.5 PLANNING AGENCY PUBLIC HEARINGS

**PLANNING AGENCY ADJOURNMENT**

**5. CITY COUNCIL PUBLIC HEARINGS**

5.1 ZONING TEXT AMENDMENT NO. ZTA 11-13-2720, AN AMENDMENT TO TITLE 9 OF THE LAGUNA HILLS MUNICIPAL CODE (ZONING AND SUBDIVISIONS) TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS AND REVISE THE DEVELOPMENT CODE COMPLIANCE POLICY

RECOMMENDATION: THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC HEARING; AND (2) INTRODUCE FOR FIRST READING, READ BY TITLE ONLY, AND WAIVE FURTHER READING, AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING TITLE 9 OF THE LAGUNA HILLS MUNICIPAL CODE (ZONING AND

SUBDIVISIONS) TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS AND REVISE THE DEVELOPMENT CODE COMPLIANCE POLICY."

## 6. ADMINISTRATIVE REPORTS

6.1 City Manager

6.1.1 AMBULANCE CONTRACT AWARD AUTHORITY

RECOMMENDATION: THAT THE CITY COUNCIL DELEGATE AUTHORITY FOR THE AWARD OF AN AMBULANCE CONTRACT TO THE ORANGE COUNTY FIRE AUTHORITY.

6.2 Community Development Director

6.2.1 INFORMATION CONCERNING THE HIRING OF A NOISE CONSULTANT TO PROVIDE PEER REVIEW SERVICES REGARDING THE APRIL 2013 NOISE STUDY REPORT FOR THE INTERSTATE 5 (I-5) WIDENING PROJECT FROM STATE ROUTE 73 (SR-73) TO EL TORO ROAD

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AND FILE THE REPORT.

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

## 8. CITY COUNCIL MEMBER COMMENTS

## ADJOURNMENT

The next Regular Meeting of the City Council will be December 10, 2013, in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

## CERTIFICATION

I, PEGGY J. JOHNS, 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 La Paz Center by November 22, 2013, at 5:00 PM.

Peggy J. Johns

**PEGGY J. JOHNS, CITY CLERK**

NOVEMBER 22, 2013

**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:** NOVEMBER 26, 2013

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** PEGGY J. JOHNS
CITY CLERK

**ISSUE:** CERTIFICATE OF RECOGNITION, JANELL KEIDER, PET THERAPY PROGRAM

**RECOMMENDATION:** THAT MAYOR KOGERMAN PRESENT A CERTIFICATE OF RECOGNITION TO JANELL KEIDER, ALONG WITH THERAPY DOG JENNA, RECOGNIZING THEIR SERVICE AND CONTRIBUTIONS TO THE COMMUNITY THROUGH THE PET THERAPY PROGRAM.

**SUMMARY:**

The City of Laguna Hills recognizes and honors outstanding accomplishments achieved by our residents. Janell Keider and her late therapy dog, Jenna, together as a Certified Pet Therapy Team, provided pet therapy to people of all ages in the community. Providing pet therapy with Jenna enriched Janell's life greatly, and enabled her to serve and impact her community in ways she could not have done alone. It is in order to recognize and commend Janell Keider and Jenna for their service and contributions to the community.

**ATTACHMENTS:**

- Certificate of Recognition

**11/26/2013 ITEM NO. 1.2**

# CERTIFICATE OF RECOGNITION

# JANELL KEIDER
# PET THERAPY PROGRAM

**WHEREAS**, *in 2003, Janell and her late therapy dog, Jenna, learned about therapy dogs through an outreach program at Saddleback Church and began volunteering through the Saddleback Valley Humane Society, visiting residents in Assisted Living Facilities; and*

**WHEREAS**, *in 2004, Janell and Jenna completed training to become a Certified Pet Therapy Team through the nationwide, non-profit organization Delta Society, now known as Pet Partners. Because Jenna was so wonderful with children, they joined the Pet Therapy Program at Children's Hospital of Orange County (CHOC). In 2006, Janell and Jenna were ready to start a Pet Therapy Program at CHOC Mission Hospital. Janelle and Jenna were honored to be chosen as the first team to begin the program and helped to establish program guidelines; and*

**WHEREAS**, *in 2008, Janell and Jenna joined the Pet Therapy Program at Mission Hospital visiting patients in the Acute Rehab Unit where they provided Animal Assisted Therapy and also continued to visit children at both CHOC locations. Janell became the trainer/evaluator of new incoming Pet Therapy Teams from 2008 to present; and*

**WHEREAS**, *in 2011, Janell and Jenna were proud to assist the children of the 3/5 Marines, adopted by the City of Laguna Hills, at a "Halfway through Deployment" party; and in 2012 they assisted Bravo Battery Family Day, both events were held at Camp Pendleton; and*

**WHEREAS**, *Jenna was a remarkable dog and worked alongside Janell for over 10 years, helping people of all ages. Jenna made her final pet therapy visit at CHOC Children's Mission Hospital on September 10, 2013, her 13th birthday*

**NOW, THEREFORE,** *I, Barbara Kogerman, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby commend Janell Keider and Jenna for their service and contributions to the community through the Pet Therapy Program.*

**Dated this 26th day of November 2013.**

**BARBARA D. KOGERMAN, MAYOR**

**11/26/2013 ITEM NO. 1.2**

# City of Laguna Hills
## City Council Meeting Agenda
## Staff Report

**DATE:** **NOVEMBER 26, 2013**

**TO:** **MAYOR AND COUNCIL MEMBERS**

**FROM:** **PEGGY J. JOHNS**
**CITY CLERK**

**ISSUE:** **PRESENTATION FROM THE TRANSPORTATION CORRIDOR AGENCIES REGARDING THE TOLL ROAD EXPRESS ACCOUNT**

**RECOMMENDATION:** **THAT THE CITY COUNCIL RECEIVE A PRESENTATION FROM NEIL PETERSON, WITH THE TRANSPORTATION CORRIDOR AGENCIES, ON THE PLANNED REMOVAL OF CASH TOLL COLLECTION FROM THE TOLL ROADS.**

**SUMMARY:**

The Transportation Corridor Agencies (TCA) which operates The Toll Roads in Orange County, will soon provide cash customers new ways to pay on the SR 73, 133, 241 and 261 Toll Roads. Express Account will utilize drivers' license plates instead of transponders to identify a vehicle and collect the toll. The new Express Account will be available in early 2014.

Neil Peterson, CEO of the Transportation Corridor Agencies, will be presenting a PowerPoint on this planned removal of cash toll collection from The Toll Roads.

**ATTACHMENT**

- PowerPoint Presentation

**11/26/2013 ITEM NO. 1.3**

The Toll Roads®

# *Non-Stop Travel for All Customers Coming Soon*

Transportation Corridor Agencies™



11/26/2013 ITEM NO. 1.3

# The Toll Roads®

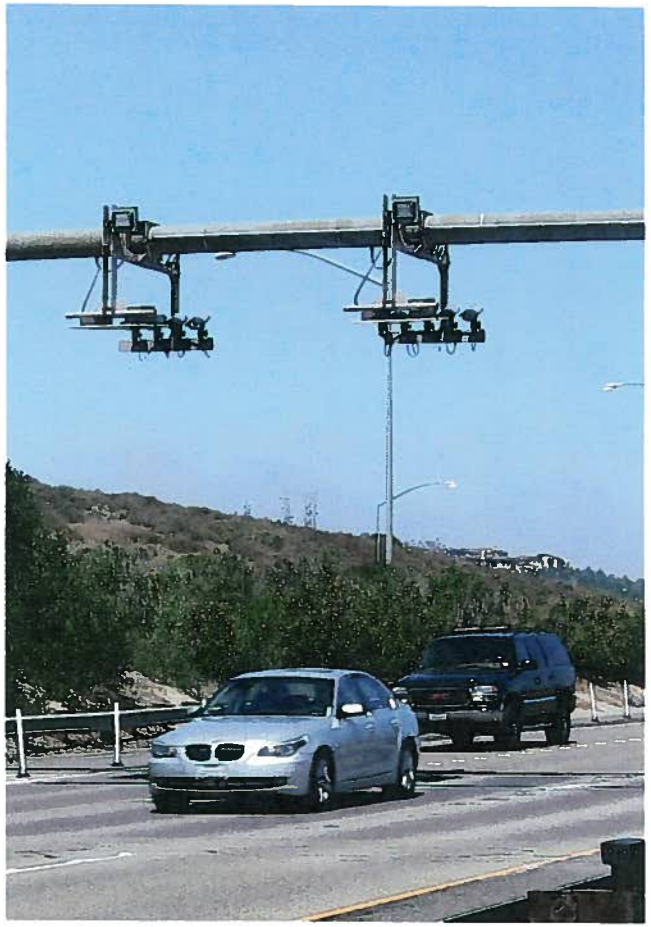
- Transportation Corridor Agencies (TCA) operates Orange County's 51-mile Toll Road network (SRs 73, 133, 241, 261)
- TCA's toll roads were the first in California and the first to offer electronic toll collection – FasTrak®
- 250,000 transactions every week day
- 81 percent of customers pay with FasTrak
- 16 percent pay with cash
- Toll Road benefits include time savings, predictability and less stress

# We asked the 16 percent…

- In surveys and focus groups, cash customers said they want:
  - a ***variety of ways to pay***
  - a ***non-stop, stress free*** experience on The Toll Roads

# Introducing EXPRESSACCOUNT™

- No stopping at toll plazas
- No searching or fumbling for exact change
- No fear
- No transponder needed
- No need to pre-pay tolls
- No monthly account fee

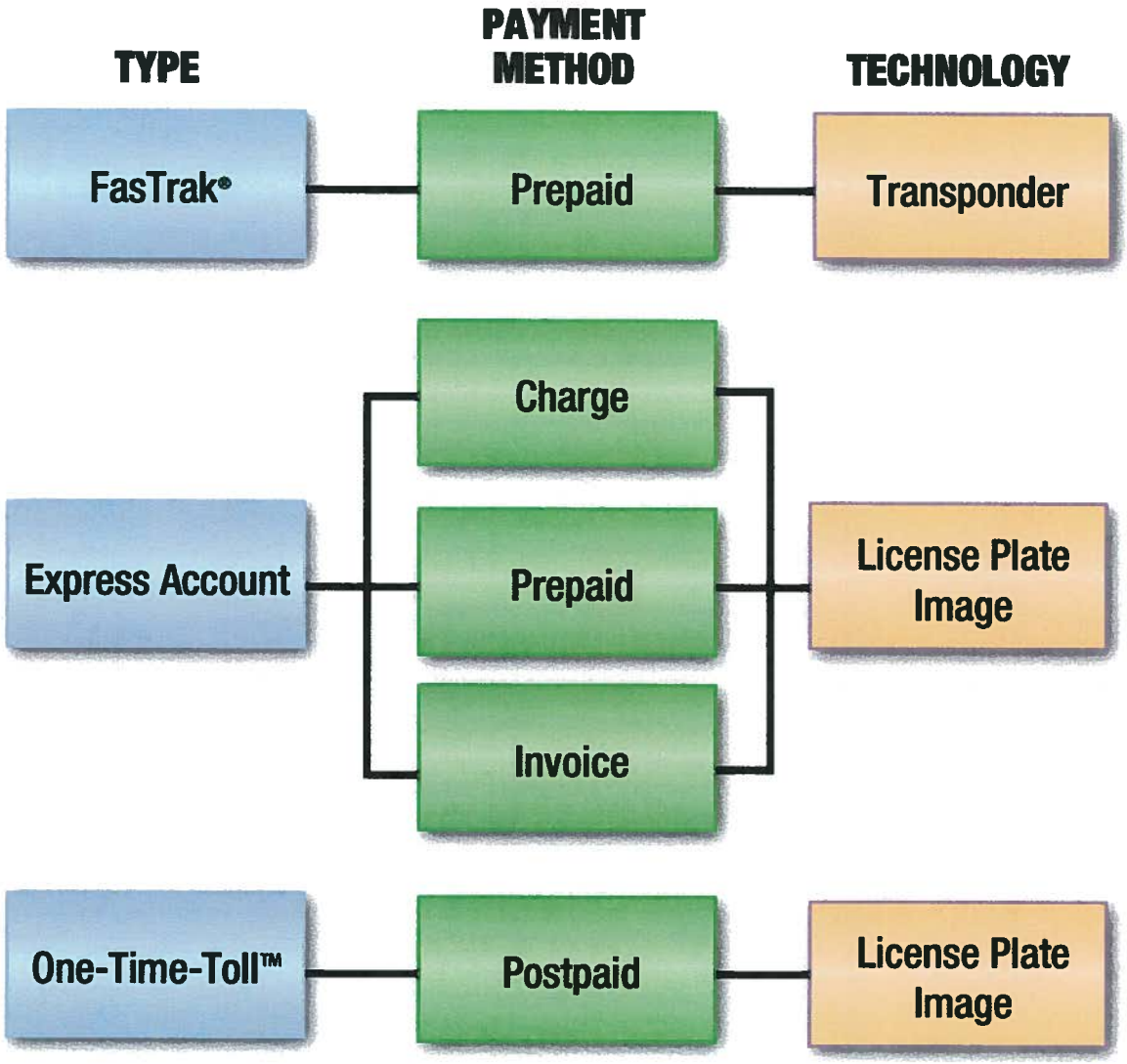


# Introducing ExpressAccount™

## ExpressAccount™

- Express Accounts will be available for customer sign ups in January 2014
- Express Accounts can only be used on the 73, 133, 241 and 261 Toll Roads
- Cash collection will be removed mid-2014

# Giving the Customer More Choices

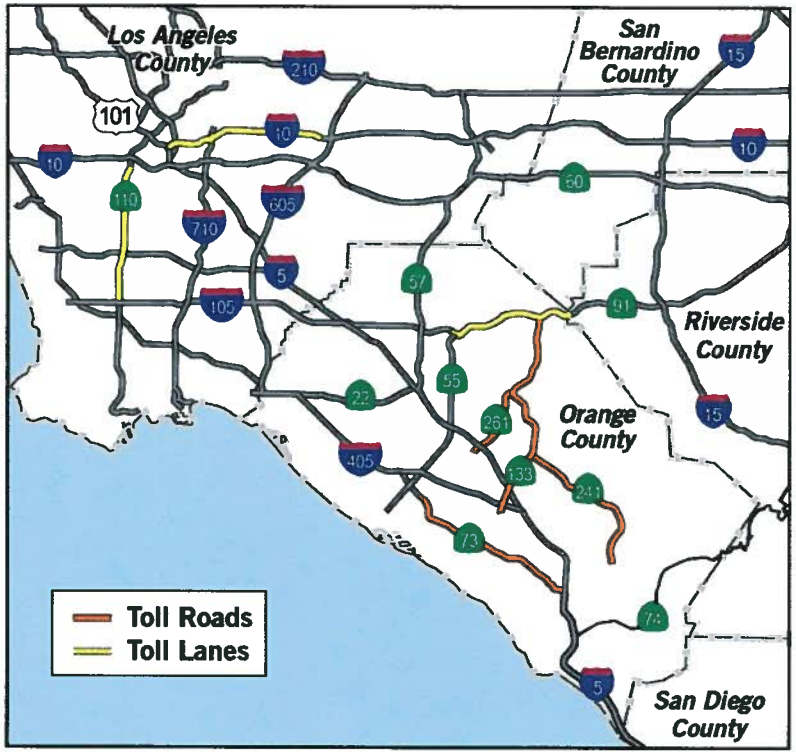


# One-Time-Toll
## *For Tourists and Infrequent Users*

- Go to www.thetollroads.com or The Toll Roads mobile app
- Must pay within 48 hours
- The Golden Gate Bridge experience

# FASTRAK® Customers

- FASTRAK® customers – No Changes, No Worries
  - FasTrak accounts = lowest tolls
  - FasTrak can be used



  - $0 monthly fee if you spend more than $25/month

11/26/2013 ITEM NO. 1.3

**11/26/2013 ITEM NO. 1.3**

**CITY OF LAGUNA HILLS, CALIFORNIA**
**CITY COUNCIL REGULAR MEETING**
**MINUTES**
**NOVEMBER 12, 2013**

**CLOSED SESSION - CONVENING AT 6:00 PM**

**CALL TO ORDER**

**ROLL CALL**

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

**ANNOUNCEMENT OF CLOSED SESSION ITEMS**

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code Section 54957(b)(1)
Public Employee Title: City Manager - Annual Performance Evaluation

**PUBLIC COMMENT ON CLOSED SESSION ITEMS**

There were no Public Comments.

**ADJOURN TO CITY COUNCIL CONFERENCE ROOM**

**CONVENE INTO CLOSED SESSION**

**RECONVENE TO CITY COUNCIL CHAMBER**

**RECESS**

**GENERAL BUSINESS - RECONVENING 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 PM in the Laguna Hills City Council Chamber, 24305 El Toro Road, Laguna Hills, California.

**PLEDGE OF ALLEGIANCE:** Council Member Gilbert

**ROLL CALL OF CITY COUNCIL MEMBERS**

Present: Mayor Kogerman, Mayor Pro Tempore Blount, Council Member Bressette, Council Member Carruth, and Council Member Gilbert.

**CLOSED SESSION REPORT**

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

City Attorney Simonian reported that the City Council voted unanimously to retain the professional consulting services of Ralph Andersen & Associates to facilitate the annual performance evaluation of the City Manager for Calendar Year 2013.

**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 KERSTYN GONZALES.

**2. PUBLIC COMMENTS**

PARKING ISSUES

Mike Sanders, Laguna Hills, requested that the City Council look into the parking problems at Alicia Village and Alicia Plaza. Mr. Sanders handed out a packet and petition to the City Council.

**3. CONSENT CALENDAR**

**MOTION TO APPROVE THE CONSENT CALENDAR, WITH MAYOR KOGERMAN REMOVING ITEM NO. 3.4, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER BRESSETTE.**
**APPROVED BY A VOTE OF 5-0.**

3.1 WAIVED 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 DECLARE THAT SAID TITLES WHICH APPEARED ON THE PUBLIC AGENDA SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED.

3.2 APPROVAL OF MINUTES FOR OCTOBER 22, 2013

THE CITY COUNCIL APPROVED THE MINUTES OF THE OCTOBER 22, 2013, REGULAR MEETING.

3.3 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED NOVEMBER 12, 2013

THE CITY COUNCIL APPROVED THE WARRANT REGISTER IN THE AMOUNT OF $296,913.74.

3.5 PROGRESS PAYMENT NO. 1 FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, AND RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172

THE CITY COUNCIL APPROVED PROGRESS PAYMENT NO. 1, IN THE NET AMOUNT OF $10,691.92, TO ALL AMERICAN ASPHALT, FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, AND RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172.

**ITEMS REMOVED FROM THE CONSENT CALENDAR**

3.4 FIRST QUARTER FINANCIAL AND TREASURER'S REPORT FOR FISCAL YEAR 2013/14

Mayor Kogerman removed this item from the Consent Calendar to acknowledge that the preparation of the Quarter Financial Reports takes considerable effort. Mayor Kogerman asked Assistant City Manager White to give a brief report regarding City revenues and expenses for the First Quarter.

**THE CITY COUNCIL RECEIVED AND FILED THE FIRST QUARTER FINANCIAL AND TREASURER'S REPORT FOR FISCAL YEAR 2013/14, BY M/MAYOR KOGERMAN, S/COUNCIL MEMBER CARRUTH.**
**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 7:19 PM.

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Kogerman, Vice Chair Blount, Agency Member Bressette, Agency Member Carruth, and Agency Member Gilbert.

4.2 PUBLIC COMMENTS

There were no Public Comments.

4.3 APPROVAL OF MINUTES FOR OCTOBER 22, 2013

**THE PLANNING AGENCY APPROVED THE MINUTES OF THE OCTOBER 22, 2013, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER BRESSETTE.**
**APPROVED BY A VOTE OF 5-0.**

4.4 ADMINISTRATIVE REPORTS

There were no Administrative Reports.

4.5 PLANNING AGENCY PUBLIC HEARINGS

4.5.1 CONDITIONAL USE PERMIT (CUP) CHANGE PLAN (CP), PARKING USE PERMIT (PUP), AND SITE DEVELOPMENT PERMIT (SDP) NO. 01-12-2174, A REQUEST TO ALLOW FOR THE EXPANSION OF AN EXISTING 147-ROOM HOTEL (AND ITS ACCESSORY USES INCLUDING RESTAURANT AND BANQUET FACILITIES) ALLOWING FOR A NEW POOL AND POOL DECK, SPA, FITNESS CENTER AND OUTDOOR COURTYARD WITH OUTSIDE DECK AND ALLOW FOR MODIFIED PARKING STANDARDS AT THE HILLS HOTEL, 25205 LA PAZ ROAD, IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT

Chair Kogerman opened the Public Hearing.

Jacqueline Tzen, Laguna Hills, spoke on Conditional Use Permit/Change Plan/Parking Use Permit/Site Development Permit No. 01-12-2174.

Chair Kogerman closed the Public Hearing.

**THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2013-11-12-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT/CHANGE PLAN/PARKING USE PERMIT/SITE DEVELOPMENT PERMIT NO. 01-12-2174, A REQUEST TO ALLOW FOR THE EXPANSION OF AN EXISTING 147-ROOM HOTEL (AND ITS ACCESSORY USES INCLUDING RESTAURANT AND BANQUET FACILITIES) ALLOWING FOR A NEW POOL AND POOL DECK, SPA, FITNESS CENTER AND OUTDOOR COURTYARD WITH OUTSIDE DECK, AND ALLOW FOR MODIFIED PARKING STANDARDS AT THE HILLS HOTEL, 25205 LA PAZ ROAD, IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT, INCLUDING AMENDING CONDITION OF APPROVAL NO. 19, TO READ: *"USE OF THE HOTEL PARKING LOT SHALL BE LIMITED TO THE PARKING OF VEHICLES FOR HOTEL EMPLOYEES, REGISTERED GUESTS AND THEIR INVITEES, AND HOTEL PATRONS, OR FOR RECEIVING DELIVERIES";* BY M/VICE CHAIR TEMPORE BLOUNT, S/AGENCY MEMBER GILBERT.**

**APPROVED BY A VOTE OF 4-1 (AGENCY MEMBER CARRUTH VOTING NO).**

**PLANNING AGENCY ADJOURNMENT**

Mayor Kogerman reconvened the City Council Meeting at 8:53 PM. All Council Members were present.

## 5. CITY COUNCIL PUBLIC HEARINGS

5.1 ORDINANCES ADOPTING BY REFERENCE AND AMENDING THE 2013 EDITION OF THE CALIFORNIA BUILDING STANDARDS CODE, CONSISTING OF THE CALIFORNIA BUILDING CODE, MECHANICAL CODE, ELECTRICAL CODE, PLUMBING CODE, RESIDENTIAL CODE, AND GREEN BUILDING STANDARDS CODE; ADOPTING BY REFERENCE AND AMENDING THE 2013 EDITION OF THE CALIFORNIA FIRE CODE; AND ADOPTING BY REFERENCE THE 2012 EDITION OF THE INTERNATIONAL SWIMMING POOL AND SPA CODE.

Mayor Kogerman opened the Public Hearing.

Dennis Grubb, Orange County Fire Authority Assistant Fire Marshall, spoke on the Fire and Building Code Amendments.

Mayor Kogerman closed the Public Hearing.

**THE CITY COUNCIL INTRODUCED FOR FIRST READING, READ BY TITLE ONLY, AND WAIVED FURTHER READING OF THE ORDINANCES ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING TITLE 10 OF THE LAGUNA HILLS MUNICIPAL CODE BY AMENDING CHAPTERS 10-28, 10-32, 10-36, 10-40, 10-48 AND 10-52 ADOPTING BY REFERENCE THE CALIFORNIA BUILDING STANDARDS CODE (CALIFORNIA CODE OF REGULATIONS, TITLE 24), CONSISTING OF THE CALIFORNIA BUILDING CODE (AS AMENDED), 2013 EDITION, BASED ON THE 2012 INTERNATIONAL BUILDING CODE AS PUBLISHED BY THE INTERNATIONAL CODE COUNCIL; THE CALIFORNIA MECHANICAL CODE, 2013 EDITION, BASED ON THE 2012 UNIFORM MECHANICAL CODE AS PUBLISHED BY THE INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS; THE CALIFORNIA ELECTRICAL CODE, 2013 EDITION, BASED ON THE 2011 NATIONAL ELECTRICAL CODE AS PUBLISHED BY THE NATIONAL FIRE PROTECTION ASSOCIATION; THE CALIFORNIA PLUMBING CODE, 2013 EDITION, BASED ON THE 2012 UNIFORM PLUMBING CODE AS PUBLISHED BY THE INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS; THE CALIFORNIA RESIDENTIAL CODE (AS AMENDED), 2013 EDITION, BASED ON THE 2012 INTERNATIONAL RESIDENTIAL CODE AS PUBLISHED BY THE INTERNATIONAL CODE COUNCIL; AND THE CALIFORNIA GREEN BUILDING STANDARDS CODE (AS AMENDED), 2013 EDITION; AND AMENDING TITLE 10, CHAPTER 10-44 OF THE LAGUNA HILLS MUNICIPAL CODE BY ADOPTING BY REFERENCE THE INTERNATIONAL SWIMMING POOL AND SPA CODE (AS AMENDED), 2012 EDITION, AS PUBLISHED BY THE INTERNATIONAL CODE COUNCIL;" AND "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING TITLE 5 OF THE LAGUNA HILLS MUNICIPAL CODE BY AMENDING CHAPTER 5-16 ADOPTING BY REFERENCE THE 2013 EDITION OF THE CALIFORNIA FIRE CODE (CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 9)**

**INCLUDING APPENDICES B, BB, C, AND CC, BASED ON THE 2012 INTERNATIONAL FIRE CODE AS PUBLISHED BY THE INTERNATIONAL CODE COUNCIL, FOR THE PURPOSE OF PRESCRIBING REGULATIONS GOVERNING CONDITIONS HAZARDOUS TO LIFE AND PROPERTY FROM FIRE OR EXPLOSION;" (3) DIRECTED THAT THE ORDINANCES BE PLACED ON THE DECEMBER 10, 2013, MEETING AGENDA FOR A PUBLIC HEARING AND SECOND READING; AND (4) DIRECTED STAFF TO PREPARE AND PUBLISH THE APPROPRIATE HEARING NOTICES, BY M/COUNCIL MEMBER BRESSETTE, S/COUNCIL MEMBER CARRUTH.**
**APPROVED BY A VOTE OF 5-0.**

## 6. ADMINISTRATIVE REPORTS

6.1 City Manager

The City Manager made no reports.

6.2 Assistant City Manager

6.2.1 AWARD OF CONSULTING SERVICES AGREEMENT TO MATRIX CONSULTING GROUP FOR POLICE SERVICES STUDY

**THE CITY COUNCIL APPROVED THE CONSULTING SERVICES AGREEMENT WITH MATRIX CONSULTING GROUP TO CONDUCT A POLICE SERVICES EVALUATION AND AUTHORIZED THE CITY MANAGER TO EXECUTE THE CONSULTING SERVICES AGREEMENT WITH MATRIX CONSULTING GROUP, BY M/COUNCIL MEMBER BRESSETTE, 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.

## 8. CITY COUNCIL MEMBER COMMENTS

**COUNCIL MEMBER CARRUTH**

Council Member Carruth requested consensus by the City Council to allow a representative from the Transportation Corridor to attend the November 26, 2013, City Council meeting to give a presentation.

**MAYOR KOGERMAN**

Mayor Kogerman indicated that Mike Bland, received the “Best Civilian Volunteer” award from Camp Pendleton. Mayor Kogerman introduced Mike Bland who gave an update on recent and upcoming events for Team Dark Horse Committee.

Mayor Kogerman commented on the resurfacing of Alicia Plaza and indicated that it was a vast improvement.

**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Kogerman declared the meeting adjourned at 9:24 PM.

_____
PEGGY J. JOHNS, CITY CLERK

ATTEST:

_____
BARBARA D. KOGERMAN, MAYOR

APPROVED AT MEETING OF _____.

# City of Laguna Hills
## City Council Meeting Agenda
## Staff Report

**DATE:** NOVEMBER 26, 2013

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** DONALD J. WHITE, ASSISTANT CITY MANAGER

**ISSUE:** APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED NOVEMBER 26, 2013.

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $1,024,171.17.**

**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

11-20-13
DATE

**FISCAL IMPACT:**

The warrant register total is $1,024,171.17.

**ATTACHMENTS:**

1. **Warrant Register**

**CITY OF LAGUNA HILLS**
**WARRANT REGISTER**
**November 26, 2013**

| VENDOR | DESCRIPTION | CHECK NO. | AMOUNT |
|---|---|---|---|
| **PREPAID WARRANTS:** | | | |
| ALICEA, MIA | *Contract Instructor Fee, Dancing Fall Session, Community Services* | 8806304 | $ 1,197.70 |
| AT&T | *Communication Expense, Administrative Services Fax Line, Oct '13* | 8806307 | 77.61 |
| AT&T- CALNET 2 | *Communication Expense, Alarm System, 2-Way Line, Switchboard, Modem, T-1 Line and Traffic Control, Oct '13* | 8806310 | 2,147.89 |
| AT&T MOBILITY | *Wireless Service, Oct '13* | 8806308 | 60.92 |
| BANK OF AMERICA | *Departmental Operating Expenditures, Oct '13* | 8806297 | 8,722.90 |
| COX COMMUNICATION | *Wi-Fi Service, Community Center and City Hall, Nov '13* | 8806322 | 260.00 |
| ECHEVARRIA, LUCY | *Mileage Reimbursement, Community Services, Jul - Sep '13* | 8806325 | 101.70 |
| EL TORO WATER DISTRICT | *Water Usage, Parks, Sep '13* | 8806328 | 18,019.93 |
| JAVED, HUMZA | *Mileage Reimbursement, Public Works, Aug '13* | 8806338 | 49.72 |
| KNR BUILDERS | *Refund, C&D Deposit, CR# 46899* | 8806341 | 1,621.55 |
| MOULTON NIGUEL WATER DISTRICT | *Water Usage Parks and Community Center, Sep - Oct '13* | 8806347 | 46,749.52 |
| NADEL STUDIO ONE, INC. | *Refund, Fire Fees, CR# 47011* | 8806348 | 1,223.00 |
| OCCMA | *Meeting Expense, Administrative Services, Dec '13* | 8806351 | 325.00 |
| PECK, HALEY | *Refund, CPMA Fees, CR# 46960* | 8806356 | 800.00 |
| REFUND, COMMUNITY SVCS PROGRAM | *P. Kennedy, V# 2002944.002* | 8806358 | 30.00 |
| REFUND, COMMUNITY SVCS PROGRAM | *P. Kennedy, V# 2002971.002* | 8806359 | 30.00 |
| REFUND, FACILITY RENTAL DEPOSIT | *C. Reames, V# 2002964.002* | 8806360 | 500.00 |
| REFUND, FACILITY RENTAL DEPOSIT | *Voice Classics, Inc., V# 2002953.002* | 8806361 | 500.00 |
| REYES, JANICE MATEO | *Petty Cash Replenishment, Departmental Operating Expenditures, Oct - Nov '13* | 8806362 | 521.76 |
| REYNOLDS, DAVID | *Mileage Reimbursement, Community Services, Jan - Oct '13* | 8806363 | 122.93 |
| SAN DIEGO GAS & ELECTRIC | *Electric Usage, Street Lights and Traffic Control, Oct '13* | 8806366 | 13,157.70 |
| SC POOL AND SPA WORKS | *Refund, Pool Bond, CR# 46804* | 8806368 | 500.00 |
| SOUTHERN CALIFORNIA EDISON | *Electric Usage, Street Lights and Traffic Control, Oct '13* | 8806372 | 11,751.65 |
| SPARKLETTS | *Operating Supplies, Community Services, Oct '13* | 8806373 | 62.10 |

**CITY OF LAGUNA HILLS**
**WARRANT REGISTER**
**November 26, 2013**

| VENDOR | DESCRIPTION | CHECK NO. | AMOUNT |
|---|---|---|---|
| TARGET STORES | *Program Supplies, Community Services, Sep - Oct '13* | 8806377 | 356.34 |
| UNIVERSAL PROTECTION SECURITY | *Security Camera System Upgrade, Community Center Building Refurbishment CIP # 513* | 8806298 | 23,325.00 |
| US BANK VOYAGER FLEET SYSTEMS | *Vehicle Fuel, Oct '13* | 8806299 | 1,433.81 |
| VERIZON WIRELESS | *Communication Expense, Oct '13* | 8806300 | 667.90 |
| WELLS FARGO FINANCIAL LEASING | *Lease - Copier, Community Center, Dec '13* | 8806301 | 572.92 |
| WHITE, DONALD | *Travel Advance and Reimbursement, Administrative Services, Nov '13* | 8806379 | 394.00 |
| | ***Total Prepaid Warrants:*** | | **$ 135,283.55** |
| **REGULAR WARRANTS:** | | | |
| A. C. LANDSCAPE, INC. | *Water Management Services, Irrigation Repairs, Oct '13* | 8806302 | $ 915.36 |
| ACME BALLOON COMPANY | *Program Expense, Community Services, Dec '13* | 8806303 | 495.00 |
| ALL CITY MANAGEMENT, INC. | *Crossing Guard Services, 10/13/13 - 10/26/13* | 8806305 | 3,504.00 |
| ARBOR DAY FOUNDATION | *Signage, Entry Monuments* | 8806306 | 329.70 |
| ATHALYE CONSULTING ENGINEERING | *Professional Services, La Paz Widening @ I-5 CIP # 159* | 8806311 | 1,020.00 |
| BEE MAN, THE | *Bee Removal, Parks, Oct - Nov '13* | 8806312 | 525.00 |
| BRAME, MARILYN | *Contract Instructor Fee, Drawing Fall Session, Community Services* | 8806313 | 294.00 |
| BUREAU VERITAS NORTH AMERICA | *Professional Services, On-Call Inspections, Sep '13* | 8806314 | 1,092.50 |
| C&D ELECTRIC, INC. | *Lighting Repairs, Parks, Oct - Nov '13* | 8806315 | 2,133.30 |
| C2 REPROGRAPHICS | *Printing, City Clerk and La Paz Open Space Riparian Habitat CIP # 615* | 8806316 | 669.08 |
| CALIFORNIA SPECIAL DISTRICTS | *Annual Membership, Administrative Services, 2014* | 8806317 | 1,005.00 |
| CALIFORNIA YELLOW CAB | *Dial-a-Taxi Senior Transportation Program, Oct '13* | 8806318 | 2,045.00 |
| CARL WARREN & COMPANY | *Processing Fee, Small Claims, Aug - Oct '13* | 8806319 | 1,269.20 |
| CODE PUBLISHING COMPANY, INC. | *Online Municipal Code, Web Hosting Fee, City Clerk, Nov '13 - Nov '14* | 8806320 | 350.00 |
| COMPLETE OFFICE OF CALIFORNIA | *Office, Program and Operating Supplies, Community Center, Oct - Nov '13* | 8806321 | 586.59 |
| CROP PRODUCTION SERVICES, INC. | *Program Expense, Community Services, Oct '13* | 8806323 | 521.72 |
| DUNBAR ARMORED, INC. | *Courier Fee, Armored Transport, Nov '13* | 8806324 | 111.84 |

**CITY OF LAGUNA HILLS**
**WARRANT REGISTER**
**November 26, 2013**

| VENDOR | DESCRIPTION | CHECK NO. | AMOUNT |
|---|---|---|---|
| ECLIPSE MESSENGER SERVICE, INC. | *Delivery Service, Oct '13* | 8806326 | 25.25 |
| ECONOLITE CONTROL PRODUCTS, INC. | *Signal Control Devices, Traffic Signal Improvement Coordination CIP # 168* | 8806327 | 36,666.25 |
| ELKINS, CHRISTINA | *Contract Instructor Fee, Dancing Fall Session, Community Services* | 8806329 | 1,512.00 |
| FEDERAL EXPRESS CORPORATION | *Delivery Service, Nov '13* | 8806330 | 46.31 |
| GMU GEOTECHNICAL, INC. | *Geological Services, La Paz Open Space Riparian Habitat CIP # 615* | 8806331 | 205.00 |
| HARTZOG & CRABILL, INC. | *Professional Services, Traffic Engineering and Paseo de Valencia Widening CIP # 145 and Traffic Signal Improvement Coordination CIP # 168* | 8806332 | 65,881.31 |
| HEART OF GOLD FOUNDATION, INC. | *Contract Instructor Fee, Cooking Class Fall Session, Community Services* | 8806333 | 252.00 |
| ICMA | *Membership, Administrative Services, 2014* | 8806334 | 200.00 |
| IRON MOUNTAIN OFFSITE | *Off Site Data Storage, Oct '13* | 8806335 | 228.68 |
| JAMEY CLARK, INC. | *Park Repairs and Graffiti Removal, Oct - Nov '13* | 8806337 | 3,989.40 |
| JCTEES.COM CORPORATION | *Program Supplies, Community Services, Oct '13* | 8806339 | 125.69 |
| JOE A. GONSALVES & SON | *Professional Services, Legislative Services, Nov '13* | 8806340 | 2,900.00 |
| LINDY OFFICE PRODUCTS | *Operating Supplies, Oct '13* | 8806343 | 85.94 |
| MARTIN & CHAPMAN CO. | *Election Services and Supplies, City Clerk, 2014* | 8806344 | 536.62 |
| MARTIN-RUSK, DINA | *Contract Instructor Fee, Zumba Fall Session, Community Services* | 8806345 | 620.90 |
| MOBILE FIRE EXTINGUISHER, INC. | *Fire Extinguisher Maintenance, City Hall, Oct '13* | 8806346 | 102.50 |
| NIEVES LANDSCAPE, INC. | *Monthly Maintenance and Other Assorted Landscape Services, Nov '13* | 8806349 | 75,308.05 |
| OCCMA | *Annual Fee, Meetings, Jul '13 - Jun '14* | 8806350 | 720.00 |
| OFFICE SOLUTIONS | *Office and Operating Supplies, Oct - Nov '13* | 8806353 | 832.24 |
| ORANGE COUNTY REGISTER-FREEDOM | *Legal Advertising, City Clerk, Oct '13* | 8806354 | 410.84 |
| ORANGE COUNTY TREASURER | *Law Enforcement, Contract Services Nov '13* | 8806342 | 567,617.25 |
| PARSONS BRINCKERHOFF | *Construction Management Services, La Paz Widening @ I-5 CIP # 159* | 8806355 | 620.27 |
| QUEST DIAGNOSTICS | *Pre-employment Drug Testing, Oct '13* | 8806357 | 37.74 |
| RICHARD FISHER ASSOCIATES | *Professional Services, La Paz Open Space Riparian Habitat CIP # 615 and On-Call Inspections, Oct '13* | 8806364 | 8,733.33 |

**CITY OF LAGUNA HILLS**
**WARRANT REGISTER**
**November 26, 2013**

| VENDOR | DESCRIPTION | CHECK NO. | AMOUNT |
|---|---|---|---|
| RK ENGINEERING GROUP, INC. | *Reimbursable Expense, Traffic Study, Oct '13* | 8806365 | 3,240.00 |
| SAN JOAQUIN HILLS TRANSPORT | *Remittance, Transportation Corridor, Fees Collected, Oct '13* | 8806367 | 55,188.00 |
| SEMA CONSTRUCTION, INC. | *Progress Payment #28, La Paz Widening @ I-5 CIP # 159* | 8806369 | 8,811.37 |
| SOCAL OFFICE TECHNOLOGIES | *Usage - Printer Maintenance and Supplies, Aug - Nov '13* | 8806370 | 2,061.03 |
| SOUTH COAST WATERS | *Facility Maintenance and Repairs, Water Feature, Community Center, Nov '13* | 8806371 | 625.00 |
| STAPLETON, VIVIAN | *Contract Instructor Fee, Early Childhood Music Fall Session, Community Services* | 8806374 | 647.50 |
| STUDIO TWO BLACK DIAMOND | *Printing Services, Nov '13* | 8806375 | 486.68 |
| SUNSET PROPERTY SERVICES | *Street Sweeping, Oct '13* | 8806376 | 10,948.53 |
| WEST COAST ARBORISTS, INC. | *Tree Trimming, Oct '13* | 8806378 | 18,969.00 |
| WILLDAN | *Professional Services, Engineering, Oct '13* | 8806380 | 2,250.00 |
| XEROX CORPORATION | *Usage - Copier, City Hall, Oct '13* | 8806381 | 1,135.65 |
| | ***Total Regular Warrants:*** | | **$ 888,887.62** |
| | *****WARRANT REGISTER TOTAL***** | | **$ 1,024,171.17** |

11/26/2013 ITEM NO. 3.3

# City of Laguna Hills
## City Council Meeting Agenda
## Staff Report

**DATE:** NOVEMBER 26, 2013

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** KENNETH H. ROSENFIELD
DIRECTOR OF PUBLIC SERVICES/CITY ENGINEER

**ISSUE:** PROGRESS PAYMENT NO. 28, FINAL, FOR LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 28, FINAL, IN THE NET AMOUNT OF $8,811.37, TO SEMA CONSTRUCTION, INC., FOR THE LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159, AND AUTHORIZE THE FILING OF THE NOTICE OF COMPLETION AND SUBSEQUENT RELEASE OF RETENTION IN 35 DAYS, IF NO LIENS HAVE BEEN FILED.**

**SUMMARY:**

Work on the La Paz Road Widening at I-5 Improvement Project, CIP No. 159, began on April 7, 2011, and has been performed by SEMA Construction, Inc. The project has been in the landscape maintenance period for the last year. The work has been satisfactorily completed and it is appropriate to file the Notice of Completion. The contractor has submitted the twenty-eighth and final progress payment request for approval. Approval of the Progress Payment and filing of the Notice of Completion 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 ten (10) percent retention is withheld from each payment to assure final performance of the work. The contractor for the project, SEMA Construction, Inc., has submitted the twenty-eighth progress payment for the subject project as follows:

| ITEM # | DESCRIPTION | QUANTITY | UNIT | $ | AMOUNT |
|---|---|---|---|---|---|
| 60 | Plant Establishment | .52 | LS | $20,200.00 | $ 10,504.00 |
| CCO No. 1 | 3C Irrigation Conduit | 1 | LS | $ 715.59 | $< 715.59> |
| CCO No. 5 | 5H1 Patch Column | .0035 | LS | $ 548.33 | $ 2.00* |

*Rounded to nearest dollar.

| | | |
|---|---|---|
| Total To Date | $4,819,242.10 | |
| Less Prior Billing | $4,809,451.69 | |
| Total This Period | $ 9,790.41 | $ 9,790.41 |
| Less 10% Retention | | $( 979.04) |
| | | $ 8,811.37 |

**FISCAL IMPACT:**

The progress payment is within the Capital Improvement Program Budget for the La Paz Road Widening at I-5 Improvement Project, CIP No. 159.

**ATTACHMENTS:**

- Notice of Completion

Recording Requested by and
When Recorded Mail to:

Peggy J. Johns, City Clerk
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

No Fee Exempt per GC§27383

By: _____

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**NOTICE OF COMPLETION**

Notice is hereby given that the following public improvements have been completed and accepted by the City Council of the City of Laguna Hills on November 26, 2013.

Description of Improvements

La Paz Road Widening at I-5 Improvement Project, CIP No. 159: widen existing southbound off-ramp to provide four lanes; modify existing southbound loop on-ramp to allow for a free right-turn lane for westbound La Paz Road onto I-5 southbound on-ramp; re-align La Paz Road to provide a second left-turn lane westbound to southbound at the intersection of La Paz Road and Cabot Road; add lane eastbound La Paz Road to northbound I-5 on-ramp under I-5 between bridge bent and abutment with tie-back wall; retaining walls, drainage improvements, traffic signal modifications, and landscaping.

General Location

The intersection of La Paz Road at Interstate 5.

Owner of Property Address

City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

Contractor

SEMA Construction
Mr. Humayun Aziz, P.E.
6 Orchard, Suite 150
Lake Forest, CA 92630

This Notice of Completion is executed under authority of a directive from the City Council of the City of Laguna Hills.

I, Kenneth H. Rosenfield, P.E., declare under penalty of perjury that I am the City Engineer of the City of Laguna Hills, that I am familiar with the facts stated in the foregoing Notice of Completion executed for and on its behalf, and that I have read the foregoing Notice of Completion and know the contents thereof to be true.

Dated: November 26, 2013

_____
Kenneth H. Rosenfield, P.E., Director of Public Works/City Engineer
City of Laguna Hills

# City of Laguna Hills
## City Council Meeting Agenda
## Staff Report

**DATE:** NOVEMBER 26, 2013

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** LIEUTENANT TOM BEHRENS
CHIEF OF POLICE SERVICES

**ISSUE:** PARTICIPATION IN THE COUNTYWIDE PUBLIC MASS NOTIFCATION SYSTEM – "ALERTOC"

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF ORANGE AND THE CITY OF LAGUNA HILLS FOR USE OF THE COUNTYWIDE EMERGENCY PUBLIC MASS NOTIFICATION SYSTEM, "ALERTOC," AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE MEMORANDUM OF UNDERSTANDING.**

**SUMMARY:**

The County of Orange Chief Executive Office (CEO) and local emergency management professionals have implemented a Countywide public mass notification system taking advantage of the newest technologies. The system, named AlertOC, was developed to be utilized by both the County of Orange for regional use, and the individual cities and special districts for localized emergencies. The County's system has been operational since July 2008 and individual cities have adopted the system for local use.

**BACKGROUND:**

The intent of the AlertOC system is to disseminate early warning and time sensitive information to residents and businesses during a disaster or other emergency event. AlertOC is available 24 hours a day, seven days a week and messages may be sent by phone, email, and text. The system is pre-loaded with Orange County landline phone numbers, listed and unlisted, drawn from the E911 database of telephone service providers. Additionally, mapping technology to associate phone numbers to their geographic locations is included in the software to allow users to target call recipients using a map.

The E911 database will be refreshed on a quarterly basis and residents and businesses will also have the ability to self-register with additional contact information such as cell phones, email addresses, and out-of-area landlines through a link on the City's website.

The AlertOC system will be used to send messages describing an emergency situation and advising the public of recommended action they should take. It will be particularly valuable in that it can be used to target specific geographic areas or population groups affected by the event, and City staff will define the message to be sent. The AlertOC system can also be used for inter-departmental communications for City staff members. This feature would provide a quick and efficient notification method for City employees in the event an emergency response becomes necessary (e.g. - EOC staffing).

Emergency public notifications are limited to critical public safety related information that must be rapidly disseminated to the public, including:

- Imminent or perceived threat to life or property
- Disaster notifications
- Evacuation notifications
- Public health emergencies
- Public safety emergencies
- Any notification to provide emergency information to a defined community

As a general rule, emergency notifications are to be used when the public is being asked to take a specific action such as evacuate, prepare to evacuate, shelter in place, boil tap water, or notification of the closure of an incident.

Inter-departmental communications are emergency or non-emergency communications of an official nature to first responders, City staff, City Council or other internal City functions.

City policy will identify several staff members to receive training and authorization to access the system, create messages, define recipient populations, and send messages.

The City also has the option of entering into a separate contract agreement between the City and the AlertOC vendor to provide a non-emergency community messaging system. This system could be used by the City to disseminate announcements of community events or meetings, road closures or scheduled maintenance, facility closings, crime watch notices or other community news. The separate contract would carry a cost of $1.00 per household or business in the City enrolled in the system, or approximately $11,200 annually. Staff may evaluate this option in future budget preparations.

Staff believes that the Countywide AlertOC system is an excellent tool for the City to rapidly and effectively provide emergency information to selected populations or to the community at large.

In order to participate in the AlertOC system, the City is required to approve an MOU with the County of Orange, outlining our responsibilities as a participant.

At this time staff recommends executing the MOU for the AlertOC system for emergency use only.

**FISCAL IMPACT**

There is no cost to participate in the AlertOC Progarm. The County of Orange agrees to purchase the system, administer the vendor contract, and purchase periodic updates to the E911 database and geographic maps through June 2017, which is the term of the MOU.

**ATTACHMENTS:**

- MOU Mass Notification System
- Exhibit A - Contract between County of Orange and Blackboard Connect, Inc.
- Exhibit B - AlertOC Operating Procedures
- Exhibit C - Non-Disclosure Agreement

**MEMORANDUM OF UNDERSTANDING**
**BETWEEN**
**THE COUNTY OF ORANGE**
**AND**
**PARTICIPANTS**
**FOR USE OF COUNTYWIDE MASS NOTIFICATION SYSTEM**

This Memorandum of Understanding, hereinafter referred to as "MOU," dated_____, which date is stated for purposes of reference only, is entered into by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the undersigned municipalities, public universities and water agencies responsible for protecting a resident population and maintaining a dedicated public safety answering point (PSAP) within the County of Orange, hereinafter referred to individually as "PARTICIPANT" or collectively as "PARTICIPANTS."

This MOU is intended to establish governance and terms of use for a Countywide Public Mass Notification System.

**RECITALS**

WHEREAS, COUNTY is sponsoring a Countywide Public Mass Notification System ("System") for the primary intent of providing timely communication to the public during times of emergency; and

WHEREAS, the County is making use of the System available to all cities and agencies within the County of Orange who have the responsibility for protecting a resident population and maintaining a dedicated public safety answering point (PSAP); and

WHEREAS, COUNTY entered into Orange County Agreement No. MA-060-13011688 ("Agreement") with Blackboard Connect, Inc., for the provision of Public Mass Notification System Services, on or about May 21, 2013, attached hereto as Exhibit A, to disseminate critical, time-sensitive emergency information to COUNTY's citizens and businesses through phone and e-mail devices for emergency notification purposes; and

WHEREAS, Blackboard Connect, Inc. agrees to provide to PARTICIPANTS the services agreed to by Blackboard Connect, Inc. and COUNTY as contained under the Agreement in exchange for abiding by the terms set forth in this MOU; and

WHEREAS, PARTICIPANTS agree to uphold the same terms and conditions of the Agreement, to use the System in compliance with all usage agreements identified and incorporated herein as Exhibit A (Orange County Agreement No. MA-060-13011688), Exhibit B (Countywide Public Mass Notification System Policy and Guideline) and Exhibit C (Nondisclosure Document), and the terms of this MOU to receive the benefits under the Agreement.

NOW, THEREFORE, the parties agree as follows:

I. **Definitions:**

"Agreement" shall refer to Orange County Agreement No. MA-060-13011688 between COUNTY and Blackboard Connect, Inc. The Agreement is attached to this MOU as Exhibit A.

"Countywide" shall mean all geographic locations in Orange County, California.

"Contact information" shall mean PARTICIPANT and public contact data stored in the System for the purpose of disseminating communication in accordance with this MOU and its Exhibits.

"Emergency" shall include, but not be limited to, instances of fire, flood, storm, epidemic, riots, or disease that threaten the safety and welfare of the citizens and property located within the boundaries of the COUNTY and PARTICIPANTS' respective jurisdictions.

"Emergency information" shall mean information relevant to the safety and welfare of recipients in the event of an Emergency. Such information shall include but not be limited to instructions and directions to alleviate or avoid the impact of an emergency.

"Emergency notification situation" shall mean instances when emergency information is to be distributed through the System.

"Non-emergency information" shall refer to information that is not relevant to the safety and welfare of recipients, but has been deemed to be of significant importance to a PARTICIPANT's jurisdiction to justify the use of the System to distribute such information.

"Non-emergency notification situation" shall mean instances when a PARTICIPANT deems non-emergency information to be of significance to a PARTICIPANT'S jurisdiction and the PARTICIPANT uses the System to distribute such information.

"System" shall mean the Public Mass Notification System as provided by Blackboard Connect, Inc. to COUNTY under the Agreement. The System is designed to disseminate information by utilizing common communications, i.e. telephone and e-mail communications to citizens and businesses as permitted under the Agreement.

II. **Hold Harmless:** PARTICIPANT will defend, indemnify and save harmless COUNTY, its elected officials, officers, agents, employees, volunteers and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITIES") from and against any and all claims, demands, losses, damages, expenses or liabilities of any kind or nature which COUNTY, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon

them for injury to or death of persons, or damages to property as a result of, or arising out of the acts, errors or omissions of PARTICIPANT, its officers, agents, employees, subtenants, invitees, or licensees. COUNTY will defend, indemnify and save harmless PARTICIPANT, its officers, agents, employees and volunteers from and against any and all claims, demands, losses, damages, expenses or liabilities of any kind or nature which PARTICIPANT, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damages to property as a result of, or arising out of the acts, errors or omissions of COUNTY, its officers, agents, employees, subtenants, invitees, or licensees.

III. **Term:** This MOU shall be in effect from July 1, 2013 and shall expire on June 30, 2017, unless COUNTY funding of the System becomes unavailable at which time PARTICIPANTS will be given six-month advance notice per the termination terms found in Paragraph IX. Termination, below.

IV. **Scope of Services:** PARTICIPANTS shall receive from Blackboard Connect, Inc. the same services provided by Blackboard Connect, Inc. to the COUNTY under the Agreement. COUNTY's involvement in this MOU is limited only to extending the availability of the terms and conditions of the Agreement to the PARTICIPANTS. PARTICIPANTS and Blackboard Connect, Inc. acknowledge and agree that any actions taken by Blackboard Connect, Inc. or any PARTICIPANT under the scope of the Agreement and this MOU are the responsibility of Blackboard Connect, Inc. and the respective PARTICIPANT.

V. **Use:** Use of the System and its data, including but not limited to contact information, is governed by the terms, conditions and restrictions set forth in the terms provided in Exhibit A, B and C. All PARTICIPANTS agree to the terms and conditions contained in Exhibits A, B, and C. COUNTY retains the right to update Exhibits A, B, and C as needed, in whole or in part, during the life of this MOU. Any and all revised Exhibits will be distributed to PARTICIPANTS within five business days of the revision date and shall be incorporated into this MOU. Such modifications to the Exhibits shall not be deemed an amendment for the purposes of Paragraph X. Amendments, below.

PARTICIPANT, including each of its agents, officers, employees, and representatives who are given access to the System, agrees to abide by the individual terms of each agreement and the additional conditions incorporated herein. Breach of use may result in individual user or PARTICIPANT access account termination.

The scope of services under the Agreement is limited to using the System to distribute business communication to PARTICIPANT inter-departmental resources and/or emergency information to the public in emergency notification situations.

PARTICIPANTS may arrange for the use of the System with Blackboard Connect, Inc. to distribute non-emergency information. However, any agreement reached between Blackboard Connect, Inc. and any PARTICIPANT for the use of the System for non-emergency notification situations shall exist only between Blackboard Connect, Inc. and

the PARTICIPANT. In accordance with Paragraph II. Hold Harmless, above, COUNTY shall be held harmless and indemnified by the PARTICIPANTS and Blackboard Connect, Inc. from any actions whatsoever arising from any PARTICIPANT's use of the System for non-emergency services.

All PARTICIPANTS have read and accept the terms and conditions found in COUNTY's "Countywide Public Mass Notification System Policy and Guideline (June 30, 2008)", attached hereto as Exhibit B.

**VI. Compensation:** All compensation owed by PARTICIPANTS to Blackboard Connect, Inc. shall be made between PARTICIPANTS and Blackboard Connect, Inc.

**VII. Notice:** Any notice or notices required or permitted to be given pursuant to this MOU shall be submitted in writing and delivered in person, via electronic mail or via United States mail as follows:

COUNTY:

County of Orange – Sheriff-Coroner Department
Emergency Management Bureau
Attn: Donna Boston / Emergency Management
2644 Santiago Canyon Road
Silverado, CA 92676

PARTICIPANTS: Each PARTICIPANT shall provide to COUNTY a contact person and notice information upon entering into this MOU.

Notice shall be considered tendered at the time it is received by the intended recipient.

**VIII. Confidentiality:** Each party agrees to maintain the confidentiality of all related records and information of the other party pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this MOU. All information and use of the System shall be in compliance with California Public Utilities Code section 2872.

**IX. Termination:** The COUNTY or any PARTICIPANT may terminate its participation in this MOU at any time for any reason whatsoever. If any PARTICIPANT chooses to terminate its participation in this MOU, the terminating PARTICIPANT shall provide written notification in accordance with Paragraph VII. Notice, above. Such notice shall be delivered to the COUNTY 30 days prior to the determined termination date. A terminating PARTICIPANT shall uphold the obligations contained in Paragraph II. Hold Harmless in its entirety and Paragraph VIII. Confidentiality, above. Upon termination, PARTICIPANT agrees to inform each PARTICIPANT user to stop using the System and to relinquish all System access, user accounts, passwords and non-PARTICIPANT data to COUNTY immediately. PARTICIPANT may choose to delete and/or export non-public PARTICIPANT (aka inter-departmental) owned contact information, as well as, export resident provided contact information prior to termination. Resident provided

contact information acquired through PARTICIPANT sources shall remain in the System and available to the County for regional or multi-jurisdictional notification use as needed.

Should COUNTY discontinue its funding for the System, which shall be grounds for COUNTY's termination of its participation, COUNTY shall give PARTICIPANTS six-month advance courtesy notice prior to terminating the Agreement. All other reasons for terminating by COUNTY shall be valid upon providing notice to the PARTICIPANTS. Upon termination by COUNTY, this MOU shall no longer be in effect.

Termination by a PARTICIPANT shall not be deemed an amendment to this MOU as defined in Paragraph X. Amendments, below.

X. **Amendments:** This MOU may be amended only by mutual written consent of the parties involved unless otherwise provided for in this MOU. The modifications shall have no force and effect unless such modifications are in writing and signed by an authorized representative of each party. Termination by a PARTICIPANT or adding a new PARTICIPANT to this MOU shall not be deemed an amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the dates opposite the signatures.

**COUNTY OF ORANGE**

By: _____ Date: _____
Sandra Hutchens, Sheriff-Coroner
County of Orange

**PARTICIPANT:** _____

By: _____ Date: _____
Authorized Signature

_____
Print Name and Title

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA
By _____ Deputy
Date 5/17/13

# EXHIBIT A

## CONTRACT # MA-060-13011688

THIS AGREEMENT (hereinafter "Contract") for the procurement of a Public Mass Notification System, as further described herein is made and entered into as of the date fully executed by and between the County of Orange, operating through its Sheriff's Department, a political subdivision of the State of California, hereinafter referred to as "County" and Blackboard Connect, Inc., with a place of business at 15301 Ventura Blvd., Suite 300, Building B, Sherman Oaks, CA 91403, hereinafter referred to as ("Contractor"), which is sometimes individually referred to as "Party", or collectively referred to as "Parties."

## RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) to provide a Public Mass Notification System, as further set forth herein; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for a Public Mass Notification System;

NOW, THEREFORE, the Parties mutually agree as follows:

## ARTICLES

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

B. **Entire Contract:** This Contract, including Attachments A, B, and Exhibits I and II, which are attached hereto and incorporated herein by this reference, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.

C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

E. **Acceptance/Payment**: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, or tested to the satisfaction of County in accordance with Attachment A, and 2) payment(s) shall be made in accordance with Attachment B after satisfactory acceptance and within 30 calendar days upon the Auditor-Controller's receipt of an approved invoice submitted in accordance with the terms set forth herein, unless otherwise stated. The invoice must be verified and approved by the County's Project Manager and is subject to routine processing requirements of the County. In the event the Contract is terminated for any reason, County shall immediately receive one – twelfth (1/12) of all prepaid Annual License and/or Annual Software Maintenance and Support Fee (as listed in this Contract) for each month or portion thereof remaining for the Contract term as listed in Attachment A of this Contract. The County agrees that use of the Service for any purpose other than testing shall constitute acceptance.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

F. **Warranty:** The Service is provided 'as is' and shall be made available on a 99.99% uptime basis. To the maximum extent permitted under applicable law, Contractor expressly disclaims all other representations and warranties.

G. **Patent/Copyright Materials/Proprietary Infringement:**
Contractor will defend, indemnify, and hold harmless County to the extent of a claim that the Service infringes any copyright or U.S. patent. Contractor's obligations hereunder are contingent on the following conditions:

(i) County will notify Contractor in writing promptly after County becomes aware of a claim; and

(ii) The County will cooperate with Contractor in the settlement, compromise, negotiation, and defense of any such action. Contractor will reimburse County for reasonable out of pocket expenses that it incurs providing that assistance; and

(iii) County must provide Contractor with all information related to the action that is reasonably requested by Contractor; and

(iv) If as a result of an infringement claim, County's use of some or of all the Service is enjoined by a court of competent jurisdiction, Contractor will at its option either:

a. Modify or replace either all of or the infringing part(s) of the Service so that they are no longer infringing, provide that the so modified Service is substantially equivalent in all material respects to the infringing parts of the Service; or

b. Procure the right for Contractor and County to continue using the infringing part of the Service; or

c. If neither of the foregoing options is available to Contractor using commercially reasonable efforts, Contractor will terminate the Contract and refund to County all amounts paid by County to Contractor with respect to such affected service

except for such amounts that are due and payable by the County at the time of termination.

(v) Contractor will not be liable hereunder for any settlement made by the County without Contractor's advance written approval or for any award from any action in which the County did not act co-operatively with the Contractor in the settlement, compromise, negotiation, and defense of such actions; and

(vi) The foregoing indemnity shall not apply to any infringement claim to the extent arising from the County's use of the Service in a manner not authorized by Contractor and/or County's use of the Service with software or hardware, not provide by Contractor, where the use with such other software or hardware, gave rise to the infringement claim.

H. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by the Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

I. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

J. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty after 30 days' written notice. Either Party may terminate this Contract in the event of a material breach by the other Party, which breach remains uncured for ten (10) days following written notice to the breaching Party. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation(s). Except for the application of Additional Terms and Conditions Section 3, for services rendered which meet the specifications detailed in the Scope of Work and are deemed acceptable by the County, amounts will be invoiced or otherwise due and payable at the time of termination and shall be paid by the County for the exact time up to the date of termination and as governed by Paragraph E – Acceptance/Payment.

K. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

L. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of

certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

M. **Independent Contractor**: Contractor shall be considered an independent Contractor and neither the Contractor, employees nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

O. **Indemnification and Insurance:**

**INDEMNIFICATION PROVISIONS**

Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County INDEMNITEES, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

**INSURANCE PROVISIONS**

Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of $25,000 ($5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

**Qualified Insurer**
Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

| Coverage | Minimum Limits |
|---|---|
| Commercial General Liability | $1,000,000 per occurrence<br>$2,000,000 aggregate |
| Automobile Liability including coverage for non-owned and hired vehicles | $1,000,000 per occurrence |
| Workers' Compensation | Statutory |
| Employers' Liability Insurance | $1,000,000 per occurrence |
| Errors & Omissions Liability Insurance | $1,000,000 per claims made or per occurrence |

Required Coverage Forms
The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements
The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

Contractor shall, with respect to all insurance policies required by this contract, give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium.

If Contractor's Errors & Omissions policy is a "claims made" policy, Contractor shall agree to maintain Errors & Omissions coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

P. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

Q. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

R. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

S. **Force Majeure:** Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

T. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

U. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

V. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

W. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

X. **Waiver of Jury Trial:** To the extent enforceable under California law, each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.

Y. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

Z. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

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

BB. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

CC. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

DD. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.

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

FF. **Employee Eligibility Verification**: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

## Additional Terms and Conditions

1. **Term of Contract:** This Contract shall commence July 6, 2013 and upon execution of all necessary signatures and approval of the County of Orange Board of Supervisors, and shall be

effective for three (3) years from that date, unless otherwise terminated by County. This Contract may be renewed for one (1) additional one (1) year term by mutual agreement of both Parties. The County does not have to give reason if it elects not to renew.

2. **Scope of Services:** This Contract, including any Attachments and Exhibits, specifies the contractual terms and conditions by which the Contractor shall provide a Public Mass Notification System, as described in Attachment A - Scope of Work (and all other documents referenced in Attachment A), under a fixed price contract based upon payments, as set forth herein. Contractor agrees this Contract shall not be adversely impacted by any other projects the Contractor is conducting. Nothing in this Contract shall prohibit the County from acquiring the same type or equivalent type of services from other sources.

3. **Contingency of Funding:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty. For services rendered during the County fiscal year for which appropriation s were made, and which meet the specifications detailed in the Scope of Work and are deemed acceptable by the County, amounts will be invoiced or otherwise due and payable at the time of termination.

4. **Project Manager:** The County and the Contractor shall each appoint a Project Manager to act as liaison between each Party during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

   The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and key personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

5. **Precedence:** The Contract documents herein consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

6. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

7. **Child Support Enforcement Requirements:** In order to comply with the child support enforcement requirements of the County, within ten days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish the required Contractor data and certifications to the agency/department deputy purchasing agent.

   Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

8. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.

9. **News/Information Release**: The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's project manager.

10. **Reports/Meetings:** Upon County's request, the Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the Contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's project manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

11. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:

    a. The Contractor shall submit to the agency/department deputy purchasing agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

    b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and

that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction.

12. **Termination ~ Orderly:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

13. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

14. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Sheriff-Coroner / Emergency Management
Attn: Raymond Cheung
2644 Santiago Canyon Road
Silverado, CA 92676
Ph: 714-628-7058

cc: Sheriff-Coroner / Purchasing Services Bureau

Attn: Buyer
320 N. Flower Street
Santa Ana, Ca 92703
Ph: 714-834-4700

Contractor:

Blackboard Connect, Inc.
15301 Ventura Blvd.
Suite 300
Building B
Sherman Oaks, CA 91403
Attn: John Smith
Ph: 818-808-1738
Fx: 818-808-1702

15. **Ownership of Documents:** County will own all data and material provided by the County to Contractor. The County will only receive the right to use the Service and materials pertaining to the Service, during the term of, and in accordance with, the Contract. Nothing in the Contract will grant or transfer to the County any ownership rights in the Service or materials pertaining to the provision of the Service. The County acknowledges and agrees that the Service, the data provided by Contractor, training guides and all other materials pertaining to the use of the Service are not purchased or developed with County funds, and may not be utilized or reproduced without the written permission of Contractor.

16. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor outside of the described scope of work during, after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Contractor's Records:** Contractor shall keep an accurate record of time expended by Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times. Such records will be retained for three (3) years after the expiration or termination of this Contract.

18. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract, and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

19. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the

County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

20. **Contractor Safety Standards and Work Hours:** The Contractor will ensure compliance with all safety and hourly requirements for employees in accordance with Federal, State, and County safety and health regulations and laws.

21. **Audit:** The County's duly authorized representative shall have access, at reasonable times, to all reports, Contract records, documents, files and personnel necessary to audit and verify the Contractor's charges to the County hereunder. The Contractor agrees to retain reports, records, documents, and files related to charges hereunder for a period of three years following the date of final payment for the Contractor's services hereunder and such records shall be located in Sherman Oaks, California. The County reserves the right to audit and verify the Contractor's records before final payment is made. Audits and inspections shall take place as follows: a) such audit or inspection occurs no more than once per year; b) such audit or inspection is limited solely to records and data directly applicable to the County and/or solely to Contractor's employees rendering services to the County, and does not entitle the County to access information related to any other of the Contractor's clients; c) such audit or inspection does not include a record reproduction right with respect to Contractor confidential information; and d) such audit or inspection is at the County's sole cost and expense. The County's representatives shall have the right to reproduce any of the aforesaid documents.

    Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

22. **Authorization Warranty:** The Contractor represents and warrants that the person executing the Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

23. **Security Requirements:**

    A. Contractor shall, with respect to all employees of Contractor performing services hereunder:

        1. Perform background checks as to past employment history.
        2. Inquire as to past criminal felony convictions.
        3. Ascertain that those employees who are required to drive in the course of performing services hereunder have valid California driver's licenses and no DUI convictions within two (2) years prior to commencement of services hereunder.
        4. Perform drug screening to determine that such employees are not users of illegal drugs or other substances.
        5. Have employee complete and sign Contractor Security Clearance and Orange County Jail Release of Liability documents, as required by Orange County Sheriff's Department.

B. Contractor shall not assign to the County property any Contractor personnel as to whom the foregoing procedures indicate:

1. Inability or unwillingness to perform in a competent manner.

2. Past criminal convictions for theft, burglary or conduct causing property damage or mental or physical harm to persons.

3. Where such employee's duties include driving a vehicle, absence of a valid California driver's license or a DUI conviction within the prior two (2) years.

4. Usage of illegal drugs or other substances.

C. If any of the problems identified with respect to the Contractor's employees are discovered after assignment of an employee to County property, or if County otherwise reasonably deems an assigned employee unacceptable, Contractor shall remove and replace such employee at the County property.

D. Nothing herein shall render any employee of Contractor an employee of County.

E. THE CONTRACTOR'S PERSONNEL REQUIREMENTS:

All employees must pass the County's background check and meet all requirements as set forth below:

1. Pass Contractor's Personnel-Background Checks.

2. All personnel to be employed in performance of the work under this Contract shall be subject to background checks. Clearance must be updated and renewed every twelve (12) from original date of clearance.

3. No person shall be employed on this work that has not received prior clearance from the Sheriff's Department.

4. Within 15 days of the effective date of this Contract, the Contractor shall prepare and submit a complete and accurate "Contractor Security Clearance" and "Orange County Jail Release of Liability" information form for all Contractor's employee who will be working on or who will need access to the Sheriff's facilities to perform work covered by this Contract. County project manager shall provide form(s) to Contractor's project manager.

5. "Contractor Security Clearance" and "Orange County Jail Release of Liability" information forms for renewal, at specified intervals and for new employees of Contractor, shall be submitted at least ten (10) County working days prior to the expiration of an existing clearance or prior to the use of any person for work occurring on Sheriff's Facilities.

6. "Contractor Security Clearance" and "Orange County Jail Release of Liability" information forms must be submitted on the original Sheriff's printed form. Facsimile or photocopy forms will not be accepted.

7. "Contractor Security Clearance" and "Orange County Jail Release of Liability" information forms will be provided by the County Project Manager upon request and will be screened by the Sheriff's Department.

8. "Contract Security Clearance" and "Orange County Jail Release of Liability" information forms shall be thoroughly and accurately completed. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.

9. The Orange County Sheriff Department will not give the reason an individual's clearance is denied.

F. GENERAL SECURITY REQUIREMENT-AT WORKSITE:

1. All work areas shall be secured prior to the end of each workday.

2. Workmen shall have no contact, either verbal or physical, with inmates in the facility. Specifically:

   a. Do not give names or addresses to inmates.

   b. Do not receive any names or addresses from inmates.

   c. Do not disclose the identity of any inmate to anyone outside the facility.

   d. Do not give any materials to inmates.

   e. Do not receive any materials from inmates (including materials to be passed to another individual or inmate).

3. Contractor's personnel shall not smoke or use profanity or other inappropriate language while on site.

4. Contractor's personnel do not enter the facility while under the influence of alcohol, drugs or other intoxicants and do not have such materials in their possession.

5. Failure to comply with these requirements is a criminal act and can result in prosecution.

6. Contractor's personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all tools, equipment, and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.

7. Contractor's personnel shall follow any special security requirements issued by the onsite contact person or escort Deputy.

8. Contractor's personnel shall report either to the on-site contact person when leaving the facility, temporarily or at the end of the workday.

9. Contractor's personnel shall immediately report all accidents, spills, damage, unusual conditions and/or unusual activities to the onsite contact person or any Sheriff's Deputy.

10. Contractor's personnel shall securely close and check all gates and doors to ensure that they are tightly closed and locked.

11. Contractor's personnel shall restrict all activities to the immediate work site and adjacent assigned areas.

12. Contractor's personnel shall remain with the assigned escort at all times, unless otherwise directed by the onsite contact person.

G. POTENTIAL DELAYS/INTERRUPTIONS:

1. Contractor shall acknowledge that the primary purpose of the detention facilities is the safe and secure operation of those facilities. To that end:

   a. Contractor's personnel who enter a Sheriff facility but have not passed the security screening, or who have falsified the security screening information, or who have outstanding warrants or the Sheriff may detain warrants.

   b. Contractor's personnel shall immediately comply with all directions and orders issued by Sheriff's personnel, other than changes regarding the quality or quantity of work, which will be controlled by the designated Authorized Service Requestor, County Project Manager, Contract Coordinator or the Contract Administrator.

   c. Contractor's personnel may be delayed or denied access to the facility due to unforeseen events that may affect the availability of security escorts.

   d. Contractor's personnel may be ordered to leave a facility prior to the completion of their work or the end of the workday by unforeseen incidents occurring within secure environments.

   e. Contractor's personnel may be detained within a facility until Sheriff's personnel resolve an incident.

24. **Policies and Procedures**: Contractor, its subcontractors, the Contractor personnel, and all other agents and representatives of Contractor, will at all times comply with and abide by all Information Technology (IT) policies and procedures of the County that are provided or made available to Contractor that reasonably pertain to Contractor (and of which Contractor has been provided with advance notice) in connection with Contractor's performance under this Contract. Contractor shall cooperate with the County in ensuring Contractor's compliance with the IT policies and procedures described in this Contract and as adopted by the County from time-to-time, and any material violations or disregard of such IT policies or procedures shall, in addition to all other available rights and remedies of the County, be cause for termination of this Contract.

25. **Security and Policies**: All performance under this Contract shall be in accordance with the County's security requirements, policies, and procedures as set forth in Section 24. Policies and Procedures and as modified, supplemented, or replaced by the County from time to time, in its

sole discretion, by providing Contractor with a written copy of such revised requirements, policies, procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"). Contractor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.

26. **Information Access**: The County may require all Contractor personnel performing services under this Contract to execute a confidentiality and non-disclosure agreement concerning access protection and data security in the form provided by County. The County shall authorize, and Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Contractor permit any such mechanisms to be shared or used by other than the individual Contractor personnel to whom issued. Contractor shall provide each Contractor Person with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and software contained therein, including County data, County hardware and County software, used or accessed by Contractor: (a) shall be used and accessed by such Contractor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Contractor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Contractor, at any time.

27. **Enhanced Security Procedures**: The County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. The County shall notify Contractor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Contactor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.

28. **Breach of Security**: Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract and may be deemed an incurable and material breach of a material obligation of Contractor under this Contract resulting in termination.

29. **Conduct on County Premises**: Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of the County (or that may be established thereby, from time to time) that pertain to conduct on the County's premises, possession or distribution or contraband, or the access to, and security of, the Party's real property or facilities, to the extent that the Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and Subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as

employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.

30. **Security Audits**: Each Contract Year, County may perform or have performed security reviews and testing based on an IT infrastructure review plan. Such testing shall ensure all pertinent County security standards as well as any customer agency requirements, such as federal tax requirements or HIPPA.

31. **Limitation of Liability:** In no event will Contractor, its officers, employees, representatives or licensors be liable to County for any indirect, punitive, reliance, special, consequential, exemplary, or other similar damages of any kind of nature whatsoever, suffered by the other Party or any third party (including without limitation, business interruption, downtime, or any use of, or failure to use the Service, or any loss of business, contracts, profits, anticipated savings, goodwill or revenue, or any loss or corruption of data), arising out of this Contract, the Service, or the transactions contemplated hereby, even if the Contractor has been advised of the possibilities of such damages or should have foreseen such damages. Contractor, its officers and employees will not be liable for any damages or injury with respect to the performance of the Service, including, but not limited to, any failure of performance, error, omission, defect, delay, computer virus, or line failure, interruptions or disruptions in the services contemplated under this Contract caused by or resulting from any act, omission or condition beyond Contractor's reasonable control, whether or not foreseeable or identified, including but not limited to, transmission errors, or corruption or security of information carried over telecommunication lines, failure of digital transmission links, hostile network attacks or network congestion, or acts of God, acts of war, governmental regulations, public utilities or telecommunication providers, shortage of equipment, materials or supplies, fire, power failure, earthquakes, severe weather, floods or other natural disaster or the County's or any third party's applications, hardware, software or communications equipment or facilities, unless same results from the intentional or willful acts of Contractor. Contractor is not responsible to the County, any of County's Recipients or any other third party regarding the accuracy or validity of the data entered through the Web Portal and Contractor makes no warranty that the Web Portal will be error-free or that access thereto will be uninterrupted. Under no circumstances will the aggregate liability of Contractor to the County or any third party arising out of or related to this Contract or the provision of the Service, exceed the aggregate fees paid to Contractor under this Contract during the 12 month period immediately prior to the event, act or omission giving rise to such liability, regardless of whether any action or claim is based on warranty, indemnification, contract, tort or otherwise. The existence of multiple claims will not enlarge this limit. The foregoing limitations of liability are intended to apply without regard to whether other provisions of this Contract have been breached or have proven ineffective. Nothing contained in the foregoing limits or excludes the liability of Contractor for liability which cannot be excluded by law.

32. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other political sub-divisions and County of Orange agencies/departments. Political sub-divisions and County of Orange agencies/departments wishing to use this Contract will be responsible for issuing their own documents/subordinate contracts, providing for their own acceptance, and making any subsequent payments. These entities will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. The cooperative entities are responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by

other users of this Contract. The County of Orange may authorize the loading of this Contract into an electronic commerce system.

33. **First Responder Services:** The primary recourse for the County in the event of any actual or potential threat to person or property should be to contact First Responder Services. "First Responder Services" are typically defined as Law Enforcement, Fire Departments, EMS Services, Hazmat Responders, and other like services. Contractor's Service is not intended to replace First Responder Services, or to be used for communicating with, or replace notification to, or interoperate directly with, First Responder Services, which should have already been notified and deployed prior to using the Service.

(Signature Page Follows)

Contract Signature Page

The Parties hereto have executed this Contract # MA-060-13011688 on the dates shown opposite their respective signatures below.

***Contractor: Blackboard Connect, Inc.**

By: _____ Title: Vice President

Print Name: Jess Frazier Date: 1 April, 2013

***Contractor: Blackboard Connect, Inc.**

By: _____ Title: SECRETARY

Print Name: Michael C. Bisignano Date: 1 April, 2013

*If a corporation, the document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurers.

**County Of Orange**

A political subdivision of the State of California

By: _____ Title: PURCHASING MANAGER

Print Name: Dwight Manning Date: 5/22/13

Approved by Board of Supervisors on: 5/21/13

Approved as to Form
Office of the County Counsel

By _____
Angelica C. Daftary, Deputy

## ATTACHMENT A
## SCOPE OF WORK
## PUBLIC MASS NOTIFICATION SYSTEM

1. Requirements

Contractor shall implement a County-wide public mass notification system with the primary objective of quickly delivering alert, warning, and instructional messages via phone, SMS, and/or e-mail to County residents and businesses during times of disaster. The Contractor shall provide to County a production ready system licensed for use throughout Orange County's entire region.

Contractor shall provide a system with sufficient administrative controls to manage system use across County and city public safety jurisdictions. System users shall only be capable of viewing information and launching notification sessions to citizens within their jurisdiction. The system shall have sufficient functionality, security and bandwidth to accommodate County-wide data, regional use, multilingual outbound messages, geographical call list generation, and tiered system administration and use. Contractor's service shall be a Software as a Service ("SaaS") that will accomplish the County's mass notification objectives stated herein. Contractor's county-wide mass notification system shall include, but is not limited to, the following:

a. Facilitate public mass notification distribution.

b. Tiered administration and security levels to optimize, manage, and control system use. The service shall be highly configurable to provide granular user rights and roles, restricting data access and administrative oversight to the appropriate personnel. The contractor shall work in conjunction with the County to define multiple user groups with different levels of access. Specific rights and roles for each user account profile shall be established that restrict or allow defined functions and access to various levels of the database based upon the profile. Each department and user shall have full access to the appropriate areas of his or her purview, with capability to communicate across departments or to the public, while still providing a secure environment in which only the appropriate personnel have service access to notify their respective stakeholders.

c. Intuitive and easy to use interface that requires minimal training with an easy, user-friendly message initiation process. There shall be four methods for delivery of messages:

   1. Web User Interface: The authorized user will log-in to the Blackboard Connect service via the web interface

   2. Dial-In Messaging Card: The user will be issued a Dial-In Messaging Card that can be kept in a wallet. On this card the toll-free number the user calls from the User Interface will be on the card as well as the User ID. Upon entering the Message Assistant, the user can enter their password and follow a series of telephonic prompts to send a message directly from the phone as if he/she is using the User Interface

   3. iPhone or Android application: The user can also create and send a message using our iPhone/iPad/iPod or Android application on any 3G or Wifi Network. The Connect App allows the user to create a voice, email and/or text message and send it to any of the groups that are created or held within the County's



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Connect account. The User can create voice messages by recording them directly into the iPhone/iPad/iPod without leaving the application or dialing the message assistant number.

4. Client Care Help Desk: If the user has any difficulty following the prompts, the 24/7/365 Client Care Team is available to assist the user. Or if the user wishes to call a group other than the crisis team or "all" contacts, again, the Client Care team can support the user.

d. Ability for citizens to register phone numbers and e-mail addresses via the County's website. Contractor shall provide an interactive, multi-lingual web portal for augmented data collection beyond the initial number, to allow constituents to specify calling preferences, such as primary and secondary contact information, opt-in cell phone numbers, request TTY/TDD calling, and indicated a home language preference. The portal shall integrate with the service for data upload. Data collected on the web portal shall be entered directly into City's account. Authorized City users can export that data as frequently as they wish. The public and businesses may self-subscribe through the portal for cell phone, make additional opt-out selections, identify primary notification numbers, etc.

e. Ability for agencies to utilize the system for internal notification use including a message in the form of a customized survey with up to nine (9) questions to send to contacts. The recipients respond to a message via their telephone keypad. The service shall tabulate the results and then provides them to users via the website and e-mail reports.

f. Dissemination of messages to Telecommunications Device for the Deaf (TTD) / TeleTYpe (TTY). The service shall detect if a TTY message reaches a person or a machine and allow users to send messages to multiple devices, including TTY/TDD devices, to maximize access and outreach to the community. This capability shall be identified in the record for each address by the individual via the portal.

g. Dissemination of messages in citizen's preferred language (Spanish, Vietnamese, or English). The service shall recognize and extract the native language from a client database field for each contact and facilitate the grouping of messages by the language spoken. The service shall support voice notification in multiple languages. Text messaging and email will be available in all Roman alphabet languages. Text-to-voice conversion shall be preloaded in English, Chinese (Cantonese), Chinese (Mandarin), Danish, Dutch, French, German, Italian, Japanese, Korean, Norwegian, Polish, Portuguese, Russian, Spanish, Swedish and Vietnamese. Text-to-text translation is available from English to Danish, Dutch, French, German, Italian, Norwegian, Portuguese, Spanish, Swedish and Vietnamese.

h. Accurate, up-to-date County-wide constituent phone and e-mail data. The service shall have an automated, unattended process to import E911 or any other County provided data.

i. Up-to-date County geographical maps. All County data shall be automatically geo-coded with latitude and longitude coordinates to allow the County to make geographically specific calls (e.g. calling within a one mile radius of an incident, etc.). The service shall provide an intuitive geo-mapping tool that will allow the County to create specific call list for certain areas of the County's by quick and easily drawing shapes on a map. This tool shall also accept GIS Generated Boundary Files ("shape files") and save them in the system for users to recall them at the point of need, as often as desired

j. Capability of geo-coding AT&T and Verizon phone data to County-wide geographical maps. The Contractor shall utilize data extracted from the 9-1-1 database, and employ methods and procedures to ensure that the outbound telephone subscriber notification database is regularly managed, geo-coded, error-corrected and updated. Service shall allow for a pre-geocoded import, provides monthly non-geocoded reports upon request. All geo-coding information (i.e. lat/long) is the property of the County and is available upon request.

k. Capability of generating call lists via geographical map selection. The service will provide an intuitive geo-mapping tool that will allow the County to create specific call list for certain areas of the County by quick and easily drawing shapes on a map. For the most precise map shapes, this tool will also accept GIS Generated Boundary Files ("shape files") and save them in the system for users to recall them at the point of need, as often as desired.

l. Sufficient security, backup, and redundancy. Contractor shall utilize the following measures to support physical equipment and subsequent data security: Data facilities with redundant power feeds and data connectivity, are fireproof, flood proof, and have level 4 rating earthquake protection; All data shall be maintained at data centers with 24/7/365 manned monitoring by experienced security personnel; Access to all data shall be limited to specific authorized personnel with valid identification, handprint identification, and a key card to enter the facility; and, Databases segregate into isolated VLANs with stringent access control lists (ACLs) to protect data entering and exiting Blackboard Connect's network. Contractor shall utilize secure transmissions for all data transfer to and from the clients' sites. Specifically, Contractor shall utilize the following protocols to ensure secure data transfers: HTTPS/SSL/SFTP. All data transmitted to and from a client administration website shall utilize secure transmissions that use 128 bit SSL encryption or better. All data transfer shall be performed using either SSL or SecureFTP at the County's preference; Firewalls. All Contractor database servers at all data centers shall be behind a firewall, inaccessible from the outside and secured on a separate Virtual Local Area Network (VLAN) with non-routable IP addresses to the Internet. All firewalls shall be monitored 24/7/365 by experienced security personnel using the latest industry standard tools; Controlled Access. Employee access shall be controlled by stringent access control lists and requires domain level authentication for access; and, DMZs. Contractor web servers shall reside in a perimeter security network called a demilitarized zone (DMZ) that separates the internal network from the outside world.

m. Contractor shall guarantee a 99.99% uptime of service so that the County can initiate messages when necessary.

n. The ability to deliver 3.2 million 60 second voice calls per hour and 1.8 million text and email messages per hour.

o. Integration, and is registered, with FEMA's Integrated Public Alert and Warning System (IPAWS) and the Commercial Mobile Alerting System (CMAS).

III. Contractor Responsibilities

Contractor shall perform services as follows:

1. Solution: Contractor shall provide a public mass notification system that meets the County's functional and technical requirements specified in this Contract, including all



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hardware, software, and communications equipment required to support the business objectives.

2. Design Specification: Contractor shall provide a detail system design specification document, with diagram, that represents all components required of the public mass notification system and identifies how the system will be installed and accessed from within and outside the County's network environment.
3. Implementation Services: Contractor shall perform and complete the services, tasks, and obligations listed herein:
Schedule

Phase 1 – Implementation Deliverables

*Weeks 1-2 After Contract Execution*

- Contract Execution: Contractor's Client Care Team will begin the integration process immediately upon receipt of the executed contract.
- County Identifies a Project Manager: This person will be the primary contact person for the Contractor's Client Care Team to establish an Implementation timeline and Training schedule.
- County identifies IT/Data Lead Contact: This person will interface with Contractor's Integration Specialists to upload all message recipient data, such as phone numbers, emails and SMS information.
- Establish Roll-out Schedule: Contractor's Client Care works with the County Project Manager and IT/Data Lead to establish an implementation timeline for the upload of data, training of users, and launch of the Connect service.
    - Define User Rights and Roles: Contractor's Client Care and County collaborate, set expectations and define roles for launch and usage. County sets rights and roles for all users based upon user type, role, privileges, and responsibilities.
- Upload Employee Data: Contractor will import employee contact data and integrate with County's HR and other database systems, establishing regularly scheduled automated, unattended imports. Contractor will work with County and provide autoscripts, as needed, to automate uploads for all data.
    - Web Portal Established: Contractor will set-up a web portal for County, using County-specified parameters, including drop down for language preference, etc. The portal will collect augmented community data, such as e-mail and SMS contacts. Additionally, the Client Care Team will work with County to establish a link from the County website to the portal.

Phase 2 – Training Deliverables

*Week 3-4 After Contract Execution*

- Initial Training: A 75-90 minute training session for each identified user in County is included at no additional cost. Unlimited additional training, as needed, is available throughout the life of the Contract. Contractor



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anticipates training will be completed in no more than 1 week. The number of users granted access to Connect and trained is determined by County.

- Documentation Provided: County Users receive - User Guides, Send-A-Message "Cheat Sheets", Reference Guides and Dial-In Messaging cards (if their identified role warrants it). County Champion receives a User Management Guide, County Guidelines, Introduction Letters, a Welcome Packet and other forms and templates. The IT/Data Lead receives a Data Reference Guide, an Upload Reference Guide and sample data files
- Public Relations Roll-Out: As part of the roll-out, Contractor will work closely with the Sheriff's Community Relations Department along with our contracted PR Agency to help plan and distribute press releases, prepare letters of explanation for the community and formulate strategies to assist the County to proactively launch the service to the community.

Phase 3 Aftercare Deliverables

*Ongoing for the Lifetime of the Contract*

- Ongoing Training: Unlimited training, new user training and refresher training are included in Contractor's fee throughout the life of the Contract.
- 24/7/365 Technical and Client Support: Shall be provided through a toll-free number and e-mail. All designated County users have unlimited access to this level of support through the life of the contract.
- Usage Reports: Contractor shall provide usage reports regularly to County, to ensure that all departments are using the service optimally. This is in addition to the message delivery details that are automatically delivered by e-mail for each message as a standard capability of the Connect service. County Users can generate their own usage reports as well.
- Assessment and Evaluation – Contractor's Client Care members will work consultatively with County to develop benchmarks and assist in evaluating progress toward those benchmarks.

PROJECT TEAM

The following are the Contractor's key project team members.

*Contractor's Project Team:*

1. Project Manager – This individual leads the implementation, training, and rollout process from a management perspective. All daily activities, such as ensuring timely scheduling and training, rest with the Project Manager. The rest of the project team supports him/her. The Project Manager (also named Account Manager) interfaces with County for reporting and documentation.
2. Project Specialists – Client Care – An additional team of Contractor's Client Care Specialists works under the leadership of the Project Manager. Their role is to provide training, support, and client service for all County needs. The Team shall include Specialists dedicated to County for the life of the Contract. Each Project Specialist will be assigned as a liaison to a specific component of the Project, such as Departmental Training or County Training, and will be responsible for day-to-day management and conducting regular new user—and refresher—training.



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3. Director of Integration and Support - This individual works with the Project Manager to ensure the smooth progression of all technical deliverables, including but not limited to managing the testing process and any delivery of required customization. This person will also manage Contractor's Integration Team to ensure the upload of data and automation of all notification services. This individual is the technical project lead, responsible for creating, monitoring, and achieving sign-off on the test plan.

The Project Team will meet all service issues, but Contractor's Help Desk as well as back-end Technology Team will provide additional support required by County. For example, in the event that the Project Manager and other members of the team are not immediately available, the Blackboard Connect Help Desk will be available 24/7/365. To ensure that Contractor's support personnel are not affected by a regional event, such as an earthquake, Contractor's Client Care Team resides in multiple states that span the country, including all four US time zones.

*County's Project Team:*

County's Project Team will include at least one point of contact, the Project Manager. This person will meet weekly with Contractor's Project Manager to discuss status of deliverables and objectives. Meeting schedules will be established between Project Manager and County officials during the roll-out of the project. Additional members of the team may include an IT Manager and/or Data Manager and other members, as needed.

During the implementation and training phase, Contractor shall work with County to create an articulated best practices plan for use that adheres to existing client protocols for communication. Contractor prints this County Best Practices/Policies & Procedures Guide for County and distributes and discusses it during training. It shall not only be based upon joint conversations between County and the Contractor's Client Care Team, but also upon Contractor-provided samples from other government agencies as a guide. Contractor will advise County of fields that are available to include in the reports and will provide sample reports for review.

4. Testing and Acceptance:

If a problem is identified during testing of the Software that cannot be remedied within the agreed upon time by Contractor's and County's Project Managers, the Contractor shall submit a written response to the County indicating as such and the County shall then return the Software to the Contractor and the Contract shall be terminated in accordance with Paragraph E, Acceptance, of this Contract.

Procedures

Contractor's product shall be a fully implemented, fully hosted solution, where there is no software of hardware needed. Prior to roll-out, Contractor puts all new features and enhancements through rigorous testing including Alpha and Beta phase as appropriate prior to rolling out the feature to the client-facing interface. Contractor's product uses a combination of automated and manual testing to perform ongoing quality assurance testing of the Connect service. For automated testing, Contractor's QA personnel utilize Mercury's QuickTest Pro. Manual testing is performed on a case-by-case basis for testing where automation will not suffice. All issues are tracked in an internal bug tracking system and subsequently monitored by not only the individual QA personnel, but also all the Directors



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involved in the development and release of a feature. Quality Assurance personnel are involved from the beginning of the software development lifecycle and see each feature through from development to final launch and validation. Test and Acceptance Plans may be changed in agreement by County and Contractor.

Test and Acceptance Plan outline is as follows:

1.1 Scope & Plan Overview

1.2 Testing Approach

1.3 Test Schedule (Test ID#, name, description, time and date of execution)

1.4 Description of SetUp Procedures

1.5 Description of Action Procedure

1.6 Description of System Results

1.7 Description of Expected Results

1.8 Description of Actual Results

1.9 Variance Reporting

1.10 Resource Requirements for Resolution

1.11 Corrective Action

1.12 Summary of Results (with Signature/sign-off line)

1.13 Conclusion

5. Training, Manuals, and Documentation: The Contractor shall provide County with and maintain two (2) copies of a comprehensive and customized Public Mass Notification System Manual designed to document the proposed solutions software functions, guide trained users on detail process steps and train futures users. Additionally, technical specifications, including a network diagram of the systems architecture, data dictionary and data schema, shall be provided to allow proper maintenance of the System by County network and database administrator staff. The County may copy all manuals and documentation provided by Contractor for use and distribution to County public safety departments as needed. The Contractor shall provide all technical, administrative and user training required for County staff to use the software solution.

   Contractor shall provide training of County staff including all technical, administrative and user training. All training shall be conducted using the actual application and data of the County. Training material shall be provided in both soft and hard copies for future County "train the trainer" sessions.

   Training sessions shall seat up-to 25 participants per session. For on-site training, the Contractor shall provide a central site for training. Contractor shall also provide a Train-the-Trainer model should the County require it. During training sessions, users will be trained in best practices, and provided with detailed information regarding Contractor support.

   End user training shall consist of:

   Introduction & Website Overview; Contacts (search & view contact details); Groups Management (creating groups & editing groups); Message Types; Send a

message (3-steps process); Scripting messages; Recording messages; Selecting contacts by list; Selecting contacts via Geo-Calling; Scheduling messages' Reviewing Call Reports; Re-Send Messages; Updating User Account Information; and Q & A.

Power users/administrators receive additional information about assigning user rights and roles, call authorization functionality, PIN authentication, and best practices policies and procedures development. Technical administrators, operations staff, and support staff receive additional training in data upload and system integration management as well as troubleshooting as relevant.

Authorized users have access to online training and training materials, which can be reviewed and approved by the County. Blackboard Connect is responsible for the provision of all training materials, which shall include hard copy and electronic copy as needed. Training Materials will include the following documentation at minimum:

*Documentation Provided:*

1. End Users - User Guides, Send-A-Message Cheat Sheet, and Dial-In messaging card.
2. System Administrators/Technical – All items above, plus the following items: User Management Guide, County Best Practices Guidelines, Introduction Letters, and other Forms, Data Reference Guide and Upload Reference Guide.
3. Train the Trainer Users - All items above minus the Data Reference Guide, plus the following items: Trainer Script for Presentation, Trainer's handbook, Trainer's Guide to Best Practices.

6. System Annual Maintenance and Support and Upgrades:

Contractor will provide unlimited live 24 Hour/7 Days a Week/365 Days a Year support for **all users**--not solely for named users--through Contractor's 24-hour toll-free support line at no additional cost to the County. Support response time shall be 15 minutes or less for all issues, at all times of day or night, through the Help Desk toll-free support line. The service shall include unlimited 24-hour support for all users backed by Contractor's Client Care Team who will assist the County to implement the service, train users, drive appropriate usage of the service, and establish and monitor success metrics to ensure measurable results are delivered and documented.

Contractor will ensure integration, training, and guided system use according to best practices built with help from our existing clients. Contractor will provide technical directors to load and integrate data from their database systems to our contact management system. Contractor will provide "Quick Reference Guides" for users, replete with message script templates as well as "tips and tools" on how to create quality outbound messages to parents. Contractor will assign a Client Care Specialist who will help drive usage of the system. Based on experience in serving other clients of the Connect service, Specialists offer coaching on message length, frequency of use, content, and tone to ensure receptiveness and satisfaction from recipients. The Specialist leads the County through an assessment and evaluation

process to ensure the benefits from using the Connect service are tracked and documented.

All members of Contractor's Connect Client Care Team shall be full-time, Blackboard Connect employed customer service professionals. Contractor will assure data security by requiring all staff to undergo and clear extensive background checks prior to employment. Additionally, all Client Care Team members are Level 1/2 cross-trained in both customer and technical support to address a variety of County needs.

In the event that an issue needs to be escalated, escalation levels are listed below. Response time from level to level is typically an hour or less, but will be dependent upon the severity of the issue. Incident resolution will be dependent upon the severity of the issue as well. Contractor's Client Care Account Manager will provide updates throughout any incident until there is incident resolution.

| Escalation Level | Contact | Contact Number |
|---|---|---|
| Level 1 | Help Desk or Client Care Manager (System & Functional Issues) | (877) 428-9411 |
| Level 2 | Client Care Director (System & Functional Issues) | (818) 808-1700 or as above |
| Level 3 | Senior Client Care Director (Functional Issues) Technology Director – Integration Director (System Issues) | (818) 808-1700 or as above |
| Level 4 | Chief Technology Officer (System Issues) | (818) 808-1700 or as above |

Contractor shall seamlessly roll upgrades and updates into the service on an ongoing basis. All upgrades and enhancements will be rolled out seamlessly into the web interface after extensive testing. Major upgrades typically occur quarterly. Minor upgrades occur weekly or as needed. County will be notified about any additional client-facing functionality through email or phone call from Contractor's Client Care Account Manager. All major upgrades and updates include new user documentation and training as requested. Unlimited new and refresher training is available to all users at any time throughout the lifetime of the Contract.

For each upgrade, Contractor will provide release notes, detailing what changes have been made to Contractor's system, and updated documentation, user manuals, and training materials with each update/upgrade of the system while under maintenance agreement, to include one (1) complete set of documentation for the application administrator, one (1) complete set of documentation for the County's IT personnel, one (1) complete user set able to be copied, and one (1) electronic copy in the most current version of Microsoft Word, and (1) electronic copy in web browser accessible format.

**ATTACHMENT B**
**COST SUMMARY**

## I. COMPENSATION

This is a fixed price Contract between the County and the Contractor for a Public Mass Notification System as further described in this Contract. The Contractor agrees to supply all goods and services to provide and fully implement the Public Mass Notification System Solution including: Software License, implementation, data and map integration, software training, documentation, as well as, annual software maintenance and support. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The County shall have no obligation to pay any sum in excess of the total Contract amount specified herein unless authorized by formal Amendment.

## II. PAYMENT

The total Contract amount for the first three years shall not exceed: $900,000.00 *

| Year One Costs | |
|---|---|
| Enterprise License/Subscription | |
| 1. Perpetual License/Subscription | Not Applicable |
| 2. Annual License/Subscription | $300,000.00 * |
| Usage Transaction Fee | No Charge |
| Software/Service Configuration and integration with other County systems | No Charge |
| Implementation Services and Customizations | No Charge |
| Software Training, Manuals and Documentation | No Charge |
| Annual Software Maintenance and Support Fee | No Charge |
| Hosting Services Fees: If Hosted by Contractor, identify and describe any additional one-time and on-going fees | No Charge |
| CA Sales Tax 8.00% (If applicable) | No Charge |
| Year One Total: | $300,000.00 * |

| Year Two Costs | |
|---|---|
| Annual License and Software Maintenance and Support Fee | $300,000.00 * |
| Hosting Services Fees: If hosted by Contractor, identify and describe any additional on-going fees | No Charge |
| Year Two Total: | $300,000.00 * |

| Year Three Costs | |
|---|---|
| Annual License Software Maintenance and Support Fee | $300,000.00 * |
| Hosting Services Fees: If Hosted by Contractor, identify | No Charge |

| | |
|---|---|
| and describe any additional on-going fees | |
| Year Three Total: | $300,000.00 * |

| | |
|---|---|
| **Year Four Costs – If Renewed** | |
| Annual License Maintenance and Support Fee | $300,000.00 * |
| Hosting Services Fees: If Hosted by Contractor, identify and describe any additional on-going fees | No Charge |
| Year Four Total: | $300,000.00 * |

* Use of the system for testing, internal notification, and emergency purposes is included in the annual license fee for all users. Emergency is defined as a period of time before, during, and after a situation where life or property is endangered. Other political sub-divisions and County of Orange agencies/departments may buy additional OUTREACH and SURVEY non-emergency message units at $10,000.00 per 50,000 voice or text messages. Contractor will continue to offer UNLIMITED email messages. Other political sub-divisions and County of Orange agencies/departments wanting to utilize this and other non-emergency aspects of this Contract will be required to issue their own subordinate contract documents.

## III. Payment Terms

Software Annual License or Annual Maintenance and Support: Invoices for Annual License with Maintenance and Support costs will be submitted annually in advance to the address specified below.

Contractor shall reference Contract number on invoice. Payment will be Net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

## IV. Payment/Invoicing Instructions

The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

a. Contractor's name and address
b. Contractor's remittance address (if different from 1 above)
c. Name of County agency or department
d. County Contract number
e. Cost
f. Contractor's Federal I. D. number

g. Total

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. The County Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. Except for the optional fourth year of this Contract, for the avoidance of doubt, Contractor shall invoice each applicable Annual License and Annual Support and Maintenance Fee annually in advance.

Invoices and support documentation are to be forwarded to:

Orange County Sheriff's Dept
Emergency Management Bureau
Attn: Donna Boston
2644 Santiago Canyon Rd.
Silverado, CA 92676

# Orange County Operational Area

## Countywide Public Mass Notification System
## Standard Operating Procedures

**Effective: June 30, 2008**

### I. PURPOSE

The purpose of this document is to outline the Standard Operating Procedures for the use and administration of AlertOC, the Orange County Public Mass Notification System, hereinafter referred to as "System". This document will provide more specific step-by-step procedures and roles and responsibilities at the regional level including describing expectation of participants. Individual jurisdictions/agencies should create and maintain and **regional concepts**. The step-by step procedures for activation and use will be maintained in a separate document maintained by each jurisdiction/agency as a part of their emergency response plans for overall planning and response efforts. A copy of these procedures shall be maintained in RespondOC in the AlertOC folder.

This document does not supersede any policy and procedures outlines in the Memorandums of Understandings signed by participating agencies, but should be used to support the use of the Orange County Mass Notification System.

### II. SYSTEM DESCRIPTION

The primary intent of the Countywide Public Mass Notification System is to disseminate early warning and time sensitive information to county businesses and residents during time of an emergency event. The Public Mass Notification System is only one component of the County of Orange Public Warning System. As deemed fit by local authorities, the System should be used in conjunction with the other public warning mechanisms including, but not limited to, route alerting, the Emergency Alert System, sirens, and press releases.

The Mass Notification System is available 24/7 and has been pre-loaded with Orange County landline phone numbers (including unlisted) and countywide geographic maps. Additionally, citizens have the option to provide additional contact information via self-registration portal www.alertoc.com with link access from county and all participating entity websites. Upon local authority decision to activate, the System will be used to send a message, describing the situation and recommended action the public should take, to affected businesses and households via telephone, e-mail and/or text.

The County of Orange, Orange County Sheriff's Department is the sponsor of the Countywide Public Mass Notification System initiative and will take appropriate measures to ensure that the System is in a state of operational readiness at all times. It is the responsibility of all participating Agencies to maximize citizen benefits from the System.

While the County's intent for implementing and maintaining the System is for "emergency" use, upon consent from local authorities, cities may optionally use the System to disseminate "government-related" non-emergency notifications to citizens and organization resources within its jurisdiction. See Section V. Authorized Use and Section VIII. Cost for policy guidelines relating to non-emergency use.

## III. GOVERNANCE

The Orange County Sheriff's Department Emergency Management Division will manage the Mass Notification System as a countywide asset under the Policy and Guidance approved and recommended by the Orange County AlertOC Working Group., and agreed upon by each individual Agency when they opt into the system.

Use of the System by each Agency is contingent upon that Agency abiding by the contract with the mass notification vendor, and the protocols established by the Emergency Management Council and Operational Area Executive Board.

The System utilizes the 9-1-1 database to complete the notifications. The use of the 9-1-1 database is regulated by the California Public Utilities Code (CPUC) sections 2872 and 2891.1. The information contained in the 9-1-1 database is confidential and proprietary and shall not be disclosed or utilized except by authorized personnel for the purpose of emergency notifications. Any agency in violation of this regulation is subject to criminal charges as described in the CPUC.

The Orange County Sheriff's Department Emergency Management Division is responsible to ensure that the provisions of the contract are implemented properly. Authorized users must respect the integrity of the database, understand the privacy issues and fully comply with the policies and protocols outlined in this document. If violations of the MOU and this approved policy document are made by any individual or Agency, the Orange County Sheriff's Department reserves the right to disable that individual's or Agency's login(s).

## IV. OVERVIEW OF GENERAL SYSTEM FEATURES

At minimum, the Orange County Sheriff's Department shall acquire and maintain a Public Mass Notification System capable of meeting the following requirements.

A. Licensed for use throughout the County's entire region
B. Capacity to send a 45 second message to 10,000 residents and businesses within 10 minutes
C. Capacity to send messages via phone, e-mail and text
D. Accessible via the public Internet
E. Provides audit trail logging and reporting
F. GIS map interface for geographic call list generation
G. Citizen self-registration web portal (available in English, Spanish and Vietnamese)
H. Interactive phone survey technology and reporting
I. IVR based notification setup and execution
J. Capable of identifying constituents preferred language and sending message in English, Spanish and Vietnamese

## V. AUTHORIZED USE

The Mass Notification System is designed to be a countywide asset, available to all Agencies that have a dedicated public safety answering point (PSAP) and/or a resident population they are responsible for making protective action recommendations.

An Agency may participate in the countywide System at no charge when used for emergency purposes until June 2017.

Agencies authorized to join the system at no cost are limited to the incorporated cities in the Orange County Operational Area, County agencies and departments, the Municipal Water District of Orange County and Orange County Retail Water Agencies. Each participating Agency must sign a MOU and will maintain, at minimum, a Local Agency Administrator responsible for implementing and administering use of the System at the local level.

### Cities

Cities wishing to participate may do so by having an authoritative representative sign the "Orange County Public Mass Notification System" MOU. Upon signing the agreement, the Agency will be provided a local administrator account, a vendor provided user manual and initial training. Throughout the term of the agreement, the Agency may use the System to send an unlimited number of emergency notifications to the public as well as an unlimited number of emergency and non-emergency inter-department messages. Each participating City shall develop and maintain written procedures to identify and address the Agency's specific use of the System within the scope of this policy guide.

### County Users

Unincorporated areas of Orange County will have emergency messaging to the public launched by the Orange County Sheriff's Department. All other county agencies may have access to utilize the system for interdepartmental use. Each participating County agency shall develop and maintain written procedures to identify and address the Agency's specific use of the System within the scope of this policy guide and provide this guideline to the Orange County Sheriff's Department Emergency Management Division.

### Water Retail Water Agencies

The Municipal Water District of Orange County and Orange County Retail Water Agencies wishing to participate may do so by having an authoritative representative sign the "Orange County Water Retail Agency Public Mass Notification System" MOU. Upon signing the agreement, the Agency will be provided a local administrator account, and the Orange County Sheriff's Department, Emergency Management Division in collaboration with the Municipal Water District of Orange County – Water Emergency response Organization of Orange County (WEROC) will provide a user manual and initial training. Throughout the term of the agreement, the Agency may use the System to send emergency notifications to the public by utilizing pre-established GIS shape files or the system's interactive map feature to identify their water users. Each participating agency shall develop and maintain written procedures to identify and address the Agency's specific use of the System within the scope of this policy guide.

**Emergency Use**

Use of the Mass Notification System for emergency activity contains two components: (1) the need to disseminate critical, safety-related information to individuals regarding emergency events occurring now, follow up information regarding the event and termination of the emergency event., and (2) communicating with safety-responder staff, volunteers and involved parties about the emergency event.

As a general rule, the System is to be used when the public is being asked to take some action (e.g. evacuate, prepare to evacuate, shelter in place, boil tap water before drinking, local assistance centers and other follow up information, rentry to an areas after evacuation orders have been lifted or termination of the emergency because the danger has passed).

Emergency Public Notifications are limited to:

1. Imminent or perceived threat to life or property
2. Disaster notifications
3. Evacuation notices
4. Public health emergencies
5. Public safety emergencies
6. Any notification to provide emergency information to a defined community

The following criteria should be utilized to assist with determining the need to issue an alert:

1. Severity. Is there a significant threat to public life and safety?
2. Public Protection. Is there a need for members of the public to take a protective action in order to reduce loss of life or substantial loss of property?
3. Warning. Will providing warning information assist members of the public in making the decision to take proper and prudent action?
4. Timing. Does the situation require immediate public knowledge in order to avoid adverse impact?
5. Geographical area. Is the situation limited to a defined geographical area? Is that area of a size that will allow for an effective use of the system, given the outgoing call capacity?
6. Are other means of disseminating the information inadequate to ensure proper and time delivery of the information?
7. Is the message being sent follow up information to an emergency event in progress?

If the answer to ALL of these questions is "Yes", then an activation of the Mass Notification System for emergency purposes may be warranted.
To assist with trigger points for potential message use topics refer to Attachment A

Emergency Responder Notifications are limited to:

1. Contacting first responders to advise of an emergency
2. Contacting first responders to report for duty due to an emergency
3. Contacting key staff regarding an emergency or crisis situation

4. Contacting agency employees/DSWs to report at a different time or location (or provide an update) due to an emergency
5. Exercises

Emergency considerations:

1. Notification shall clearly state situation is an emergency
2. Message length shall not exceed 60 seconds
3. It is highly recommended all messages are recorded using a real voice and not the computer transcriber.
4. It is highly recommended to provide a phone number or website where the public can obtain additional or updated information
5. An all clear notification should be sent when applicable

**A. Inter-Department Communication**

City and County Agencies may use the Mass Notification System for non-emergency inter-departmental business communication as needed, without cost. It is recommended that individual Agencies identify where this would add value to their operations and establish separate written protocols and procedures for this use.

**B. Non-Emergency Public Use**

No agency shall use the Mass Notification System for non-emergency public announcements unless a separate contract with the vendor is established. Non-emergency use shall be consistent and in compliance with the non-emergency guidelines included within. Any agency in violation of this term may have their use of the system suspended. Additionally, E 911 data is not allowed to be utilized for non emergency use according to the law California Public Utilities Code (CPUC) sections 2872 and 2891.1 and violators may be subject to criminal enforcement. Jurisdictions will be limited to utilizing the self-registering portal entry data only when launching non-emergency messages.

Agencies who contract to use the countywide System for non-emergency activity agree to give precedence to emergency notification call-outs by delaying or terminating non-emergency notification sessions if needed to increase emergency message success. The primary concern for point of failure in this situation is not the Mass Notification System, but the telephone port capacity of local phone providers responsible for delivering calls to residents. Cost associated with non-emergency public notifications is the responsibility of the local Agency, See section VIII.

Non-emergency **public** notification use is **prohibited** for any of the following purposes:

1. Any message of commercial nature
2. Any message of a political nature
3. Any non-official business (e.g. articles, retirement announcements, etc.)
4. To send a message to an E911 obtained data source; see Section III, Governance, for additional information relating to E911 data use restrictions

## VI. AUTHORIZED SYSTEM USERS

A. Public Notifications

In general, use of the system in most cities is the responsibility of the local law enforcement agency. Since law is responsible to make alert, notification and evacuation orders. However, others may also be authorized to make notifications will be officials including , emergency management, fire and city manager departments.

County Administrator: The Orange County Sheriff's Department will act as the Countywide Public Mass Notification System County Administrator. County Administrator responsibilities are covered in section IX. System Administration and Operation.

County User: Orange County Sheriff's Department Emergency Communication Division (9-1-1 dispatch), Control One and Emergency Management Division personnel will be setup as "County" users. County Users will have permission to access and launch emergency notifications to all jurisdictions within Orange County consistent with County Operational Area public safety response guidelines. All other county agencies will have permission to execute inter department notifications.

The Orange County Emergency Operations Center, when activated will be responsible for all public notifications to unincorporated areas during an emergency. For day to day use of the system for public safety incidents including but not limited to hazmats, felony crimes with suspects still at large, the Orange County Sheriff's Department Commander will be responsible for execution of messages.

Local Agency Administrator: A minimum of one designated Local Agency Administrator will be required for each Agency participating in the countywide System. Local Agency Administrator responsibilities are covered in section IX. System Administration and Operation.

Local Agency User: Participating Agencies may have an unlimited number of Local Agency Users. Local Agency Users will have access to resident contact records within their jurisdiction as well as neighboring jurisdictions with an established MOU agreement. Local Agency Users will be authorized and managed by the Local Agency Administrator and may have varied system permissions.

Any City jurisdiction who has contracted police services (ex: Yorba Linda Police Services is contracted with Brea Police Department) shall grant and provide access to their jurisdictions system in order to launch messages in a timely manner.

- Water agencies are identified as local users under the Orange County Sheriff's Department Emergency Management Division.

Inter-Department User: Inter-departmental users will have permission to inter-departmental contact information only and are authorized to use the system solely for inter-departmental communication including but limited to first responder or volunteer call-outs. Additional user for special contact groups including In House Special Services (IHSS), access and

functional need cliental may be established with prior authorization from the Orange County Sheriff's Department to ensure no vendor contract violations are occurring.

## VII. ACTIVATION OF THE SYSTEM

Each City Jurisdiction is responsible for launching messages to affected citizens and businesses within their jurisdiction. Determination of authority to request activation of the Mass Notification System rest with local officials, not with the County of Orange or the Orange County Sheriff's Department Emergency Management Division. Water agencies are responsible for launching messages to affected citizens and businesses as identified in their service district. The following is protocol to be followed when an emergency message is launched anywhere in Orange County.

### A. Public Notifications

1. The County of Orange is authorized to use the System to send notifications of regional emergencies to any and all residents within the Operational Area (example: Countywide quarantine order for a health alert). Upon sending a countywide notification, Orange County Sheriff's Department Emergency Management Division will, as soon as possible, advise the appropriate local Agency that mass notifications have been sent by the County to residents of their cities. Pre-notification to emergency managers by email or WebEOC of this AlertOC activation before actual delivery of the message will occur if possible.
2. Other than regional emergency notifications, public notifications are the responsibility of the individual City/Local Government. In the event that the geographical location of an incident requires a message to be delivered to multiple jurisdictions, the responsible Agency will inform each individual Agency so that they can send the message to those affected within their own jurisdiction. Exception: Small unincorporated neighborhoods embedded within City limits will receive mass notification of local city emergency activity from City Officials. This does not include the unincorporated areas of Rossmoor, Midway City, Cowan Heights, Lemon Heights, all canyons, Coto de Caza and Trabuco Canyon areas. Any of the fore mentioned unincorporated areas by names, coordination will have to occur with the Orange County Sheriff's Department/Watch Commander when the EOC is not activated.
3. For a City wishing to send or receive messages to or from a neighboring Agency during time of a multi-jurisdictional incident, an MOU should be established between both parties that grants permission for the handling Agency to send emergency notification to residents within the affected Agency. (Exception will be made for cities who have contracted law enforcement services. No MOU will be required and access SHALL be granted).
    a. In the event no MOU has been established, the local city agency will contact the Police Watch Commander who is the 24 hour warning point for all cities for approval and coordination.
4. Water agencies sending information to the public will do so only to pre-loaded GIS shape files containing their service areas. This procedure must occur due to the overlapping jurisdictional boundary areas. Water agencies will launch messages under the Orange County user account. Pre-notification to the Water Emergency Response of Orange County (WEROC) emergency manager, and impacted city emergency

managers will occur prior to the lunch of the message by email containing the AlertOC message before actual delivery of the message will occur.

a. The WEROC Emergency Manager is responsible to notify and provide the information to the OA/County Emergency Manager since the identification information will show the County of Orange as the initiator.

5. In the event a participating Agency is unable to send out an **emergency** message, the Orange County Control One Coordinated Communications Center is available to act on the local Agency's behalf. Agencies that do not have a current MOU with the County may also request Control One to send out an emergency message. Control One will not be available to send internal notifications. All rules and guidelines are applicable. It is still the responsibility of the local agency with the primary responsibility of the incident to receive approval for adjacent jurisdictions on multi jurisdictional events. Attachment B is the launch form containing all information required in order to launch a message. Authority to request mutual aid assistance from Control One must be requested by a Lieutenant or above (same protocols as requesting a Code Alex).
6. If the Operational Area EOC is activated, agencies may request to utilize the Orange County Information Hotline 714-628-7085 as the identification phone number for residents and businesses to call to obtain additional information. Agencies are requested to send a copy of the AlertOC script to the OA EOC before the message is launched, if possible.
7. Participating Agencies are authorized to develop pre-established notification lists and messages to meet their individual needs. These lists may include special populations (e.g. in-home care, schools, etc) or those susceptible to certain risks (e.g. homes within dam inundation zone). It is the responsibility of the participating Agency to create, maintain and update these lists.

**B. Emergency Response and Inter-Department Notifications:**

1. Each participating Agency is authorized to create employee/volunteer and department call lists and pre-recorded messages.
2. Any non-city agency wishing to create specialty groups which still contain public contact information (ex: special needs callouts) may do so with prior consent. However, any activation of information to any of these groups needs to be coordinated to ensure clear, concise and accurate information is being dispersed. During emergencies, messages will be coordinated with the Operational Area, Orange County Sheriff's Department Emergency Management Division.
3. It is the sole responsibility of each participating Agency to maintain these lists and to launch notifications as deemed necessary.

## VIII. COSTS

The County of Orange agrees to fund the System for notifications classified as "emergency use". The County of Orange also agrees to continue to purchase updated E911 telephone data and geographic maps.

Costs associated with use of the System for non-emergency activity is the responsibility of the local Agency through separate contract with the mass notification Vendor.

## IX. SYSTEM ADMINISTRATION/OPERATIONS

Individual Agencies are responsible for providing logins and procedural training to key individuals within their Agency responsible for using the Mass Notification System.

### A. County Administrator

The Orange County Sheriff's Department will assign and maintain a designated Mass Notification Program Administrator responsible for overall acquisition, accessibility, maintenance, compliance and management of all components required to provide an effective countywide mass notification system.

The County Administrator is responsible for:

1. System acquisition and contract management.
2. Policy management and as needed modification (in consultation with public safety, emergency management and emergency response personnel.)
3. Audit compliance: routine monitoring of System use to insure policy and contract compliance.
4. Access management: record management of signed MOU from each participating Agency, distribution of local administrator accounts and updated local administrator contact list.
5. Data management: E911 data acquisition, update and compliance monitoring. Countywide map file acquisition, update and overall geo-coding.
6. Testing: facilitate routine System-wide test exercise, document overall test results and recommend and execute, as needed, corrective action at the County level.
7. Public education campaign: initiate and facilitate public education campaign aimed at making the public aware of the countywide public mass notification system initiative and citizen web portal.
8. System support: provide support to Local Agency Administrators.

### B. Local Agency Administrator

Participating Agencies agree to appoint a designated Mass Notification Local Administrator responsible for leading, coordinating, monitoring and optimizing use of the Mass Notification System at the local level. Local Agency Administrator shall act as the Agency's central point of contact and will work collaboratively with the County Administrator to insure local use of the system is within policy and MOU guidelines.

Local Agency Administrator is responsible for:

1. Contract acquisition if Agency will use the system for non-emergency purposes.
2. Local Agency Mass Notification Operating Procedure development and management.
3. Use compliance: routine monitoring to ensure System is used within the conditions and terms of this document and associated MOU.
4. Access management: local user account distribution and management, record management of MOU(s) and signed end user P&P.
5. Data management: perform routine data management, error-correcting and data integrity updates to System contact and geo-coded map data.

6. Testing: facilitate routine local System test exercise, document local test results and recommend and execute, as needed, corrective action at the local level.
7. Public education campaign: initiate and facilitate public education campaign aimed at making the local community aware of the intended use of the Mass Notification System and citizen web portal.
8. System support: provide support to local Agency end-users.

## X. INFORMATION SYSTEMS AND SUPPORT

The Orange County Sheriff's Department will acquire and maintain 24x7x365 vendor support for the Mass Notification System. Participating Agencies are authorized to contact vendor support as needed.

## XI. ROUTINE TESTING

The Mass Notification System will be tested quarterly. Test exercises will be geared towards insuring that use of the System in an emergency is optimized. This includes testing operational readiness, activation procedures and system effectiveness as well as validating data and system processes. Through test exercises, System administrators and users will be able to observe the mode of operation to augment and refresh System and process knowledge.

Specific test exercise routines, roles, responsibilities and schedule will be detailed in the Operational Area Standard Operating Procedure document.

By signing the Mass Notification System MOU, participating Agencies agree to take part in quarterly Mass Notification countywide test exercises.

## XII. DEFINITIONS

1. **System** – All components of the Mass Notification System including hardware, software, access portals, contact data and GIS maps.

2. **Resident** – Comprises households and businesses.

3. **IVR** – Interactive Voice Response is a phone technology that allows a computer to detect voice and touch tones using a normal phone call. This technology will allow a user of the Mass Notification System to launch a message to a pre-defined call list when a pc or internet connection is not available.

4. **Emergency** - "Emergency" shall include, but not be limited to, instances of fire, flood, storm, epidemic, riots, or disease that threaten the safety and welfare of the citizens and property located within the boundaries of the county and participants' respective jurisdictions.

**Revision History:**

| *Revision Date* | *Author* | *Description* |
|---|---|---|
| April 18, 2008 | PMNS Policy Committee | Document originated |
| May 19, 2008 | PMNS Executive Review Team | Non-emergency session termination in Section V., Item C. |
| June 16, 2008 | Teara LeBlanc | Exception clause in Section VII, Item A., bullet 2. |
| May 2010 | Vicki Osborn | Revision of all sections |
| June 2012 | Raymond Cheung | Revision for OCSD transition |
| May 2013 | Raymond Cheung | Revision for new vendor contract |

## Attachment A – Alert OC Trigger Points Guidelines *(Placeholder)*

| Type of Incident | Description | Meets Public Safety Criteria |
|---|---|---|
| Active Shooter | A shooting with armed individual or individuals is occurring in a known area. | Yes |
| Boil Water Orders | An unsafe water supply issue requiring the public to boil water before use. | Yes |
| Building Fire | A fire occurring in an urban area requiring evacuation or shelter in place for the immediate area. | Yes |
| Violent Crimes | Violent crimes that just occurred such as robbery, assault, murder, etc. | Yes |
| Felony Suspect at Large | Law enforcement is currently searching for a felony suspect that is suspected to be in a certain area. | Yes |
| HazMat | Hazardous Materials incidents that require a fire/hazmat response and may include evacuations or shelter-in-place orders. | Yes |
| Health Orders | Any public health order made pursuant to County Health Officer recommendations. | Yes |
| Missing Adult (920A) with special circs | 12- 17 yrs with decreased mental capacity or medical condition | Yes |
| Missing Child (920C) | 12 yrs or younger ***Discussion add Amber alert triggers | Yes |
| Missing Juvi (920J)with special circs | 18 yrs and older 12- 17 yrs with decreased mental capacity or medical condition | Yes |
| Severe Weather Related | Weather warnings that forecast an occurring or imminent threat to public safety or coincide with protective action recommendations such as voluntary or mandatory evacuation orders. | Yes |
| Evacuation or Shelter-in-Place | Voluntary or mandatory evacuation or shelter-in-place orders. | Yes |
| Wildland Fire | A fire occurring in a wildland urban interface area requiring immediate evacuation or shelter-in-place. | Yes |
| Road Closures | Unplanned road closures due to an emergency situation. | Yes |
| | | |
| Planned Events | Road closures due to community events planned in advance. | No |

# AlertOC Activation Form (for emergency use only)

(Attachment B)

| Request Received | |
|---|---|
| Date/Time: | |
| By: (Name/Title) | |

| Jurisdiction Information | | |
|---|---|---|
| Jurisdiction Name: | | |
| Requestor: (Name/Title) | | |
| Contact Phone Numbers: | #1: | #2: |
| Authorizing Official: (Name/Title) | | |

| Message Specifics |
|---|
| Date/Time Message to Be Sent: ☐ Immediately |
| Targeted Recipients: |
| Type of Message: ☐ Phone ☐ e-mail ☐ SMS |
| SMS Content: |
| Message Content: |

| Staff Executing Message | |
|---|---|
| Initiator Name (printed): | |
| Authorizing Sheriff Official: | |
| Date and Time Sent: | |
| Name, Date and Time Results provided to jurisdiction | |

EXHIBIT C

**NONDISCLOSURE AGREEMENT**

NONDISCLOSURE AGREEMENT BETWEEN
PACIFIC BELL TELEPHONE COMPANY dba SBC CALIFORNIA,
AND
THE COUNTY OF ORANGE, CALIFORNIA

THIS AGREEMENT, effective this 26th day of June, 2008, ("Effective Date") is between PACIFIC BELL TELEPHONE COMPANY dba SBC CALIFORNIA, a California corporation (hereinafter "SBC California"), County of Orange (hereinafter "Customer") and NTI Group, Inc. (hereinafter "Subcontractor").

1. Customer has requested Neighborhood Call service from SBC California under SBC California's Tariff, CAL.P.U.C. NO. A9.2.6 and agrees to comply with all provisions of SBC California's Tariff, CAL.P.U.C. NO. A9.2.6.

2. Customer has identified Subcontractor as its agent for obtaining Neighborhood Call subscriber information from SBC California for provision of community alerts and notifications to citizens as defined in California Public Utilities Commission Code Sections 2872 and 2891.1 and as allowed in SBC California's Tariff, CAL.P.U.C. NO. A9.2.6. In the event Customer elects to no longer use Subcontractor for obtaining Neighborhood Call subscriber information, Customer shall provide SBC California written notice of such change 30 days in advance of Subcontractor's agency status being terminated by Customer.

3. Subcontractor certifies that it has reviewed the terms and conditions of the SBC California Tariff, CAL. P.U.C. NO. A9.2.6 for Neighborhood Call and specifically A9.2.6B.2.b which stipulates in part: "The Neighborhood Call database information provided to Customer pursuant to this tariff is confidential and proprietary and such information will be held in confidence and only used and disclosed to Customer's employees or its subcontractors and agents with a need to know for purposes of providing a community alert and notifications to citizens as defined in California Public Utilities Code Sections 2872 and 2891.1. Customer agrees that each of its employees, subcontractors or agents receiving or having access to the Neighborhood Call database information will be informed that such information is subject to the terms and conditions of this tariff and the Neighborhood Call database information will remain the property of Pacific; that the Neighborhood Call database information will be treated with the same degree of care as Customer affords to its own highly confidential and proprietary information; and that the Neighborhood Call database information will not be reproduced in any manner, unless otherwise specifically authorized in writing by Pacific. Upon request, Customer will promptly return to Pacific all Neighborhood Call database information in a tangible form or certify to Pacific that such information has been destroyed."

4. Subcontractor agrees to comply with each of the obligations contained in SBC California's Tariff, CAL. P.U.C. NO. A9.2.6.B.2.b for Neighborhood Call Tariff. Notwithstanding the preceding sentence, Subcontractor agrees that no Neighborhood Call subscriber information will shared with any non-employee of Subcontractor, whether it be a subcontractor or agent, without the written authorization of Customer and the execution of a Nondisclosure Agreement with SBC California.

5. This Nondisclosure Agreement shall be in effect from the Effective Date until such time that Customer terminates its request for Neighborhood Call service from SBC California or Customer elects to no longer use Subcontractor for obtaining Neighborhood Call subscriber information. Subcontractor's duty to keep the Neighborhood Call subscriber information confidential shall continue beyond the term of this Nondisclosure Agreement until such time that Subcontractor returns to SBC California all Neighborhood Call subscriber information in a tangible form or certifies to SBC California that such information has been destroyed.

6. Nothing contained in this Nondisclosure Agreement shall be construed as granting or conferring any rights by license or otherwise in any Information.

7. This Nondisclosure Agreement shall benefit and be binding upon the parties hereto and their respective subsidiaries, affiliates, successors and assigns.

8. This Nondisclosure Agreement shall be governed by and construed in accordance with the laws of the State of California, irrespective of its choice of laws principles.

[SIGNATURE PAGE FOLLOWS]

**PACIFIC BELL TELEPHONE COMPANY dba SBC CALIFORNIA**

By:_____

Print Name: _____

Title: _____

Date Signed:_____

**XXXX (Customer)**

By:_____

**Print Name:** Teara Le Blanc

**Title** Program Manager

**Date Signed:** June 30, 2008

**XXXX (Subcontractor and/or Agent)**

By:_____

Print Name:_____

Title: _____

Date Signed:_____

3.5 PROGRESS PAYMENT NO. 1 FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, AND RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172

THE CITY COUNCIL APPROVED PROGRESS PAYMENT NO. 1, IN THE NET AMOUNT OF $10,691.92, TO ALL AMERICAN ASPHALT, FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, AND RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172.

**ITEMS REMOVED FROM THE CONSENT CALENDAR**

3.4 FIRST QUARTER FINANCIAL AND TREASURER'S REPORT FOR FISCAL YEAR 2013/14

Mayor Kogerman removed this item from the Consent Calendar to acknowledge that the preparation of the Quarter Financial Reports takes considerable effort. Mayor Kogerman asked Assistant City Manager White to give a brief report regarding City revenues and expenses for the First Quarter.

**THE CITY COUNCIL RECEIVED AND FILED THE FIRST QUARTER FINANCIAL AND TREASURER'S REPORT FOR FISCAL YEAR 2013/14, BY M/MAYOR KOGERMAN, S/COUNCIL MEMBER CARRUTH.**
**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 7:19 PM.

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Kogerman, Vice Chair Blount, Agency Member Bressette, Agency Member Carruth, and Agency Member Gilbert.

4.2 PUBLIC COMMENTS

There were no Public Comments.

4.3 APPROVAL OF MINUTES FOR OCTOBER 22, 2013

**THE PLANNING AGENCY APPROVED THE MINUTES OF THE OCTOBER 22, 2013, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER BRESSETTE.**
**APPROVED BY A VOTE OF 5-0.**

4.4 ADMINISTRATIVE REPORTS

There were no Administrative Reports.

4.5 PLANNING AGENCY PUBLIC HEARINGS

4.5.1 CONDITIONAL USE PERMIT (CUP) CHANGE PLAN (CP), PARKING USE PERMIT (PUP), AND SITE DEVELOPMENT PERMIT (SDP) NO. 01-12-2174, A REQUEST TO ALLOW FOR THE EXPANSION OF AN EXISTING 147-ROOM HOTEL (AND ITS ACCESSORY USES INCLUDING RESTAURANT AND BANQUET FACILITIES) ALLOWING FOR A NEW POOL AND POOL DECK, SPA, FITNESS CENTER AND OUTDOOR COURTYARD WITH OUTSIDE DECK AND ALLOW FOR MODIFIED PARKING STANDARDS AT THE HILLS HOTEL, 25205 LA PAZ ROAD, IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT

Chair Kogerman opened the Public Hearing.

Jacqueline Tzen, Laguna Hills, spoke on Conditional Use Permit/Change Plan/Parking Use Permit/Site Development Permit No. 01-12-2174.

Chair Kogerman closed the Public Hearing.

**THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2013-11-12-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT/CHANGE PLAN/PARKING USE PERMIT/SITE DEVELOPMENT PERMIT NO. 01-12-2174, A REQUEST TO ALLOW FOR THE EXPANSION OF AN EXISTING 147-ROOM HOTEL (AND ITS ACCESSORY USES INCLUDING RESTAURANT AND BANQUET FACILITIES) ALLOWING FOR A NEW POOL AND POOL DECK, SPA, FITNESS CENTER AND OUTDOOR COURTYARD WITH OUTSIDE DECK, AND ALLOW FOR MODIFIED PARKING STANDARDS AT THE HILLS HOTEL, 25205 LA PAZ ROAD, IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT, INCLUDING AMENDING CONDITION OF APPROVAL NO. 19, TO READ: *"USE OF THE HOTEL PARKING LOT SHALL BE LIMITED TO THE PARKING OF VEHICLES FOR HOTEL EMPLOYEES, REGISTERED GUESTS AND THEIR INVITEES, AND HOTEL PATRONS, OR FOR RECEIVING DELIVERIES";* BY M/VICE CHAIR TEMPORE BLOUNT, S/AGENCY MEMBER GILBERT.**

**APPROVED BY A VOTE OF 4-1 (AGENCY MEMBER CARRUTH VOTING NO).**

**PLANNING AGENCY ADJOURNMENT**

Mayor Kogerman reconvened the City Council Meeting at 8:53 PM. All Council Members were present.

# City of Laguna Hills
## City Council Meeting Agenda
## Staff Report

**DATE:** NOVEMBER 26, 2013

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** DAVID CHANTARANGSU, COMMUNITY DEVELOPMENT DIRECTOR
GREGORY E. SIMONIAN, CITY ATTORNEY

**ISSUE:** ZONING TEXT AMENDMENT NO. ZTA 11-13-2720, AN AMENDMENT TO TITLE 9 OF THE LAGUNA HILLS MUNICIPAL CODE (ZONING AND SUBDIVISIONS) TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS AND REVISE THE DEVELOPMENT CODE COMPLIANCE POLICY

**RECOMMENDATION:** THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC HEARING; AND (2) INTRODUCE FOR FIRST READING, READ BY TITLE ONLY, AND WAIVE FURTHER READING, AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING TITLE 9 OF THE LAGUNA HILLS MUNICIPAL CODE (ZONING AND SUBDIVISIONS) TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS AND REVISE THE DEVELOPMENT CODE COMPLIANCE POLICY."

**SUMMARY:**

The Laguna Hills Municipal Code ("LHMC") presently does not expressly address the establishment and operation of medical marijuana dispensaries, which is a unique land use arising out of the Compassionate Use Act, the Medical Marijuana Program Act, and related state actions, regulations, and policies. The California Supreme Court recently affirmed the authority of cities to ban medical marijuana dispensaries from all zoning districts. Consistent with this authority, the proposed ordinance would add a definition for "medical marijuana dispensary" to the Zoning and Development Code and prohibit such uses in all zoning districts of the City.

The LHMC provides for the enforcement of Title 9 ("Zoning and Development Code") standards and requirements through administrative, civil, and criminal proceedings. However, the Zoning and Development Code provides that the City pursues "every administrative means available" before initiating criminal or civil proceedings to remedy violations of the Development Code. Consistent with the City's policy and practice, the proposed ordinance would recognize that the City determines, on a case-by-case basis,

whether to first pursue administrative, criminal, or civil proceedings, thus preserving the City's discretion over the means it employs to correct violations of the Zoning and Development Code.

**BACKGROUND:**

**Medical Marijuana Dispensaries**

In 1996, California voters approved Proposition 215 (the "Compassionate Use Act"), codified at Health and Safety Code Section 11362.5 *et seq*., an initiative measure that exempted qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of a limited amount of marijuana for personal medical use, where medical use is deemed appropriate and has been recommended by a physician. The stated purpose of this initiative was to allow patients suffering from a number of serious illnesses the opportunity to find relief through the use of doctor recommended medical marijuana.

In 2003, the State Legislature enacted Senate Bill 420, known as the Medical Marijuana Program Act ("MMPA"), codified at Health and Safety Code sections 11362.7 *et seq*. The MMPA clarified the scope and application of the Compassionate Use Act, further defined the regulatory framework for the cultivation, distribution, possession and use of medical marijuana, and recognized the right of cities to regulate the operation, location and establishment of medical marijuana dispensaries.

In 2008, the California Attorney General enacted Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (the "Attorney General's Guidelines"), which, among other things, set forth suggested standards for the lawful operation of medical marijuana cooperatives and collectives, including medical marijuana dispensaries properly organized and operated as collectives or cooperatives.

Reactions to these state laws and policies by municipalities have varied. Some municipalities have adopted, or are currently considering, ordinances allowing, but regulating, medical marijuana dispensaries. Others have adopted ordinances specifically prohibiting medical marijuana dispensaries. Others maintain that medical marijuana dispensaries are barred under pre-existing zoning code provisions that prohibit any land use not specifically enumerated as a permitted use.

Significant adverse impacts associated with medical marijuana dispensaries have been chronicled in detail by the California Police Chiefs Association in its 2009 report entitled "White Paper on Medical Marijuana Dispensaries" and the Orange County Chiefs of Police and Sheriff's Association in its 2010 report entitled "Public Safety Issues Related to Medical Marijuana in Orange County." These reports include documented evidence that medical marijuana dispensaries pose a substantial threat to the public health, safety and

welfare. According to the reports, medical marijuana dispensaries often result in increased crime and nuisance conditions, including: (1) armed robbery, murders and burglaries; (2) an increase in disturbance calls, pedestrian and vehicular traffic, loitering and noise; (3) organized crime, money laundering and firearm violations; and (4) illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need.

Since the enactment of the Compassionate Use Act, questions concerning the scope of local authority to regulate medical marijuana have been heavily litigated. Most recently, on May 6, 2013, in the case of *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc*., 2013 WL 1859214 (Cal.), the California Supreme Court affirmed the right of municipalities to ban medical marijuana dispensaries pursuant to the local police power, holding that neither the Compassionate Use Act nor the MMPA preempted a zoning ordinance declaring medical marijuana dispensaries a prohibited use of land.

As to the City, medical marijuana dispensaries are not a "permitted" use in any zoning district. The LHMC provides that any land use that is not expressly allowed in a zoning district as a permitted use or as a conditionally permitted use shall be deemed a prohibited use. Further, any use or activity that is illegal under federal law shall be deemed a prohibited use in all zoning districts within the City. (LHMC §§ 9-10.050 and 9-10.060.) Therefore, medical marijuana dispensaries are currently prohibited in all zoning districts. Nevertheless, the proposed ordinance would further clarify the status of medical marijuana dispensaries as a prohibited land use in all of the City's zoning districts, in accordance with the foregoing California Supreme Court decision.

**Code Compliance Policy**

LHMC Section 9-100.020 provides that a violation of Title 9 of the LHMC ("Development Code") is a misdemeanor, unless specifically designated as an infraction, subject to criminal prosecution. LHMC Section 9-100.020 further provides that a violation of the Development Code may also constitute a public nuisance subject to administrative abatement and/or to abatement by civil action.

LHMC Section 9-100.040 states that it shall be the policy of the City to seek the rapid resolution and correction of all violations of the Development Code ("Enforcement Policy"). The first sentence of LHMC Section 9-98.030 provides that it is the policy of the City "to obtain timely compliance and to correct deviations from [Development Code] standards and requirements ("Compliance Policy"). However, the final sentence of Section 9-98.030 contains a general policy statement that purports to limit the City's discretion over the means of enforcement by specifying the pursuit of "every administrative means available" before initiating criminal or civil proceedings to correct violations of the Development Code. Further, by specifying the pursuit of administrative remedies first, Section 9-98.030 conflicts with and hinders the Enforcement Policy (requiring rapid resolution and correction) and the Compliance Policy (City to obtain timely compliance with zoning and development code standards and requirements).

Consistent with the City's policy and practice, the proposed ordinance amends LHMC Section 9-98.030 to recognize that the City determines, on a case-by-case basis, whether to first pursue administrative, criminal, or civil proceedings, thus preserving the City's discretion over the means it employs to timely achieve code compliance and to correct Zoning and Development Code violations. As amended, LHMC Section 9-98.030 comports with the Enforcement Policy and the Compliance Policy, which collectively require prompt remediation of Development Code violations, and is a more accurate expression of the City's code enforcement compliance policy.

**FISCAL IMPACT:**

There is no fiscal impact to the City resulting from adoption of an ordinance to prohibit medical marijuana dispensaries in all zoning districts and revise the Development Code compliance policy.

**CEQA FINDINGS:**

Environmental review is not required under the Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Chapter 3, Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly. Zoning Code Text Amendment No. 11-13-2720 does not authorize any changes to the environment but merely clarifies that medical marijuana dispensaries are prohibited in all zoning districts in the City and preserves the City's discretion over the means it employs to correct violations of the Development Code.

**ATTACHMENTS:**

- Attachment 1 - Proposed Ordinance
- Attachment 2 - White Paper on Marijuana Dispensaries (California Police Chiefs Association, 2009)
- Attachment 3 - Public Safety Issues Related to Medical Marijuana in Orange County (Orange County Chiefs of Police and Sheriff's Association, 2010)

# Attachment #1

**Proposed Ordinance**

ORDINANCE NO. 2013-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING TITLE 9 OF THE LAGUNA HILLS MUNICIPAL CODE (ZONING AND SUBDIVISIONS) TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS AND REVISE THE DEVELOPMENT CODE COMPLIANCE POLICY

THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Laguna Hills hereby finds, determines, and declares as follows:

A. The federal Controlled Substance Act ("CSA"), codified at 21 U.S.C. Section 841 *et seq*., strictly prohibits the cultivation, distribution, possession or use of marijuana under any circumstance, including for medical purposes.

B. In 1996, California voters approved Proposition 215, entitled The Compassionate Use Act ("CUA"), codified at Health and Safety Code Section 11362.5 *et seq*. The CUA, which was intended to enable seriously ill persons to obtain and use marijuana for medical purposes, exempted qualified patients and their primary caregivers from criminal prosecution under state law for the cultivation, distribution, possession and use of marijuana under specified circumstances.

C. In 2003, the California Legislature enacted Senate Bill 420, known as the Medical Marijuana Program Act ("MMPA"), codified at Health and Safety Code Section 11362.7 *et seq*. The MMPA clarified the scope and application of the CUA, further defined the regulatory framework for the cultivation, distribution, possession, and use of medical marijuana, and recognized the right of cities to regulate the operation, location, and establishment of medical marijuana dispensaries.

D. In 2008, the California Attorney General published Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Attorney General's Guidelines"), which, among other things, set forth suggested standards for the lawful operation of medical marijuana cooperatives and collectives, including medical marijuana dispensaries properly organized and operated as collectives or cooperatives.

E. Neither the CUA, the MMPA, nor the Attorney General's Guidelines obligate cities to allow or permit medical marijuana dispensaries within their local jurisdictional limits.

F. Since the enactment of the CUA, City Staff has researched, evaluated and monitored: (1) federal and state laws pertaining to medical marijuana; (2) litigation concerning the authority of cities to regulate and prohibit medical marijuana dispensaries; (3) medical marijuana dispensary ordinances enacted by other cities; and (4) reports and studies on the primary and secondary effects of marijuana dispensaries on local communities.

G. Several California cities and counties have experienced significant adverse impacts and negative secondary effects on the public health, safety, and welfare associated with and resulting from the establishment and operation of medical marijuana dispensaries. According to these communities, news stories widely reported, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, property damage, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need, as well as nuisance conditions for adjacent businesses, in the areas immediately surrounding such medical marijuana dispensaries.

H. Significant adverse secondary effects arising from the operation of dispensaries throughout California have been chronicled in detail by a report prepared by the California Police Chiefs Association, dated April 22, 2009, as well as by a report prepared by the Orange County Chiefs of Police and Sheriff's Association, dated June 2, 2010. In these reports, various crimes consisting of armed robberies and murders, and burglary, arising from, or connected with, the operation of these establishments have been recorded by law enforcement agencies in, among numerous other communities, the California communities of Santa Barbara, Mendocino, San Leandro, Hayward, Laytonville, Bellflower, Claremont, and Willits, as well as various communities in Orange County.

I. The California Police Chiefs Association report further found: (a) that there have been reported poisonings from distribution of marijuana products due to contamination issues which are more likely because such products are not inspected by health agencies; (b) that adverse traffic, noise, and drug dealing impacts occur commonly outside marijuana dispensaries; and (c) that gang involvement in the ownership and operation of these dispensaries have been reported in some communities.

J. Numerous other media and agency reports have documented criminal and nuisance activities associated with medical marijuana dispensaries, such as burglaries, robberies, murders, property damage, negative secondary community impacts associated with an undue overconcentration of such uses, and adverse impacts to adjacent businesses.

K. On May 6, 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc*., 2013 WL 1859214 (Cal.), affirmed the right of municipalities to ban medical marijuana dispensaries, holding that neither the CUA nor the MMPA preempted a zoning ordinance declaring medical marijuana dispensaries a prohibited use of land.

L. Medical marijuana dispensaries are not a "permitted use" in any zoning district in the City of Laguna Hills. The Laguna Hills Municipal Code ("LHMC") provides that (i) any land use that is not expressly allowed in a zoning district as a permitted use or as a conditionally permitted use shall be deemed a prohibited use, and (ii) any use or activity that is illegal under federal law shall be deemed a prohibited use in all zoning districts within the City. (LHMC §§ 9-10.050 and 9-10.060).

M. This Ordinance clarifies the status of medical marijuana dispensaries as an expressly prohibited land use, and shall not be construed to limit or affect the application of Sections 9-10.050 or 9-10.060 of the LHMC to medical marijuana dispensaries or any other land use or activity.

N. The City Council finds that the establishment and/or operation of, or the issuance or approval of any permit, certificate of use and occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the City would result in a threat to the public health, safety and welfare of the City and that the experience of other California cities with medical marijuana dispensaries shows that negative effects on the public health, safety, and welfare occur in the vicinity of such uses. In addition, the cultivation, distribution, possession or use of marijuana under any circumstance, including for medical purposes, is illegal under federal law.

O. Section 9-100.020 of the LHMC provides that a violation of Title 9 of the LHMC ("Development Code") is a misdemeanor, unless specifically designated as an infraction, subject to criminal prosecution.

P. Section 9-100.020 of the LHMC further provides that a violation of the Development Code can constitute a public nuisance subject to administrative abatement and/or abatement by a civil action.

Q. Section 9-100.040 of the LHMC provides that it shall be the policy of the City to seek the rapid resolution and correction of all violations of the Development Code ("Enforcement Policy").

R. Section 9-98.030 of the LHMC provides that it shall be the policy of the City to obtain timely compliance and to correct deviations from standards and requirements of the Development Code ("Compliance Policy").

S. The City desires to continue to maintain full discretion over the means it employs to correct violations of the Development Code, whether criminal, administrative, or civil, as determined on a case-by-case basis.

T. Section 9-98.030 of the LHMC sets forth a general zoning and development code compliance policy statement by specifying the pursuit of "every administrative means available" prior to initiating criminal or civil proceedings to correct violations of or deviations from the Development Code. Further, by specifying pursuit of administrative remedies first, Section 9-98.030 conflicts with and hinders the Enforcement Policy (requiring rapid resolution and correction) and the Compliance Policy (City to obtain timely compliance with development code standards and requirements).

U. This Ordinance is a City-initiated zoning text amendment subject to Chapter 9-90 of the LHMC.

V. The City Council of the City of Laguna Hills has held a duly noticed public hearing and considered public comments and the written and oral information and testimony presented by City staff, community residents and other interested parties at a public hearing held on November 26, 2013.

SECTION 2. In accordance with Chapter 9-92 of the Laguna Hills Municipal Code, the following findings for approving the zoning text amendment set forth in this Ordinance are hereby made:

The City Council hereby finds this Ordinance is consistent with the goals, objectives, and policies of the General Plan as a whole and is not inconsistent with any element thereof in that medical marijuana dispensaries are not a contemplated land use in the General Plan and prohibiting the establishment and/or operation of medical marijuana dispensaries in all zoning districts of the City is necessary and appropriate to maintain and protect the public health, safety and general welfare of the City as a whole. This Ordinance clarifies that medical marijuana dispensaries are prohibited in all zoning districts in the City. Medical marijuana dispensary uses are not allowed by the current General Plan and Development Code. Adoption of this Ordinance maintains the current consistency with the General Plan and between the General Plan and the Development Code. This Ordinance promotes public health, safety, and general welfare and serves the goals and purposes of Title 9 by clarifying and confirming that medical marijuana dispensaries are prohibited in all zoning districts in the City. The continued prohibition of such uses in all zoning districts will ensure that none of the negative secondary effects of medical marijuana dispensaries will adversely impact the general welfare of the City as a whole.

SECTION 3. Title 9 of the City of Laguna Hills Municipal Code (Zoning and Subdivisions), Chapter 9-04 (Definitions), Section 9-04.130 ("M" definitions), is hereby amended to add a definition for "medical marijuana dispensary" to read as follows:

"Medical marijuana dispensary" means any association, business, facility, use, establishment, location, delivery service, cooperative, collective, or provider, whether fixed or mobile, that possesses, cultivates, distributes, makes available or otherwise facilitates the distribution of marijuana to any person including, but not limited to, a qualified patient, a person with an identification card, or a primary caregiver as those terms are defined in California Health and Safety Code Sections 11362.5 and 11362.7 *et seq*., as may be amended from time to time."

SECTION 4. Title 9 of the City of Laguna Hills Municipal Code (Zoning and Subdivisions), Chapter 9-10 (Zoning Districts Established), Table 9-10.050 (Land Use Matrix) is hereby amended to add the following land use category and designate the same as a prohibited use in all zoning districts:

**Table 9-10.050**
**LAND USE MATRIX**

| | |
|---|---|
| A | Accessory Use |
| C | Conditional Use |
| SUP | Special Use Permit |
| P | Permitted Use |

| | |
|---|---|
| S | Site Development Permit Required |
| T | Temporary Use |
| ♦ | Special Requirements |
| • | Prohibited Use |
| U | See Urban Village Specific Plan |
| L | See Laguna Hills Planned Community Development Plan and Text |

| Land Use | Zones | Estate Residential (ER) | Low Density Residential (LDR) | Medium Low Density Residential (MLDR) | Medium Density Residential(MDR) | High Density Residential (HDR) | Office Professional (OP) | Village Commercial (VC) | Freeway Commercial (FC) | Community Commercial (CC) | Mixed Use (MXU) | Neighborhood Mixed Use (NMU) | Community/Private Institution (C/PI) | Open Space-1 (OS-1) Parks | Open Space-2 (OS-2)/ Drainage Facilities | Open Space-3 (OS-3)/Landscape Corridors | Planned Community (PC) | Planned Community Residential (PCR) | Reference |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Medical marijuana dispensary | | • | • | • | • | • | • | • | • | • | • | • | • | • | • | • | • | • | |

SECTION 5. Title 9 of the City of Laguna Hills Municipal Code (Zoning and Subdivisions), Chapter 9-98 (Code Compliance Process), Section 9-98.030 (Compliance policy), is hereby amended in its entirety to read as follows:

**"9-98.030 Compliance policy.**

It is the policy of the city to obtain timely compliance and to correct deviations from standards and requirements of the development code. The aesthetic values, safety, health, and welfare of the community as a whole depends upon the voluntary and cooperative efforts of citizens to respond to and to correct notice of violations. The city may elect to seek compliance by administrative means prior to or in lieu of prosecution through criminal or civil actions in accordance with Section 9-100.020 of this code."

SECTION 6. The City Council of the City of Laguna Hills hereby finds and determines that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, Title 14, Chapter 3, Sections 15060 (c) (2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 7. 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 8. 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 _____ 2013.

_____
BARBARA KOGERMAN, MAYOR

ATTEST:

_____
PEGGY J. JOHNS, CITY CLERK

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

I, Peggy J. Johns, 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 _____ 2013, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the _____ day of _____ 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

_____
PEGGY J. JOHNS, CITY CLERK

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

AFFIDAVIT OF POSTING
AND PUBLICATION

PEGGY J. JOHNS, 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 _____ 2013, was published in the Saddleback Valley News; and was, in compliance with City Resolution No. 2004-05-25-2, on the _____ day of _____ 2013, caused to be posted in three places in the City of Laguna Hills, to wit:

Laguna Hills City Hall
Laguna Hills Community Center
La Paz Center

_____
PEGGY J. JOHNS, CITY CLERK
Laguna Hills, California

# Attachment #2

## Whitepaper on Marijuana Dispensaries

# WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES

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## ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice
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Lorrac Craig, Trinity County Sheriff's Department
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John Gaines, California Department of Justice/Bureau of Narcotics Enforcement
Craig Gundlach, Modesto Police Department
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

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Mark Pazin, Merced County Sheriff's Department
Michael Regan, El Cerrito Police Department
Melissa Reisinger, California Police Chiefs Association
Kimberly Rios, California Department of Justice, Conference Planning Unit
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement
Crystal Spencer, California Department of Justice, Conference Planning Unit
Sam Spiegel, Folsom Police Department
Valerie Taylor, ONDCP
Thomas Toller, California District Attorneys Association
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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# WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES

## EXECUTIVE SUMMARY

### INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

### FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

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## CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

## PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthful mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

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## LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

## LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as "cooperatives" under California law, which would be a rare occurrence. Civil liability could also result.

## ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a "hands off" attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These "patients" have most often turned out to be young adults who are not sick at all, but have secured a physician's written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often "medical marijuana" has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

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# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION

Editor: Dennis Tilton, M.A.Ed., M.A.Lit., M.C.J., J.D.
Adjunct Professor of Criminal Justice, Political Science, & Public Administration, Upper Iowa University
Sheriff's Legal Counsel (Retired), San Bernardino County Sheriff's Department

## INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

## FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) "The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail." (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich,* the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as "medical" by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the "supreme law of the land" and shall be legally superior to any conflicting provision of a state constitution or law. [1] The Commerce Clause states that "the

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Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[2]

*Gonzales v. Raich* addressed the concerns of two California individuals growing and using marijuana under California's medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.[3] "Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment."[4] (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state's regulation, including California's. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.[5] California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.[6]

**CALIFORNIA LAW**

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.[7] The initiative added California Health and Safety code section 11362.5, which allows "seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . . ."[8] The codified section is known as the Compassionate Use Act of 1996.[9] Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.[10] This act expanded the definitions of "patient" and "primary caregiver"[11] and created guidelines for identification cards.[12] It defined the amount of marijuana that "patients," and "primary caregivers" can possess.[13] It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,[14] as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a "patient," a "primary caregiver," or as a member of a legally recognized "cooperative," as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a "dispensary" or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes' parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a "qualified patient," "primary caregiver," or a member of a "cooperative." Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

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Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute "individuals within the legal scope of California's Compassionate Use Act." Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California's medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a "cooperative"—than on the possession and use of marijuana upon the recommendation of a physician.

When California's medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to "individuals within the legal scope of" the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General's opinion nor the current California Attorney General's guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state's regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

### 1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a "patient," "primary caregiver," or is a member of a legally recognized "cooperative," he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.[15] If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.[16]

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

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### 2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A "qualified patient" is an individual with a physician's recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief.*[17] A physician's recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A "person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

### 3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves "cooperatives," but function like storefront dispensaries, suffer this same fate. In *People v. Mower,* the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.[18] He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he "**consistently** had assumed responsibility for either one's **housing, health, or safety**" before he could assert the defense.[19] (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient's health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient's health needs beyond just supplying him or her with marijuana.

A "primary caregiver" is an individual or facility that has "consistently assumed responsibility for the housing, health, or safety of a patient" over time. (Cal. H&S Code sec. 11362.5(e).) "Consistency" is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra,* to qualify as a primary caregiver, more aid to a person's health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

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The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: "One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party 'who has consistently assumed responsibility for the housing, health, or safety' of that purchaser as section 11362.5(e) requires.")

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as "primary caregivers." Those included in the list clearly show the Legislature's intent to restrict the definition to one involving a significant and long-term commitment to the patient's health, safety, and welfare. The only facilities which the Legislature authorized to serve as "primary caregivers" are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

**4. Cooperatives and Collectives**

According to the California Attorney General's recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that "Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California's marijuana laws.

Further, the common dictionary definition of "collectives" is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."[20] Marijuana businesses, of any kind, do not normally meet this legal definition.

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Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal **or** state law.

## LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.[21]

## STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.[22] Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.[23] Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.[24] These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.[25] Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.[26] Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."[27] Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have "consistently assumed responsibility for the housing, health, or safety" of a patient.[28] Clearly, it is doubtful that any of the storefront marijuana businesses currently

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existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

**HOW EXISTING DISPENSARIES OPERATE**

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.[29]

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their "primary caregiver" (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the "contribution" will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so "contributions" are made to reimburse the dispensary for its time and care in making "product" available. However, if a calculation is made based on the available evidence, it is clear that these "contributions" can easily add up to millions of dollars per year. That is a very large cash flow for a "non-profit" organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold $45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately $16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the "primary caregivers" of patients. This is a spurious claim. As discussed above, the term "primary caregiver" has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has "consistently assumed responsibility for the housing, health, or safety of a patient."[30] The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it "**consistently** had assumed responsibility for [a patient's] **housing, health, or safety**."[31] The key to being a primary caregiver is not simply that marijuana is provided for a patient's health: the responsibility for the patient's health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business's relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant "primary caregiver" relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient's act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

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consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

## ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILIARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

## ANCILLARY CRIMES

### A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.[32] And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because "medical marijuana is such a controversial issue." [33]

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man's throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.[34] And, on August 19, 2005, 18-year-old Demarco Lowrey was "shot in the stomach" and "bled to death" during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowery was hit by gunfire and "dumped outside the emergency entrance of Children's Hospital Oakland" after the shootout.[35] He did not survive.[36]

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over $250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.[37]

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane's home in Laytonville, California while yelling, "This is a raid." Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.[38] Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.[39]

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

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cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.[40]

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.[41]

**B. BURGLARIES**

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.[42] And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries "crime magnets" after a burglary occurred in one in Claremont, California.[43]

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.[44] Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.[45] After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was "prompted by incidents of armed burglary at some of the city's eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise . . . ."[46]

**C. TRAFFIC, NOISE, AND DRUG DEALING**

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,[47] as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.[48] Sharing just purchased marijuana outside dispensaries also regularly takes place.[49]

Rather than the "seriously ill," for whom medical marijuana was expressly intended,[50] "'perfectly healthy' young people frequenting dispensaries" are a much more common sight.[51] Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 "showed that 72 percent of patients were between 17 and 40 years old . . . ."[52] Said one admitted marijuana trafficker, "The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed."[53]

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.[54] And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.[55] It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

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dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

## D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.[56] The dispensaries or "pot clubs" are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.[57] Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise's storage facilities, federal officers also confiscated three firearms,[58] which seem to go hand in hand with medical marijuana cultivation and dispensaries.[59]

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.[60] The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.[61] Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.[62]

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.[63] Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,[64] and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.[65]

## E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a "gift," and soon afterward felt dizzy and disoriented.[66] The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.[67]

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## OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.[68]

## SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

### A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about $150 a pop."[69] Other individuals just make up their own phony doctor recommendations,[70] which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.[71] Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.[72]

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay $74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

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requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

## B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . . ."[73] Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.[74] In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.[75] Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels.[76] Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.[77] With a street value of $3,000 to $5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between $4.5 million and $10 million a year . . . ."[78] The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.[79]

## C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from $1,000 to $3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, "Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord." Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.[80] Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, "We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints." House fires caused by

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grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.[81]

Chief Mendosa also observed that since marijuana has an illicit street value of up to $3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make $25,000 every three months by selling marijuana grown in the bedroom of his rented house.[82] Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.[83] To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.[84]

## D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.[85] In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.[86]

## E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.[87] Dispensaries also sell marijuana to minors.[88]

## F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,[89] and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold, [90] all of which are dangerous to any children or adults who may be living in the residence,[91] although many grow houses are uninhabited.

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## G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

## H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,[92] and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.[93]

## ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

## POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

## A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.[94]

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## B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.[95] Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.[96]

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.[97] And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.[98] It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.[99] To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.[100]

## C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

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Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

**"Categories:**

1. Personal Use
2. Cooperatives or Collectives

**Medical Marijuana for Personal Use:** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
   a. Cultivation lighting shall not exceed 1200 watts;
   b. Gas products ($CO_2$, butane, etc.) for medical marijuana cultivation or processing is prohibited.
   c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
   d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
   e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
   f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
   g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
   h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator my approve up to 100 square foot:
   a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
   b. Include written permission from the property owner.
   c. City Building Official must inspect for California Building Code and Fire Code.
   d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
   e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

**Medical Marijuana Cooperatives or Collectives.**

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
   a. A 300 foot radius from any existing residential zoning district,
   b. Within 500 feet of any other medical marijuana cooperative or collective.

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c. Within 500 feet from any existing public park, playground, day care, or school.

7. Source of medical marijuana.
   a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
   b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
   c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
   a. Staff screening process including appropriate background checks.
   b. Operating hours.
   c. Site, floor plan of the facility.
   d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
   e. Screening, registration and validation process for qualified patients.
   f. Qualified patient records acquisition and retention procedures.
   g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
   h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
   i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
   a. No dispensing medical marijuana more than twice a day.
   b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
   c. Display the client rules and/or regulations at each building entrance.
   d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
   e. Persons under the age of eighteen (18) are precluded from entering the premises.
   f. No on-site display of marijuana plants.
   g. No distribution of live plants, starts and clones on through Use Permit.
   h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
   i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
   j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
   k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

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## LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

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In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

## A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

### 1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

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**The Investigation**

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over $58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

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In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and $2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over $190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

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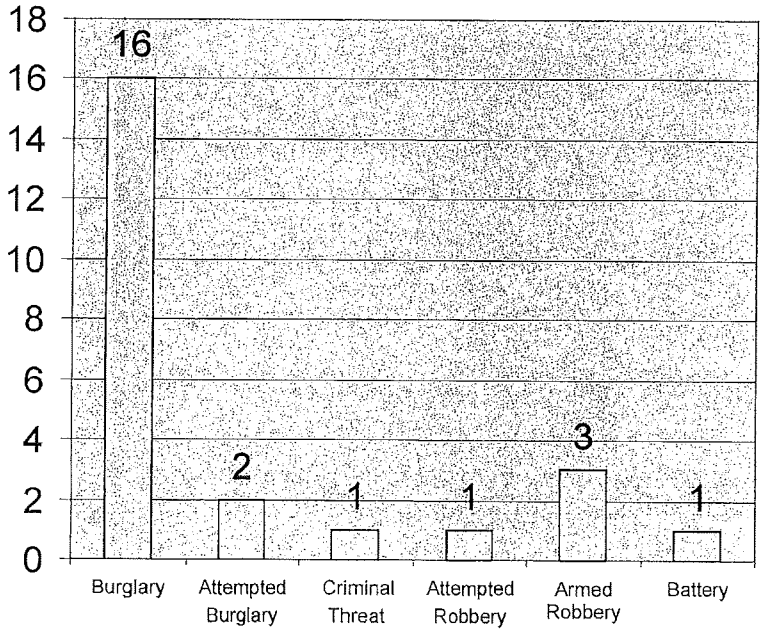
The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

**Press Materials:**

**Reported Crime at Marijuana Dispensaries**
**From January 1, 2005 through June 23, 2006**




**Information showing the dispensaries attracted crime:**

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over $300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

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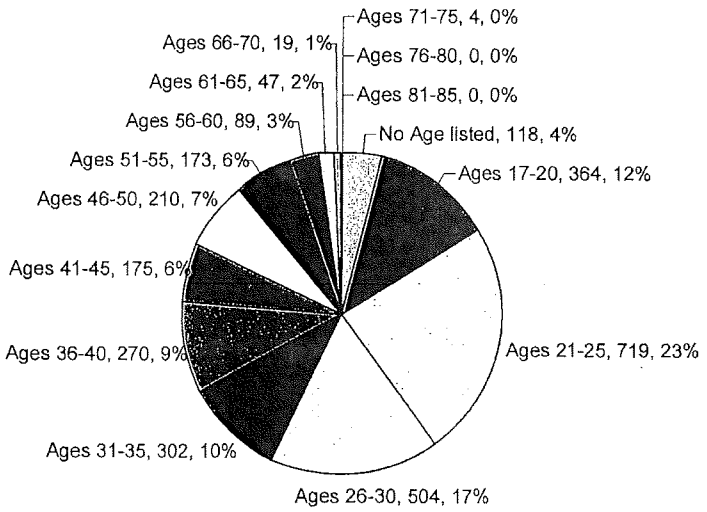
- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

**Dispensary Patients By Age**




An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

**Why these businesses were deemed to be criminal--not compassionate:**

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

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example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

## 2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

## 3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

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are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

### A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

### B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

### C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

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Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

### D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. $4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be $16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than $200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

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and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

### E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

### F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a $250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra,* 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

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real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars "as a joke." They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend "Brandon," who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a "blunt" (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician's recommendation for marijuana.

- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.

- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing "honey oil" for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special "honey oil" extractor tube. The butane extraction operation ***exploded*** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the "honey oil" with marijuana and butane that they brought up from one of Estes' San Diego pot clubs after it was shut down by federal agents.

- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.

- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the "designated driver." When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

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smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and $12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About $3,000 to $4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.[101] A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

## 4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

## 5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

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who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

## 6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

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## PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

## QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83?**

## ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

## ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.[1] Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

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[1] As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

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The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added).)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

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be truly considered to be operating as a "cooperative."[2] If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

**QUESTION**

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

**ANSWER**

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.[3]

**ANALYSIS**

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

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[2] A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

[3] Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

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exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

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ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See http://www.boe.ca.gov/news/pdf/medseller2007.pdf (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.[4]

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

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[4] Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

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B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)[5] Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

[5] Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

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they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

**QUESTION**

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

**ANSWER**

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

**ANALYSIS**

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.").) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

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1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

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**QUESTION**

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

**ANSWER**

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

**ANALYSIS**

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.").) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

**QUESTION**

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

**ANSWER**

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

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## ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

## OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.[6] [102]

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

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[6] Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006];"Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

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## CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.[103] Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

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**ENDNOTES**

[1] U.S. Const.. art. VI, cl. 2.
[2] U.S. Const., art. I, sec. 8, cl. 3.
[3] *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
[4] *Gonzales v. Raich.* See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
[5] *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
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[7] See *People v. Mower* (2002) 28 Cal.4th 457, 463.
[8] Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
[9] H&S Code sec. 11362.5(a).
[10] H&S Code sec. 11362.7 *et. seq.*
[11] H&S Code sec. 11362.7.
[12] H&S Code secs. 11362.71–11362.76.
[13] H&S Code sec. 11362.77.
[14] H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.
[15] H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
[16] H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
[17] H&S Code sec. 11362.7(h) gives a more comprehensive list -- AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
[18] *People v.* Mower (2002) 28 Cal.4th 457 at p. 476.
[19] *Id.* Emphasis added.
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[25] *Gonzales v. Raich, supra,* 125 S.Ct. at page 2195.
[26] *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.
[27] Israel Packel, 4-5. Italics added.
[28] H&S Code sec. 11362.7(d)(1).
[29] See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
[30] H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.
[31] *People v. Mower,* 28 Cal.4th at 476. Emphasis added.
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# Attachment #3

## Public Safety Issues Related to Medical Marijuana in Orange County

# PUBLIC SAFETY ISSUES RELATED TO MEDICAL MARIJUANA IN ORANGE COUNTY

Orange County Chiefs of Police and Sheriff's Association

June 2, 2010

ATTACHMENT D

**Acknowledgements**

Orange County Chiefs of Police and Sheriff's Association working group on Medical Marijuana in Orange County.

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The Orange County Chiefs of Police and Sheriff's Association (OCCSA) recognizes that medical marijuana dispensaries and its related issues can have an impact on public safety in Orange County. Agencies are receiving reports of significant crimes, (robberies, burglaries, assaults), occurring at or in the immediate area of dispensaries. These businesses have been known to associate with organized criminal gangs, receive their product (marijuana) from large sophisticated grow operations and are receiving a significant financial profit. Orange County communities and citizens are asking law enforcement to address these and other related issues.

As such, the OCCSA has implemented a working group to analyze the issue and give potential tools to remedy identified public safety concerns. The mission of the working group is to:

> *Identify potential public safety issues of medical marijuana and possible solutions to those issues. The primary focus will be on the applicable criminal and civil laws, dispensaries and delivery businesses. The purpose of the committee is not to consider the medicinal values of marijuana.*

**Medical Marijuana Laws**

To understand the public safety issues of medical marijuana dispensaries and delivery services it is important to understand the history and current status of the related laws.

In 1996, "The Compassionate Use Act" (CUA), was passed by the voters of California. The CUA decriminalized marijuana possession and cultivation for specific patients or their primary caregiver. Basically, the CUA provides an affirmative defense against cultivation and possession of cannabis for a patient's personal medical treatment, with the oral or written recommendation of a physician. In addition, the patient's primary caregiver is provided the same protections.

The Act was codified in Health and Safety Code 11362.5, which specifically states, to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."

Under federal law, marijuana is classified as a Schedule I drug, which means it has no recognized medical use. In 2005, the United States Supreme Court ruled in *Gonzales v. Raich* that the federal Controlled Substances Act is valid even as applied to the use of marijuana for personal medical use on the advice of a physician. While the ruling states marijuana remains illegal under federal law, the ruling has no direct impact on California law relating to medical marijuana.

In 2003, the California State Legislature passed Senate Bill 420, which became the Medical Marijuana Program (MMP) and took effect on January 1, 2004. The MMP further defined the definition of "patient" and "primary caregiver". It required the California Department of Public Health to establish and manage a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport medical marijuana without being subject to arrest.

The California Department of Health Services (CDHS) manages the State's MMP. Each county is responsible for implementing their own Medical Marijuana Program. Orange County has named their program the Medical Marijuana Identification Card Program (MMIC). Orange County residents may access the MMIC through the Public Health Services – Heath Care Agency website, http://ochealthinfo.com/mmic. Each card has a unique identification number, which can be verified by law enforcement through a database (www.calmmp.ca.gov).

The MMP also established limits on the amount of marijuana and plants a single qualified person could possess (Health and Safety Code 11362.77). The MMP states qualified patients and primary caregivers may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. In addition, a doctor may recommend additional amounts of marijuana to treat a specific patient's condition. Additionally, counties and cities could adopt local regulations that allowed qualified persons to possess medical marijuana in amounts exceeding the above possession guidelines. This section of the MMP was found to be an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess (People v. Kelly [2008]). Thus, for the purposes of a criminal prosecution, the Section 11362.77 limitations are inapplicable. The prosecutor must prove that the amount possessed was not reasonably related to the defendant's current medical needs. And, because the CUA provides an affirmative defense, the defendant bears the burden of providing evidence on that issue.

However, the CUA does not provide a *protection against arrest* -- which was one of the stated purposes of the MMP. As such, to the extent that the MMP limits the quantity of marijuana (8 ounces, 6 mature plants or 12 immature plants) a person may have to prevent an arrest for possession or cultivation, those limits are viable. Accordingly, the limits may still be used by law enforcement to determine whether they have legal authority to arrest a person -- protection from arrest is provided only for those MMP card holders who comply with the quantity limitations of Health and Safety code 11362.77 (See Section 11362.71(e)). After arrest, it will be up to the prosecutor to determine whether the defendant has a potential affirmative defense to a criminal prosecution under the "reasonableness" standard - and then up to the defendant to provide evidence supporting the difference.

As it relates to dispensary or storefront marijuana distribution, the MMP created a limited affirmative defense to criminal prosecution for qualifying individuals (patients and caregivers) that collectively gather to cultivate medical marijuana and from criminal sanctions for conduct such as possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use or distribution of marijuana for a person who qualifies as a "patient," a "primary caregiver," or as a member of a legally recognized "cooperative," as defined within the statutory scheme. However, there is no law or provision that expressly authorizes or protects the establishment of a storefront marijuana distribution business.

The CUA authorized a patient or a patient's "designated primary caregiver" to cultivate and possess cannabis for the patients' medical use. As such, marijuana "dispensaries" started to take root in communities. Operators were designated as a "primary caregiver" by "patients" – often by the hundreds and even thousands. As the "caregiver", the dispensary operator would provide medical marijuana to the "patients" for a fee. However, the CUA did not authorize any individual or entity (pharmacy, cannabis buyers' clubs or dispensaries) to sell, or even give, cannabis to a patient or caregiver. In fact, the California Supreme Court ruled that a person whose "care giving" consists principally of supplying marijuana and instructing on its use, and who otherwise only sporadically takes some patients to medical appointments, cannot qualify as a "primary caregiver" under the CUA. (People v. Mentch (2008). Specifically, a "primary caregiver" must prove that they:

- Consistently provide care giving.
- Independent of any assistance in taking medical marijuana.
- At or before the time he/she assumed responsibility for assisting with medical marijuana.
- A primary caregiver must be the principal, lead, or central person responsible for rendering assistance in the provision of daily life necessities.

The MMP also addressed "primary caregivers" and provided a specific definition. Under Health and Safety Code 11362.7(d), "primary caregiver means the individual, designated by a qualified patient or by a person with an identification card, "**who has consistently assumed responsibility for the housing, health, or safety of that patient or person.**"

Law enforcement agencies should also be aware of the court decision from City of Garden Grove v. Superior Court. The Court ruled a defendant has a due process right under the 14th Amendment to the return of property where the marijuana was found to be lawfully possessed with the meaning of the CUA and/or the MMP. Defendants requesting that marijuana be returned to them should be directed to obtain a court order for the return. If obtained, the court order should be followed by the law enforcement agency. A number of Orange County law enforcement agencies have returned marijuana to defendants of various criminal marijuana cases.

**Collectives and Collaborative**

Since the Mentch decision, medical marijuana storefronts have essentially stopped the practice of identifying themselves as "primary caregivers." However, the MMP recognizes that patients and caregivers may associate in order to collectively or cooperatively cultivate medical marijuana. Specifically, the MMP added Health and Safety code 11362.775, which provides that "patients and caregivers who associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. Typically medical marijuana storefronts in Orange County operate under the model or title of a "Collective" or "Cooperative."

In August 2008, the California Attorney General's office issued "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use." http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf. The AG's Guidelines stated that a "cooperative" is a legal entity. As such, they must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. It must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year.

The AG Guidelines also addressed a "collective," which is not defined under California law. The AG's Guidelines states a "collective" should be an organization that merely facilitates the collaborative efforts of patient and caregiver members. According to the guidelines neither collectives nor cooperatives should purchase cannabis from, or sell to, non-members. The guidelines also suggested practices for operating "**collective growing operations**" including:

- Non-Profit
  - Nothing allows collectives, cooperatives or individuals to profit from the sale or distribution of marijuana.

- Business Licenses, Sales Tax, and Seller's Permits
  - The State Board of Equalization determined medical marijuana transactions are subject to sales tax.

- Membership Application and Verification
  - Suggests a written application.
  - Verification of the individual's status as a qualified patient or primary caregiver.
  - Have the individual agree not to distribute marijuana to non-members.
  - Have the individual agree not to use the marijuana for other than medical purposes.

- Maintain membership records on-site or reasonably available.
- Track member's medical marijuana recommendation.
- Enforce conditions of membership.

- Permissible Reimbursements and Allocations: Marijuana grown at a collective/corporative for medical purposes may be:
  - Provided free to members.
  - Provided in exchange for services rendered.
  - Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses.

As noted above, nothing in the CUA or MMP expressly allows for the storefront sales of marijuana. In Orange County these storefronts have used the titles of "dispensaries", "collectives" , "cooperatives" and "alternative health care" to name a few. Typically, these businesses distribute/sell marijuana outside of California law.

As noted previously, California State law, specifically the CUA under Health and Safety code 11362.5 and the MMP under Health and Safety Code sections 11362.7 through 11362.83, provides an affirmative defense to charges of possession or cultivation of marijuana for individuals who have a physician's recommendation for the use of marijuana to treat specified illnesses, or their primary caregivers. However, this affirmative defense does not apply to any storefront operation in which there is the distribution or sale of marijuana, except in limited circumstances where persons with a valid physician's recommendation or their primary caregivers associate to ***collectively or cooperatively cultivate marijuana*** for medical purposes. Outside of these parameters, a storefront is most likely an illegal operation.

The simple act of having a customer sign a membership form (collective or otherwise), and selling marijuana without any other relationship to cultivate marijuana is likely illegal. Investigations have revealed these storefronts are involved in the illegal distribution and sale of marijuana for money and not the simple possession of marijuana by qualified patients and their primary caregivers for the personal medical purposes of the patient.

**Medical Marijuana Dispensaries and Delivery Services**

Medical marijuana dispensaries and delivery services in Orange County consistently advertise their services on internet sites such as http://legalmarijuanadispensary.com/, http://www.canorml.org/, www.weedmaps.com and in the OCWeekly publication. There is even a mobile telephone application, iPot, to locate marijuana dispensaries. Many are operating out of locations that do not specifically advertise their business as a medical marijuana business, such as natural herbs or health food stores. There are even dispensary colleges to educate business owners on operating dispensaries. Two are located in Los Angeles - Dispensary University and Oaksterdam University and two in Orange County - Cannabis State in Sunset Beach and Otherside Farms in Costa Mesa. Frequently, these dispensaries have close business relationships with physicians who specialize in providing examinations of people seeking a medical marijuana recommendation. Dispensaries have distributed advertising flyers and discount coupons for physicians.

Delivery services appear to be increasing in numbers as more law enforcement agencies are taking enforcement action against dispensaries. The associated public safety concerns can be just as significant as with a dispensary. Anecdotal evidence suggests that many crimes associated with delivery services go unreported to law enforcement. Local licensing and other legal business requirements are rarely followed. Identifying and locating these delivery businesses can be difficult for agencies.

Law enforcement officials estimated at the end of 2009 that there were between 600-800 dispensaries in the City of Los Angeles alone (Los Angeles Times estimated 966). There are approximately 60-80 in Long Beach. The Los Angeles Police Department and the Los Angeles District Attorney's Office have taken an aggressive enforcement position with regards to these dispensaries.

The following page lists the number of known Medical Marijuana Dispensaries (85) and delivery services (14) in Orange County as of January 1, 2010. It is important to understand that the number and locations of dispensaries and delivery services in Orange County changes frequently.

**Orange County Medical Marijuana Dispensaries and Delivery Services**

| Jurisdiction | Number of Known Medical Marijuana Dispensaries | Number of Known Medical Marijuana Delivery Services |
|---|---|---|
| Aliso Viejo | 0 | 0 |
| Anaheim | 5 | 5 |
| Brea | 0 | 0 |
| Buena Park | 0 | 0 |
| Costa Mesa | 11 | 4 |
| Cypress | 0 | 0 |
| Dana Point | 5 | 0 |
| Fountain Valley | 1 | 0 |
| Fullerton | 0 | 0 |
| Garden Grove | 3 | 0 |
| Huntington Beach | 0 | 0 |
| Irvine | 3 | 0 |
| La Habra | 0 | 0 |
| La Palma | 0 | 0 |
| Laguna Beach | 0 | 0 |
| Laguna Hills | 2 | 0 |
| Laguna Niguel | 3 | 0 |
| Laguna Woods | 0 | 0 |
| Lake Forest | 11 | 0 |
| Los Alamitos | 0 | 0 |
| Mission Viejo | 0 | 0 |
| Newport Beach | 2 | 0 |
| Orange | 2 | 0 |
| Placentia | 0 | 0 |
| Rancho Santa Margarita | 0 | 0 |
| San Clemente | 0 | 0 |
| San Juan Capistrano | 0 | 0 |
| Santa Ana | 31 | 5 |
| Seal Beach | | |
| Stanton | 0 | 0 |
| Tustin | 0 | 0 |
| Unincorporated County Area | 6 | 0 |
| Villa Park | 0 | 0 |
| Westminster | 0 | 0 |
| Yorba Linda | 0 | 0 |
| **Orange County totals** | **85** | **14** |

**Public Safety Incidents in Orange County**

To understand the impact on public safety, it is valuable to know about specific experiences law enforcement agencies have had with dispensaries and delivery services. The incidents help to put a perspective on the seriousness of the issue. The following are descriptions of actual incidents:

Costa Mesa

- An individual who owned a legitimate massage establishment rented a suite directly across from a business alleged to be dispensing marijuana. The massage business reported they could smell the burning marijuana permeating their business and wanted to relocate their massage business. However, Costa Mesa currently has a moratorium on massage establishments and therefore the business is unable to relocate.

- A business owner rented a suite in a business complex that is surrounded by several businesses allegedly involved in dispensing marijuana. The business owner reported a high volume of foot traffic and the numerous "clientele" on the premises were negatively impacting their business. Therefore, the business owner plans to relocate the business.

Huntington Beach

- An undercover police detective attempted to buy medical marijuana from a medical marijuana dispensary. He was told he would first need to obtain a recommendation from a physician. The dispensary employee gave the detective a single-page flyer advertising a physician who could provide the required recommendation. The flyer included a discount coupon for the physician's services. The detective visited the physician's office expecting an examination. Instead, the detective completed a short medical questionnaire, spoke with the physician for less than five minutes and then was given a recommendation card. There was no physical examination. There were no standard medical equipment (blood pressure monitor/cuff, stethoscope) devices and no medical certificates displayed. The detective had just told the physician of previous headaches and that when he, detective, smoked marijuana the headaches went away. The physician agreed that marijuana was good for headaches. However, the physician told the detective he would need to return to the doctor in three months for another examination. The detective paid the physician $125.00 which included a 25% discount since the detective had the flyer. The detective was then able to return to the dispensary and purchase marijuana.

- Police detectives received information there was going to be a "420 party" at a local tobacco products, or "smoke shop", business. "420" is a slang term referring to marijuana. The party was to include live entertainment and an illegal raffle. The business was not licensed or permitted for any of these activities. Detectives

advised the business that the planned party would be illegal. The business agreed to not host the event. However, the business did hold a marijuana party at a vacant storefront adjacent to the smoke shop. This party included a physician who would provide an examination, for a fee, and then issue a medical marijuana recommendation card. The doctor described himself as a "caregiver." After receiving the card the detectives would be able to purchase marijuana from a printed price list inside the business. The business was having a "Valentines day" special.

Several weeks later, detectives made contact with a person working at the business and arranged for a delivery of medical marijuana to a local hotel.

Brea

- An individual contacted the city about a business permit for a medical marijuana dispensary. He was told the city had an ordinance prohibiting such establishments. He opened up a dispensary anyway under the guise of a food shop selling brownies, popcorn, etc. The paperwork he provided was falsified and the products were laced with marijuana. One of the Brea Police Department narcotics detectives saw the business's advertisement on the internet. The detective obtained a marijuana recommendation card from a physician in Lake Forest. With that recommendation card, the detective purchased marijuana at the shop at current street level prices. The individual was charged with municipal code violations and felony sales.

Yorba Linda

- Detectives received numerous complaints of a business that had excessive foot traffic and the smell of burning marijuana. The location was not licensed for any type of business through the City. Detectives entered the business under the guise of being prospective customers. The entrance was monitored by cameras and a manned cage. Once inside, the detectives locked down the business and obtained a search warrant. While waiting for the search warrant, numerous males, 18-25 years old, with no obvious physical ailments were turned away. One individual arrived with a back-pack full of marijuana with the purpose of selling to the business. He and two people working the counter were arrested for sales. Property records turned up fictitious names for the actual lessee and the true business owner was never located. The case on the two counter workers trailed for over a year in criminal court. The defendants had free legal council from NORML (The National Organization for the Reform of Marijuana Laws) who brought people on crutches and in wheel chairs into court.

- Brea Police located a subject from Lake Elsinore making deliveries of marijuana to Orange County with his first stop being Yorba Linda. He was located on the internet. He was arrested after a controlled buy in the east end of the city.

Orange

- The East Hills Patient Association applied for a business license tax application. However, the business did not fully disclose its intentions of providing medicinal marijuana. The license clearly stipulated "No retail sales." The applicant indicated on the application the business was providing consultation and general services to outpatient and elderly patients. The applicant clearly stated he would not be a marijuana dispensary.

  At a later time, detectives observed an advertisement in the OC Weekly publication reference the same location distributing marijuana. The advertisement also indicated a discounted price for first time customers.

  Detectives created a fraudulent physician recommendation card, which listed a fictitious doctor's name. Detectives entered the business, in an undercover capacity, provided the recommendation card to the business owner and were instructed to wait in the lobby while the legitimacy was confirmed. The business operator called the phone number provided on the fraudulent recommendation, which was another detective's phone number, and inquired if the patient/detective was provided with the recommendation card. The other detective, who was waiting in a vehicle outside of the business, confirmed on his cell phone, the patient/detective's recommendation was legitimate.

  The patient/detective was escorted to a secured room. The detective did not see any uniformed security present during the entire transaction. The room possessed a display case, which contained several different types of cannabis. There was an exchange of U.S. currency for marijuana, which was in violation of the Orange Municipal Code. A criminal complaint was ultimately filed through the Superior Court.

- Detectives received a "We-Tip" report about the Orange County Healing Patients Association. Detectives learned there was no existing license for that location and the business owner attempted to circumvent the system by not applying for a City of Orange business tax license. Detectives entered the business, in an undercover capacity, to determine whether or not they were operating a medicinal cannabis dispensary. Detectives created a fraudulent physician recommendation card, which listed a fictitious doctor's name. The fictitious recommendation card was provided and the patient/detective was able to purchase marijuana. The seller was cited for Business Tax Certificate code violation.

  Although it was difficult to determine whether or not customers had a legitimate physical disability or illness, the average patients entering the businesses while detectives were present was in their early twenties. During the hours of surveillance, detectives did not see anyone enter the business with the assistance of a walking cane, crutch, wheelchair, or caregiver.

Fullerton

- On February 13, 2008 at about 1100 hours, police detectives inspected several Cannabis Dispensaries operating in the City of Venice, California. These locations were published on the "NORML" web site. In an undercover capacity, detectives entered a two-story building with a sign reading "Medical Kush." Detectives did not see any wheelchair access to the second floor. Detectives were told by a receptionist that a doctor was on site and the detective could be examined that day. The detective was told that if "qualified", the detective would receive a medical marijuana card, which would enable the detective to purchase medical marijuana at their location in Venice or any location in the State of California. The detective filled out the medical questionnaire and was told to produce a valid photo identification card. The detective provided a photo ID card which had been issued by the North Orange County School of Continuing Education. The detective was escorted to a room to be interviewed by a male who identified himself as a physician. Later the detective was able to confirm the doctor was, in fact, a licensed physician and surgeon in good standing. The interview/examination lasted 3-5 minutes. The detective told the doctor he wanted a medical marijuana card so he could legally possess marijuana. He told the doctor he smoked marijuana when he woke up in the morning with a sore neck and also found marijuana helpful when having difficulty sleeping at night. The doctor told the detective he qualified under State law to use medical marijuana to treat his medical conditions and suggested eating marijuana as opposed to smoking it. The detective asked the doctor how much marijuana he would need to eat to feel relief from his medical conditions. The doctor told him he did not know and suggested that he experiment with marijuana to determine the correct dose. The detective returned to the reception area where he paid $75.00 for a laminated Medical Marijuana Card. The price of the cards ranged from $75.00 for 3-months to $140.00 for 12-months

  The detective was allowed access to the dispensary and smoking room. He saw five or six young people who appeared to be in their late teens or early twenties lying on sofas smoking cannabis. A female behind a Plexiglas window showed the detective various samples of marijuana and hashish. He purchased 1/8 ounce of marijuana for $60.00, which was marketed as "Orange Crush". He also selected a small amount of hashish which he was charged an additional $40.00. The sale was not rung up on a cash register or computer and he was not offered a receipt for the transaction.

- A detective called "OC Private Caregivers" 949-887-7246. He had obtained this phone number from the "NORML" web site as one of 19 services that delivers medical marijuana in Orange County. The detective spoke to a subject who identified himself as "Jeff". The detective told "Jeff" that he had a medical marijuana card issued to him by a physician and wanted to order marijuana. Jeff told him that he could usually deliver anywhere in Orange County within one hour, depending on the current traffic conditions. Jeff said his service is open

from 10am to12am, 7 days-a-week. He said that he was running a "Valentines Special" today and the detective could save $40.00 off the purchase of an ounce of marijuana. The detective ordered one ounce of marijuana for $300.00.

The detective obtained a room at a local motel and waited for the delivery of his order. A short time later, a male arrived at the motel carrying a clipboard. This subject identified himself as "Tim". The police surveillance team had observed the subject arrive in a 1994 Mercedes Benz. "Tim" entered the motel room and the detective presented him with the medical marijuana card. "Tim" verified the detective had $300.00 in cash and exited the room telling him that the marijuana was in his car. He returned a short time later carrying two white paper bags that contained two round plastic pill vials with marijuana.

- Patrol officers were dispatched to a location in regards to a shooting that just occurred. One subject, who had been shot multiple times, was down on the street and was holding a handgun. Officers arrived and found this subject still alive and still in possession of the handgun. There was also a plastic bag near him which contained approximately three ounces of marijuana. He was safely detained and transported for medical treatment. A second shooting victim had driven himself out of the neighborhood to a gas station at Harbor and Bastanchury. Officers located him and he was also transported for medical care due to a single gun shot wound to his chest.

  Investigators discovered that both shooting victims had arrived at the location together and were shot during an attempted drug deal. The two "victims" attempted to rob the dope dealer of his Medical Marijuana. Further investigation revealed that the two "victims" were La Habra gang members. The shooter/dope dealer in this case was later arrested and charged with two counts of attempted murder and drug charges. Both shooting victims survived and the initial shooting victim is paralyzed.

Orange County Sheriff's Department

- Deputies were dispatched to an alarm call at a medical marijuana dispensary business. Upon their arrival, deputies saw three suspects running away from the business. Within a few minutes, four suspects were taken into custody. The investigation revealed that the suspects tunneled into the business from an adjoining business while wearing gloves and ski masks. According to the dispensary owner, the business had been burglarized two weeks prior. The owner did not report the break-in, in which a safe containing $20,000 of marijuana was stolen. As a result of the first burglary, the owner installed the alarm system that resulted in the arrests during the second burglary.

- A home invasion robbery occurred at a residence in an unincorporated area of Santa Ana. The robbery stemmed from the victim cultivating marijuana at the residence. In addition, the victim was involved in supplying a collective and operating a marijuana delivery service. At 1:00 AM, the victim woke up when he heard the side door of his residence forced open. Moments later, two suspects attacked the victim inside the master bedroom area. The victim was struck numerous times around the head area with a tire iron. The assailants then tied up the victim with duct tape. The victim was asked repeatedly by the assailants about the marijuana and other items relating to marijuana sales. The suspects ransacked the house and fled with approximately three pounds of recently harvested marijuana, electronics, and misc. items.

  The victim had a fully operational indoor hydroponic marijuana grow located in the residence. The marijuana grow was found in two separate rooms. Marijuana plants and processed marijuana were found. The marijuana grow included sophisticated ventilation, hydrating, fertilizing and lighting systems. The victim claimed to be a member of a marijuana collective with a medical marijuana license. Items relating to the suspected illegal cultivation and sales of marijuana, including a large amount of US currency were collected by Sheriffs' Investigators.

- An investigation and search warrants tied to dispensaries in Laguna Niguel and Irvine led to the owner's residence in Nellie Gail (Laguna Hills). At the location, investigators found PVC containers with mud on the outside. Inside the containers, they found packaging consistent with bulk money laundering. A further search of the residence revealed over $100,000 in currency.

  During the search at the Irvine storefront, documents showing a storage unit rental in Ladera Ranch were identified. Investigators obtained a search warrant for the location the same evening. A search of the unit located additional PVC containers and over $200,000 in currency. Documentation and physical evidence demonstrated the owners were burying the PVC containers with bulk currency in their backyard.

- A number of undercover investigators have received medical marijuana recommendations from various doctors throughout Orange County. In some instances doctors who advertise their cannabis service on-line will not issue a recommendation without a diagnosis from another physician. The "cannabis doctor" conducts a cursory review of diagnoses and prescriptions records from the prior treating physician. The "cannabis doctor" concurs with the diagnoses, and then writes a recommendation for medical marijuana.

  Other doctors that specialize in marijuana recommendations will diagnose and recommend from their office or rented hotel rooms. In every case these doctor's provide 24/7 recommendation verification for dispensaries, which is a

significant selling point. With round-the-clock verification, customers believe they do not need to obtain a State Medical Marijuana Card.

- The Sheriff's Department investigative process has resulted in search warrant service for seven dispensaries in Lake Forest, Laguna Niguel, Dana Point, Irvine and Unincorporated La Habra. In addition, each storefront has a number of residences related to each location. While post seizure analysis is being conducted on many of these investigations, two locations have resulted in case filings. In addition, two suspects have pled guilty to various charges with one operator pleading to a four year prison term.

Westminster

- A police informant reported there had been an armed "takeover" robbery at a medical marijuana dispensary. The business had not reported the crime. The loss included marijuana, cash and personal records. When contacted by the police, the dispensary operators, after some time, confirmed the crime had occurred. However, the operators refused to provide any details of the crime or cooperate with the investigation.

**Related Governmental Agencies and their Potential Impact on the Issue**

The State Board of Equalization, Franchise Tax Board and the California Medical Board all have a unique role when dealing with medical marijuana. It is important to understand the requirements and restrictions each of these agencies must follow. The following are descriptions of areas of jurisdiction relating to the issue:

STATE BOARD OF EQUALIZATION

According to the Board of Equalization (BOE), the retail sale of medical marijuana does require a seller to obtain a permit and pay sales tax. The BOE has always considered medical marijuana taxable and began issuing permits in 2005. The BOE also indicated that medical marijuana dispensaries do not qualify for an exemption under Sales and Use Tax Regulation 1591, because the FDA has not approved medical marijuana as a medicine. The BOE does actively follow-up on businesses that have not obtained the required seller's permits and/or have not paid their sales tax, including medical marijuana dispensaries. The BOE is currently involved in a "door to door" program to ensure compliance.

FRANCHISE TAX BOARD

According to the Franchise Tax Board (FTB), any business, including a medical marijuana dispensary, must elect their business structure, e.g. sole proprietorship, partnership, LLC etc., and then file their income tax in accordance with the specifications established for the structure selected. If the FTB learns that a particular business is not filing their income tax returns, they will follow-up to ensure compliance and take potential legal action.

CALIFORNIA MEDICAL BOARD

The Medical Board of California has provided a written statement on www.medbd.ca.gov/med.cal_Marijuana.html regarding physicians who choose to participate in the implementation of the Compassionate Use Act. The Board's position is:

*"On November 5, 1996, the people of California passed Proposition 215. Through this Initiative Measure, Section 11362.5 was added to the Health & Safety Code, and is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:*

*"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and*

*(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."*

*Furthermore, Health & Safety Code section 11362.5(c) provides strong protection for physicians who choose to participate in the implementation of the Act. - "Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes."*

The Medical Board of California developed this statement since medical marijuana is an emerging treatment modality. The Medical Board wants to assure physicians who choose to recommend medical marijuana to their patients, as part of their regular practice of medicine, that they **WILL NOT** be subject to investigation or disciplinary action by the MBC if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending medical marijuana will not generate an investigation absent additional information indicating that the physician is not adhering to accepted medical standards. These accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, and include the following:

**STANDARDS OF CARE**

1. History and good faith examination of the patient.
2. Development of a treatment plan with objectives.
3. Provision of informed consent including discussion of side effects.
4. Periodic review of the treatment's efficacy.
5. Consultation, as necessary.
6. Proper record keeping that supports the decision to recommend the use of medical marijuana.

In other words, if physicians use the same care in recommending medical marijuana to patients as they would recommending or approving any other medication, they have nothing to fear from the Medical Board.

Here are some important points to consider when recommending medical marijuana:

1. Although it could trigger federal action, making a recommendation in writing to the patient will not trigger action by the Medical Board of California.

2. A patient need not have failed on all standard medications, in order for a physician to recommend or approve the use of medical marijuana.

3. The physician should determine that medical marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.

4. The Act names certain medical conditions for which medical marijuana may be useful, although physicians are not limited in their recommendations to those specific conditions. In all cases, the physician should base his/her determination on the results of clinical trials, if available, medical literature and reports, or on experience of that physician or other physicians, or on credible patient reports. In all cases, the physician must determine that the risk/benefit ratio of medical marijuana is as good, or better, than other medications that could be used for that individual patient.

5. A physician who is not the primary treating physician may still recommend medical marijuana for a patient's symptoms. However, it is incumbent upon that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

6. The initial examination for the condition for which medical marijuana is being recommended must be in-person.

7. Recommendations should be limited to the time necessary to appropriately monitor the patient. Periodic reviews should occur and be documented at least annually or more frequently as warranted.

8. If a physician recommends or approves the use of medical marijuana for a minor, the parents or legal guardians must be fully informed of the risks and benefits of such use and must consent to that use.

Physicians may wish to refer to CMA's ON-CALL Document #1315 titled "The Compassionate Use Act of 1996", updated annually for additional information and guidance: *(http://www.cmanet.org/bookstore/freeoncall2.cfm/CMAOnCall1315.pdf?call_number=1315&CFID=745764&CFTOKEN=27566287)*.

Although the Compassionate Use Act allows the use of medical marijuana by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law. However, in Conant v. Walters (9th Cir.2002) F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally-protected right to discuss medical marijuana as a treatment option with their patients and make oral or written recommendation for medical marijuana. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet, their patients in obtaining medical marijuana.

*Department of Health Care Services / California Department of Public Health - California Medical Marijuana Program*"

If the Medical Board of California (MBC) Complaint Unit receives a complaint directed towards a physician, and believes the accusations pertaining to the physician's conduct has not met the applicable standards of care, they will initiate an investigation.

The investigative unit will determine whether or not the physician is adhering to the Standards of Care, which are listed and highlighted in red on Page 2. In addition, they will determine if the physician is making decisions based on what a reasonable physician would do based on the same training and experience.

Upon conclusion of the MBC complaint unit's investigation, they will forward their findings, if applicable, to the Attorney General's (AG) office for review. The AG's will present their case to the Administrative Law Judge, who will make a determination.

The Medical Board will then impose disciplinary actions against the physician. Those disciplinary actions include, but are not limited to the following: administrative penalties, fines, probation, suspension, and revocation of licenses.

Furthermore, in regards to physicians recommending the use of medicinal cannabis to their patients, they shall adhere to the previously listed eight items of "Consideration".

Local Orange County Law Enforcement officers should contact the a MBC office to address local complaints and initiate a parallel investigation, which will be conducted by the Medical Board Complaint Unit.

The MBC has the discretion to investigate and must believe there is substantial evidence of criminal conduct or conduct that fails to meet their appropriate standards of care.

Strategies to Address Associated Public Safety Issues

- Regulation of land use – this can be one of the most effective means of regulating dispensaries and delivery services. Recent case law has supported the efforts of cities and counties to regulate or prohibit these businesses. Cites and counties have a legal right to ban dispensaries and delivery services with the establishment of zoning ordinances. At least 80 California cities and 6 counties have enacted laws banning dispensaries. The courts have ruled that cities and counties may not create an ordinance that is in conflict with State or Federal law (California Government Code 37100).

- Investigate and prosecute illegal dispensaries and delivery services – these investigations are usually time and labor intensive, however, can be productive in eliminating a specific business within a jurisdiction. Past investigations have found these businesses possessing weapons, significant cash and links to organized crime. The target of these investigations should be to identify who is supplying the marijuana, who is operating the dispensary, who is profiting, is the dispensary engaging in over-the-counter marijuana sales and the dispensary is not associating to collectively or cooperatively cultivate marijuana for medical purposes.

  A critical component of the investigation is for the law enforcement agency to contact and collaborate with the district attorney's office at the start of the investigation. There may also be the need to contact the agency's city attorney if local ordinances and/or land use issues will be involved.

  Note: As of February of 2009, the Drug Enforcement Administration will not pursue criminal investigations involving marijuana dispensaries if the dispensaries are following State laws.

- Collaborate with other law enforcement agencies – operators of marijuana dispensaries and delivery services tend to move from jurisdiction to jurisdiction. Orange County law enforcement should capitalize on its long history of County-wide collaboration and community support to address all the related issues.

- Provide training to law enforcement personnel – L.A. Clear/HIDTA provides a training class "Illegal Medical Marijuana Dispensaries Investigations" (www.lahidtatraining.org) and the Los Angeles Sheriff's Department hosts training on "Medical Marijuana for Patrol Officers" (gdwalsh@lasd.org). Both classes can be highly beneficial.

- Resources – "White Paper on Marijuana Dispensaries" by the California police Chiefs Association's Task force on Marijuana Dispensaries (http://www.californiapolicechiefs.org/)

# City of Laguna Hills
## City Council Meeting Agenda
## Staff Report

**DATE:** NOVEMBER 26, 2013

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** BRUCE E. CHANNING
CITY MANAGER

**ISSUE:** AMBULANCE CONTRACT AWARD AUTHORITY

**RECOMMENDATION: THAT THE CITY COUNCIL DELEGATE AUTHORITY FOR THE AWARD OF AN AMBULANCE CONTRACT TO THE ORANGE COUNTY FIRE AUTHORITY.**

**SUMMARY:**

The Orange County Fire Authority (OCFA) administers a bidding process for emergency ambulance services for its member jurisdictions. As the current ambulance contracts are set to expire on September 1, 2014, OCFA is preparing for the next contract cycle. Each member agency has the ability to either retain or delegate the authority for the selection and contract award process, and OCFA has formally requested each agency to notify OCFA of its choice by December 5, 2013.

**BACKGROUND:**

The current emergency services system in Orange County authorizes the Orange County Fire Authority to administer the competitive process for emergency ambulance services for those areas within OCFA's jurisdiction. This process involves the development and circulation of a Request for Proposal, evaluation and ranking of proposals received, and recommendations for vendor selection. For actual selection and award of contract, each OCFA member agency has the option to retain this authority or delegate it to OCFA.

Based on information provided by OCFA on October 24, 2013, cities that retain contract award authority designate a representative to work with the OCFA Grading Panel on the evaluation and ranking. Once the ratings and recommendations are made, the City Council awards the contract to the selected vendor. If the City delegates contract award authority, OCFA evaluates and ranks the proposals (with or without City participation), and

the OCFA Board of Directors awards the contract. Presently, Doctor's Ambulance provides ambulance service to the City of Laguna Hills. The contract was awarded in September, 2004 through the Authority's competitive process. Prior to the start of that process, the City Council opted to delegate contract award authority to the OCFA.

Retaining contract award authority allows the City Council to make a determination that is in the best interest for the City. It allows for a tailored approach for each member agency. However, the City also retains some measure of liability with respect to the competitive bidding process and defending claims that may arise from any malpractice or negligence on the part of the selected ambulance service provider.

Delegating authority to the OCFA Board of Directors would mean that the City Council would not make the final selection on an ambulance service provider for the City. The decision would be made by the OCFA Board, which is making that same decision on behalf of several other member agencies, for a variety of reasons, known primarily to the respective member city. Liability for the process and defense of claims would rest with OCFA.

Staff recommends that the City continue to delegate its authority to award the emergency ambulance contract for services rendered in Laguna Hills to the OCFA. Past experience with this selection process has proven fairly time-consuming for staff and the rating process has often resulted in relatively miniscule differences in the point totals received by the competing companies. Arguably, all of the qualified and serious competitors are capable of performing the service successfully albeit with slightly different attributes and strengths. Moreover, the OCFA is the agency charged with overseeing the performance of the ambulance providers, once they are selected. Staff believes that the OCFA has far better ability to judge the competence of the ambulance companies and to know which of them will likely perform best in our community.

**FISCAL IMPACT:**

There is no fiscal impact associated with this action.

**ATTACHMENTS:**

- October 24, 2013, Letter from OCFA

# ORANGE COUNTY FIRE AUTHORITY

P.O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Road, Irvine, CA 92602

**Keith Richter, Fire Chief** **(714) 573-6000** **www.ocfa.org**


October 24, 2013


RECEIVED

OCT 29 2013

CITY OF LAGUNA HILLS


Bruce Channing, City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653-3103

Dear Mr. Channing,

Subject: **City Option to Retain or Delegate Authority for Award of Ambulance Contract**

Prior to the start of the Orange County Fire Authority Ambulance Request for Proposal (RFP) process, the Authority needs to know if a city wishes to retain or delegate their authority to award the contract. Currently, the City of Laguna Hills delegates authority. The following describes the two options:

1. **If the City of Laguna Hills would like to *RETAIN* contract award authority:**
   A city representative works with the OCFA Grading Panel to evaluate and rank proposals submitted for their City EOA. The OCFA Grading Panel then submits bidder ratings and recommendations to City Staff and Council who then awards the EOA contract to the most responsive bidder. A city that retains contact approval authority assumes the risk that it may be sued by an unsuccessful bidder, as well as liability exposure from service recipients based on the acts or omission of the ambulance service provider (e.g., ambulance medical malpractice or ambulance personnel negligence). If an unsuccessful bidder protests or challenges the City's selection and contract award decision, or if the competitive process is challenged procedurally or substantively, the City would be responsible for defending such action.

2. **If the City of Laguna Hills would like to *DELEGATE* contract award authority:**
   The OCFA Grading Panel evaluates and ranks proposals (City participation optional but strongly recommended). The Grading Panel then submits bidder ratings and recommendations to the OCFA Board of Directors who awards the EOA contract to the most responsive bidder. The OCFA assumes responsibility for defending any challenges to the final selection and contract award, as well as for the competitive process and negligence by the ambulance service provider, should such occur.

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**Please return the following requested information with your decision to retain or delegate contract award authority by *December 5, 2013*.**

- **The City of Laguna Hills would like to: [ ] Retain [ ] Delegate**
  - **Contact Name:** _____
  - **Contact Phone Number:** _____
  - **Contact E-Mail:** _____

Please feel free to contact me if you have any questions at lorizeller@ocfa.org or 714-573-6020.

Sincerely,

Lori Zeller

Lori Zeller, Assistant Chief of Business Services

# City of Laguna Hills
## City Council Meeting Agenda
## Staff Report

**DATE:** **NOVEMBER 26, 2013**

**TO:** **CITY COUNCIL**

**FROM:** **DAVID CHANTARANGSU, AICP**
**DIRECTOR OF COMMUNITY DEVELOPMENT**

**ISSUE:** **INFORMATION CONCERNING THE HIRING OF A NOISE CONSULTANT TO PROVIDE PEER REVIEW SERVICES REGARDING THE APRIL 2013 NOISE STUDY REPORT FOR THE INTERSTATE 5 (I-5) WIDENING PROJECT FROM STATE ROUTE 73 (SR-73) TO EL TORO ROAD**

**RECOMMENDATION:** **THAT THE CITY COUNCIL RECEIVE AND FILE THE REPORT.**

**SUMMARY:**

At the City Council meeting of October 8, 2013, staff was directed to gather costs associated with retaining a noise consultant for the purpose of reviewing the CalTrans Noise Study Report (NSR) for the I-5 widening project between El Toro Road and SR-73 (the "Project"). The purpose of retaining the consultant is to ensure the City and its residents are being treated fairly with respect to the Project's use of sound walls to mitigate noise impacts due to the widening of Interstate 5, as well as identify any flaws in the Project's noise analysis. Staff has already identified and commented on what it believes are deficiencies in the Project's approach to the environmental analysis and in the proposed mitigation of noise impacts.

After contacting several consultants, two proposals were solicited from environmental firms which specialize in noise analysis for transportation projects – RECON and Acoustics Group Inc., (AGI). The cost to evaluate the NSR was $10,076 by RECON and $7,200 by AGI. AGI included several optional tasks which involved performing independent sound measurements and analysis at an additional expense of $35,000.

The City Council should also note that the City would need to retain special outside legal counsel for any legal services needed in this matter because the City's legal services firm (Woodruff, Spradlin & Smart) has a conflict of interest due to their also representing OCTA, which is also participating in the Project. Outside legal counsel would be necessary should the City Council decide to pursue a legal challenge to the Project's environmental

review process. Proposals from two outside legal services firms were obtained with general cost estimates as low as $60,000 but as high as over $250,000.

In addition to hiring a Noise Consultant, there will be a significant cost associated with retaining outside legal counsel ranging from $60,000 to $250,000, should the Council wish to challenge the environmental analysis through a court action. The costs associated with hiring consultants to undertake the aforementioned work are not included in the City's approved budget.

**BACKGROUND:**

The Project is subject to state and federal regulations that require the completion of an environmental evaluation process. Under state law, the project must comply with the requirements of the California Environmental Quality Act (CEQA) and under federal law, the National Environmental Protection Act (NEPA). In the context of the Project, CalTrans is required by law to disclose all environmental impacts the Project may have on the environment and determine whether or not impacts are significant. CalTrans is proposing to complete the Project's environmental review process by approving a Mitigated Negative Declaration, which signifies that all project impacts will be mitigated below a level of significance.

Based on noise criteria used by CalTrans to evaluate noise impacts, a significant impact on the environment results when properties will experience an exposure to noise levels which either, (1) result in an increase of 12 A-weighted decibels (dBA) or more over existing noise levels, or; (2) result in a continuous exterior sound level of 67dBA for certain uses such as residences, active open space areas, and certain commercial uses. For Laguna Hills, no property is predicted to be exposed to a noise level increase of more than 12dBA as a result of the Project. However 17 properties (14 residences, the Aliso Creek bikeway, St. George's Episcopal Church and Academy, and a portion of the Laguna Hills Mall) will experience noise impacts which exceed the noise threshold of 67dBA for continuous noise exposure.

Proposed mitigation does not commit CalTrans to making any sound barrier improvements since property owner cooperation is required to build the improvements, or the construction of improvements has been deemed too costly. Staff believes it is reasonable to assume that CalTrans will not mitigate the Project's significant noise impacts based on their approach to the Project's environmental review process. In fact, the Project's own studies point to the potential for significant noise impacts to remain. Under the requirements of CEQA, where a mitigated negative declaration process is used, significant impacts cannot remain. When a project causes significant impacts that cannot be mitigated, CEQA requires the use of an Environmental Impact Report (EIR). Ironically, the EIR process allows significant impacts to remain in place under certain circumstances.
Should Caltrans opt to prepare an EIR for the Project, it's unlikely that all impacts could be mitigated at each property. The CEQA process recognizes that excessive costs and the uncertainty of providing mitigation beyond project boundaries (in this instance outside the

CalTrans right-of-way) can be acceptable circumstances for excusing the implementation of mitigation to avoid or reduce significant impacts. Both of these conditions are present under the Project. However, it does not excuse CalTrans from following the requirements of CEQA or NEPA.

While CalTrans has the opportunity to correct procedural errors and conduct more analysis before taking final action on the Project's environmental process and documentation, it is staff's opinion that CalTrans may not address all of the issues raised by the City in a manner consistent with the requirements of CEQA. However, that won't become evident until February 2014 which is staff's understanding as to when CalTrans will have completed its responses to the comments the City provided on the Project.

Once CalTrans has prepared responses to comments by the City, the City will have approximately two weeks to review the responses to determine if revisions to the environmental documentation address the concerns identified above. Assuming Caltrans continues down the path of project approval without addressing all of the issues raised by the City, the City Council will generally have 30-days, following CalTrans' approval of the project, to determine if the Project should be challenged in court to bring about revisions to the analysis and/or mitigation.

Should the City Council wish to avail itself of all options for this issue, it should direct staff to retain a noise consultant to complete a peer review of the CalTrans NSR for the Project and determine whether or not additional noise measurements should be taken for the purpose of submitting a competing noise analysis that would challenge the validity of CalTrans' Project NSR. Should noise readings and analysis be conducted which reveal additional noise impacts, it would provide the City with an even stronger basis for challenging the Project's environmental review process.

As the City Council considers its options in this matter, the City Attorney has obtained cost information from other legal services firms that have identified significant costs in pursuing litigation over the Project. These costs range from $60,000 to over $200,000. However, these costs would not have to be incurred until CalTrans approves the project and the Mitigated Negative Declaration.

**FISCAL IMPACT:**

The cost to proceed with the hiring of a Noise Consultant to peer review the CalTrans NSR would be at least $7,200, however after analyzing the two proposals received, staff would suggest that an additional $5,000 be added to the budget for this limited effort. Should the City Council wish to undertake our own analysis of the noise impacts, essentially for the purpose of filing a future legal challenge to the project itself, then an additional $35,000 should be added to the budget. Finally and depending on the response to our comments by CalTrans and the Project NSR that is ultimately approved by them, the City Council may wish to consider filing a legal challenge. Staff estimates that the pursuit of a legal challenge related to the project's environmental review document could cost well over

$200,000. To that end, it is important to recognize that the City has not budgeted any money to perform any of the previously identified tasks. Therefore, a budget amendment would be required in order to proceed with the incurrence of these costs.

**CEQA FINDINGS:**

This activity is not a project and therefore not subject to the requirements of CEQA.

**ATTACHMENTS:**

- Attachment 1 - Letter to CalTrans Dated October 4, 2013
- Attachment 2 – Proposed Scopes of Work from AGI & RECON for noise consultant services.

# Attachment #1

## October 4, 2013 Letter to CalTrans

# CITY OF LAGUNA HILLS

October 4, 2013

Caltrans District 12
Environmental Branch Attn: Gabriela Jauregui
3347 Michelson Drive, Suite 100
Irvine, CA 92612-8894

SUBJECT: COMMENTS UPON THE PROPOSED MITIGATED NEGATIVE DECLARATION FOR THE I-5 WIDENING PROJECT FROM SR-73 TO EL TORO ROAD, 12-ORA-5-PM 12.4/18.9, RELEASED FOR PUBLIC COMMENTS BETWEEN SEPTEMBER 6, 2013, AND OCTOBER 7, 2013

Dear Gabriela Jauregui,

Thank you, for the opportunity to comment upon the subject environmental document. Below are the comments provided by the City of Laguna Hills including questions and clarifications which need to be responded to before the environmental document approval process is completed.

Comment 1: 1.4.1.9 Noise Attenuation page 1-48 and 1-49
The introductory paragraph states, "...the following noise barriers were determined to be feasible..." This statement, without any qualifying language, leaves the reader to understand that the listed walls are to be constructed with the project. Since that is not necessarily true per Section 2.14 Noise, there should be a statement included in the introductory paragraph stating that although the walls listed below are feasible to mitigate the noise impacts of the project, not all of the walls will be constructed, refer to Section 2.14.

Comment 2: The same introductory paragraph also states, "Please refer to Figures 1-3 and 1-4 for location of these noise barriers." The referenced figures show noise barriers but they do not have any identifying information/number on them from which to determine which wall is which. And, neither Noise Barrier No. 159 nor 175 are shown on the Figures. These omissions should be corrected.

Comment 3: 2.1.1.1 Existing Land Uses page 2.1-9
The paragraph "City of Laguna Hills" is not accurate as to the description of land uses immediately adjacent to I-5. There are substantial residential areas immediately

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website: www.ci.laguna-hills.ca.us

adjacent to the I-5 in the City of Laguna Hills, in addition to the noted commercial properties, and this fact should be noted in the paragraph.

Comment 4: 2.1.1.5 Parks and Recreation page 2.1-35 & 36
The paragraph "Aliso Creek Trail" should be augmented to include a statement recognizing the City of Laguna Hills has established a monument and information rest stop along this County trail westerly of I-5 to mark the location of the Juan Avila Adobe. The Adobe is a culturally significant and historic asset that should be considered in the impact analysis. Further, the designation of Aliso Creek as having Recreation 2 level of water contact and the potential of having Recreation 1 level of contact should be noted.

Comment 5: The paragraph "Monument Park" is inaccurate. The location of this facility is westerly of Cabot Road between Oso Parkway and Hitching Rail Road. The ownership of this park should be identified as the Nellie Gail Ranch Owners Association and not the City of Laguna Hills.

Comment 6: 2.1.3 (Land Use) Avoidance, Minimization and/or Mitigation page 2.1-57 & 58. Mitigation measures LU-1, LU-2 and LU-3 should include a requirement that trail detours also be coordinated with, and approved by, the City of Laguna Hills as the detoured trail users will be using City facilities and City owned trail access points. In addition, the posting of detour signs will likely occur within the City of Laguna Hills rights of way with potential utility and sight distance impacts that should be mitigated.

Comment 7: 2.5.3 (Traffic and Transportation) Avoidance, Minimization and/or Mitigation page 2.5-28. "Traffic Control" - The mitigation measure TRA-1 should recognize that temporary traffic impacts may require increased local police services on City streets and the cost of those additional services should be mitigated.

Comment 8: "Signing" - The mitigation measure TRA-1 should recognize that the posting of traffic control signs on local streets will have an impact that will require the contractor to gain approval of any temporary signage locations and require the contractor to acquire an Encroachment Permit from the local agency.

Comment 9: The mitigation measure TRA-1 should include the recognition that temporary traffic impacts may cause concentrations of unusual traffic volumes and truck traffic on local City streets resulting in pavement degradation and the cost of that adverse pavement impact should be mitigated.

Comment 10: 2.8.3 (Hydrology and Floodplain) Avoidance, Minimization and/or Mitigation page 2.8-13. The discussion of "Location 1 – Aliso Creek" on page 2.8-9

notes "The velocities in both the existing and proposed condition are erosive..." but mitigation measure HY-5 on page 2.8-13 ignores this issue. Erosive velocities will cause erosion of the support structure of the Aliso Creek Bike Trail which can reasonably be anticipated to result in damage to this infrastructure. The mitigation measure should be revised to require that erosive velocities shall be addressed and the bike trail shall be flood proofed in the design and construction phases of the project.

Comment 11: Section 2.8.3 does not discuss storm drain hydraulic impacts as a result of the changes to the runoff expectation into local storm drains from the widening of the I-5. Storm drain capacity in the City of Laguna Hills in the vicinity of I-5 has been exceeded in some storm events and the existing systems may not be capable of handling any additional runoff. An analysis of the storm drain systems, their ability to carry additional storm flows as a result of this project, potential flooding of local streets and private properties and mitigation of these storm flows should be included in the Environmental Document.

Comment 12: 2.14 Noise (sub headings of sections and pages as noted below)
2.14.2 California Environmental Quality Act, page 2.14-1, makes a reference to "Chapter 4" for further information. Please explain this reference as the document Chapter 4 is not related to Noise.

Comment 13: 2.14.4.1 Surrounding Lands Use and Receptors, page 2.14-7, describes the land uses for I-5 Southbound between El Toro Road and Alicia Parkway. There is a reference to a trail which is understood to be the County Bike Trail in the Aliso Creek Recreational Area. The sentence, "The trail was identified under Activity Category C, and noise levels were reported because there are no outdoor frequent human use areas" should be reconsidered and the area should be classified as having frequent human use. In addition to being a Bike Trail for recreational use, the trail provides access to the Aliso Creek Recreational Area which includes access to Aliso Creek identified as having Recreation level 2 usage and potential Recreation level 1 usage per discussion in Section 2.9 Water Quality, provides access to the Juan Avilla Adobe Cultural site and informational monument, includes cultural and biological significance and provides a pedestrian alternative to Alicia Parkway or Los Alisos Boulevard for transit between the Cities of Lake Forest and Laguna Hills. There is frequent human use with exposure to high levels of noise in this area and this condition should so be noted. A Noise Barrier across the I-5 frontage of the Aliso Creek Recreational Area between Los Alisos Boulevard and Alicia Parkway should be implemented to mitigate the noise impacts to the frequent human uses of this area.

Comment 14: 2.14.4.2 Existing Noise Level Measurements, page 2.14-8, Short Term Monitoring. The short term noise monitoring was conducted to "document existing noise levels at 62 representative receptor locations..." but no short term noise monitoring was conducted along the Aliso Creek Bike Trail. No other location within the project area is representative of the conditions in the Aliso Creek Recreational Area. Short term monitoring of this location should be performed and the noise analysis revised to take the results into account. The noise impacts should be mitigated.

Comment 15: Table 2.14-3 identifies the short term monitoring locations including ST-48, rear yard of 24472 Christina Court, with a noise reading of 63.7 dBa Leq. However, in a report commissioned by the City of Laguna Hills and dated July 19, 2004, to address the 1992 I-5 widening unmitigated environmental impacts, LSA Associates conducted a similar study and identified a short term noise reading in the rear yard of the same home, 24472 Christina Court, of 67 dBa Leq. It is unreasonable to expect the noise level in 2013 would be less than in 2004 with all conditions otherwise unchanged. A 3 dBa difference in measurement is significant. The calibration of the current noise measurement and model should be re-checked and reevaluated and noise levels recalculated and mitigated accordingly. The potential for Noise Barriers No. 159 and 175 to be determined feasible and reasonable may be affected by this analysis. In addition, the aforementioned 2004 study noise modeling determined a number of additional homes along Christina Court to be eligible for a noise barrier and this result was not shown to be the case in the current study. This difference in modeled noise results should be explained or reevaluated.

Comment 16: Alternatives 2 and 3 – Build Alternatives. This section, beginning on page 2.14-60, discusses Receptors that "...would continue to be exposed to noise levels that approach or exceed the NAC under Activity Categories B, C and E..." However, Receptor 216 on the Aliso Creek Bike Trail is not discussed in the following pages and this omission should be corrected. The existing noise levels for Receptor 216 already highly exceeds the recommended FHWA standard of 67 dBA. The proposed project will exacerbate the existing noise levels without providing appropriate mitigation. Furthermore, the number of receptors adversely affected by the noise impacts on the Aliso Creek Recreational Area should be identified and this value should be used in the Reasonableness determination for a noise barrier to be placed along the southbound I-5 from Los Alisos Boulevard to Alicia Parkway.

Comment 17: The noise analysis identifies a location (Receptor R-265) that is developed with an outdoor dining area where noise impacts cannot be abated. The Mitigated Negative Declaration process does not allow for environmental impacts to go unmitigated because they are not feasible. The correct process for this type of

determination is the preparation of an Environmental Impact Report (EIR) with the adoption of a properly supported statement of overriding considerations explaining why the project impacts will remain due to feasibility issues with the implementation of mitigation measures. The City notes that the construction of other noise barrier improvements were similarly discounted in other areas not located in the City of Laguna Hills.

Comment 18: Noise Abatement Consideration. This section, beginning on page 2.14-65, makes reference to noise barriers being shown on Figures 2.14.2 and 2.14.3. However Noise Barriers No. 159 and 175 are not shown on these Figures and this omission should be corrected.

Comment 19: Reflected Noise. This section, beginning on page 2.14-180, discusses noise reflection as relates to receptors on the opposite side of the freeway. However, this section does not discuss reflected noise from noise barriers placed along private property lines as a part of the project and which could then reflect noise to nearby properties on the same side of the freeway. Noise Barrier No. 115 has the potential to reflect freeway noise into the Hills Hotel outdoor and indoor use spaces. To mitigate this issue, Noise Barrier No. 115 should be constructed with noise absorbing materials and this should be a stated mitigation measure of the project.

Comment 20: Table 2.14-12, Total Reasonable Allowance per Noise Barrier, page 2.14-185. The number of Receptors for Noise Barriers No. 159 and 175 should be revised to take into account the results of the 2004 Noise Study as described in Comment number 15 above which identifies additional affected additional Receptors along Christina Court and should include the frequent human use of the Aliso Creek Recreational Area.

Comment 21: Table 2.14-3 Summary of Reasonable Noise Barriers, page 2.14-192. For the second analysis entry of Noise Barrier No. 121, the 408' wall length should be reduced to still effectuate the noise reduction but not exceed the reasonable allowance. As it is currently presented, the $165,000 allowance covers almost 70% of the wall cost and a short reduction in length of the wall will justify its construction. The reduced wall length should be modeled for feasibility and, as well, the likely result of construction costs being less than estimated should be taken into account in order to find this wall to be reasonable.

Comment 22: The discussion of Noise Barrier Reasonableness and the determination of feasible or infeasible improvements as depicted in Table 2.14-13, together with proposed mitigation measure N-2, is wholly inconsistent with the requirements of CEQA

which require impacts to be mitigated when a lead agency proposes to utilize the Mitigated Negative Declaration process. As described above, failure to mitigate a significant impact, in this instance noise, requires the preparation of an EIR pursuant to Section 15073.5(d) of Title 14, Chapter 3 of the California Code of Regulations.

Comment 23: The Noise Analysis in Chapter 2.14 fails to clearly identify which thresholds (CalTrans, FHWA, or both) are being used to evaluate noise impacts as a result of the project. The analysis should use both Cal Trans and FHWA criteria in order to identify the truest level of impact on the environment. Instead, the analysis refers to only the CalTrans noise protocols as the sole arbiter as to whether or not an impact is occurring (See Page 2.14-3). Since the project is subject to FHWA criteria for the evaluation of noise, the project should have also evaluated noise impacts using FHWA standards to determine the significance of noise impacts as a result of the project.

Comment 24: Further, to ensure that the public understands whether or not their property is being impacted and the extent of the impact, information depicted on Table 2.14-9 should have been compared against CalTrans noise protocols as well as FHWA standards. Instead, the public is left to guess as to whether or not their property is impacted by flipping through a myriad of tables and maps, and to what degree, and at the end must draw their own conclusions. The information should be re-formatted to clearly identify impacts which include existing conditions, predicted noise increase, final predicted noise levels (including all mitigation proposed), and a comparison between final predicted noise levels and acceptable CalTrans and FHWA noise thresholds.

Comment 25: The Project's noise analysis fails to evaluate interior noise impacts on residential structures and other uses located adjacent to the project area in the City of Laguna Hills. The omission of such an analysis could result in significant environmental impacts on people as a result of increased interior noise in their residences that exceed 45 dBA, which is a recommended interior noise level by the Department of Housing and Urban Development for residential uses. FHWA standards identify 52 dBA as an acceptable interior noise level in for other uses.

Comment 26: The project will leave potentially significant noise impacts in place once the project is constructed as a result of CalTrans' reliance on property owners to accept (or reject) improvements on private property in order to accomplish noise mitigation as described by the Maintenance provision associated with the use of noise barriers on Page 2.14-197. A property owner rejecting any improvements on their private property could potentially result in noise impacts that go unmitigated since improvements, such as sound walls, would fail to be constructed. Failure to mitigate a significant impact

requires the preparation of an EIR pursuant to Section 15073.5(d) of Title 14, Chapter 3 of the California Code of Regulations.

Comment 27: 2.21 Cumulative Impacts
The project noise analysis completely omits any discussion of potential cumulative impacts on approved projects located within the City of Laguna Hills, specifically the redevelopment of Oakbrook Village which includes an approved residential component. The impact of the proposed project on Oakbrook Village must be determined pursuant to Section 15065(a)(3) of Title 14, Chapter 3 of the California Code of Regulations.

Sincerely,

Kenneth H. Rosenfield, P.E.
Director of Public Services

# Attachment #2

## AGI & RECON Scopes of Work

ACOUSTICS GROUP, INC.
Consultants in Acoustics, Noise & Vibration

October 17, 2013

Mr. David Chantarangsu
**CITY OF LAGUNA HILLS**
24035 El Toro Road
Laguna Hills, CA 92653

Subject: Proposal to provide Traffic Noise Peer Review for the City of Laguna Hills, CA.

Reference: "Noise Study Report Interstate 5 Widening Project From State Route 73 to El Toro Road", Prepared by LSA Associates, Inc., April 2013.

Dear Mr. Chantarangsu:

Acoustics Group, Inc., (AGI) is pleased to submit our proposal to provide a noise study report peer review for the City of Laguna Hills (CLH). Based on our correspondence, Caltrans is proposing to widen Interstate 5 from State Route 73 to El Toro Road. AGI's approach to this project is to review the Noise Study Report and as an option provide a detailed analysis of the areas within the City, if requested. Our proposal for providing the noise study peer review for the City of Laguna Hills follows:

**Task 1 –Initialization and Document Review**

- Conduct a meeting with CLH to identify specific noise sensitive receptors, noise monitoring and test locations, criteria, and study areas of concern.
- Review the Caltrans Noise Abatement Criteria and Noise Study Protocol to determine applicability to the project.
- Conduct a site visit to observe the study area and to gain an understanding of noise sensitive areas within the I-5 corridor.


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- Perform a General Level Review of the Referenced Noise Study Report to evaluate consistency with the Caltrans Criteria and Protocol. No detailed modeling analysis will be performed.
- Prepare a letter that summarizes our findings.

**Optional Task 2 – Traffic Noise Monitoring**

- Conduct short term limited (15- to 60-minute) and 24-hour noise measurements at select exterior locations to document existing traffic noise levels as determined necessary. Spot measurements will be conducted at unprotected locations and will be performed simultaneously with the 24-hour survey. Some of these spot measurements will include second and third row receptors located further away from the roadway as well as second story receptors.
- The number of acoustical measurements will be determined after the initial site meeting with CLH.
- A field technician will attend portions of the exterior traffic noise measurements to observe and document events that contribute to the measurement data. A field data sheet will be kept by the field engineers to document traffic and other noise sources along I-5. One or more field staff will be involved with the field noise surveys.
- The measurement data from the instruments will be downloaded into electronic files, processed into a usable spreadsheet format (Excel), and field observations will be correlated with the measurement results. Field data will be made available to CLH.
- Vehicle speeds will be monitored by radar or driver to correlate the baseline data to the traffic counts.

**Optional Task 3 – Traffic Noise Analysis & Modeling**

- The FHWA's Traffic Noise Model (TNM) will be used to predict and verify future traffic noise levels at the project site.
- The Project's Future Design Drawings will be marked up for preparation of traffic noise modeling input files. Roadway design drawings including but not limited to grading plans, topo maps, landscape plans, local zoning/tract maps, applicable Project environmental documents, and boundary maps will be provided by CLH. This information is assumed to be available immediately upon the issuance of an authorization to proceed. Additional Project information may be requested by


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AGI to supplement the analysis. If TNM input and output files from the referenced noise study are provided to AGI, then this effort can be minimized. AGI can provide assistance in requesting roadway design information from Caltrans or LSA. However, our experience with working with public agencies indicates that information is more easily obtained when requested by council.

- Use traffic flow data measured as part of Task 2 to calibrate the traffic model when determined appropriate given the existing roadway configuration and future design. This process is consistent with industry standard practice.
- The future exterior traffic noise level at the project site will be analyzed and predicted using forecast future traffic volumes as provided in the referenced noise study.

**Optional Task 4 – Noise Impact Assessment & Abatement**

- All predicted future exterior traffic noise levels will be verified and assessed with respect to the Caltrans NAC.
- Where exterior noise impacts are identified, barriers will be analyzed to determine and verify the location, height, and lengths needed for abatement. Results of the barrier analysis will be provided in both tables and figures (e.g. the locations of soundwalls will be shown on Project layout maps).
- Abatement/Soundwalls located along the right-of-way and private property will be evaluated if determined necessary.
- A Barrier Abatement Summary Table will be prepared that includes all barrier heights, and lengths for consideration by CLH.
- AGI will meet with CLH to present the preliminary results and abatement recommendations.

**Optional Task 5 – Report**

- A Draft report of findings will be prepared that summarizes the results of the baseline noise measurements and acoustical tests, presents the predicted traffic noise levels, discusses noise impacts, and presents appropriate noise abatement measures to meet the criteria. The Report will be written in a format that is readable and understandable by the lay person.
- A Final Report will be prepared that incorporates the comments from CLH. This report will be intended for public release.


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**Optional Task 6 – Meetings and Teleconferences, etc.**

Meetings will be attended and supported by Mr. Robert Woo of AGI. Meetings, telephone conferences, etc. will be provided, as requested by CLH, on a time-and-materials (T&M) basis and with prior Staff approval. Interaction with local Project, City, and/or regulatory personnel is assumed to be led by or coordinated by CLH.

**Optional Task 7 – Direct Costs (Travel, Field Expenses, Printing, Courier, Telecom, etc.)**

Other Direct Costs (ODC's) for AGI services will be accounted for under this task. These job related expenses can include courier services, telephone, fax, reproduction (including presentation hand-outs and display graphics), hotel expenses, travel, fuel, meals, transportation, etc. A detailed invoice and expense report will document each charge under this task.

**Optional Task 8 – Depositions, Testimony, Trial, etc.**

Depositions, testimony, trail and court appearances will be provided, as requested by CLH, on a time-and-materials (T&M) basis and with prior Staff approval.

**DELIVERABLES**

Acoustics Group, Inc. proposes to furnish the following deliverables:

**Task 1:** A letter report that summarizes the Peer Review findings.

**Optional Tasks 2 through 5:** One Draft Results Table and Figure for CLH Review and Comment. Two copies of the Draft Report will be submitted to CLH for review. Two copies of the Final Report will be provided to CLH. An electronic copy of each report will also be provided in the deliverable.

**Optional Tasks 6 through 8:** No deliverables.

**FEES & COSTS**

Acoustics Group, Inc. proposes to furnish consulting services under the following terms:

Task 1: on a time-and-material (T&M) basis, per the attached fee schedule, with an initial not-to-exceed budget of Seven Thousand Two Hundred Dollars ($7,200).


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Optional Tasks 2 through 5: on a time-and-material (T&M) basis, per the attached fee schedule, with an initial not-to-exceed budget of Thirty Five Thousand Dollars ($35,000). The availability of electronic files and TNM modeling files will minimize AGI charges under these tasks.

Optional Tasks 6 through 7: on a time-and-material (T&M) basis, per the attached fee schedule.

Other Direct Costs (ODC's) for travel, mileage, field-related expendables, reproduction, graphics, communications, fax, courier services, equipment rental, etc. will be invoiced at cost plus 10-percent.

Optional Task 8: on a time-and-material (T&M) basis, per the attached fee schedule. ***All Legal proceedings, including mediation, depositions, trail, testimony, and associated preparatory meetings will be billed at twice the rates shown above. AGI will not perform any work under Task 8 without a budget estimate and prior written approval from the client.***

**Payment terms are net 30 days.**

## Contacts and Authorizations

Mr. Robert Woo, as company principal, will supervise the AGI effort, with potential technical and office assistance from AGI-network technicians. The analyses and reporting will be performed by these engineers to ensure continuity, compatibility, and consistency with previous noise control engineering preparation efforts performed for similar endeavors.

Deviations from this technical scope or the budgetary allotment will be coordinated through Mr. David Chantarangsu or his designee(s). Mr. Chantarangsu's phone number is 949-707-2675.

AGI's contact person and key person for this project is:

| | |
|---|---|
| **Name:** | Robert Woo |
| **Title:** | Principal Consultant |
| **Offertory's Name:** | Acoustics Group, Inc. |
| **Corporate Address:** | 2102 Business Center Dr., Suite 130<br>Irvine, CA 92612 |
| **Telephone Numbers:** | Phone 877-595-9988 |


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Fax 877-595-9989
**E-mail address:** RobertWoo@acousticsgroupinc.com

## Additional Stipulations and Assumptions

1. Delays due to conditions, forces, or circumstances beyond AGI's control (such as, but not limited to CLH scheduling/accessibility delays or cancellations, inclement weather, competing noise sources, etc.) may incur additional costs beyond the indicated fee. These additional costs will be billed per the attached rate schedule on a time-and-materials (T&M) basis.
2. Interaction with Client representatives and/or local authorities is assumed to be led by or coordinated by CLH project personnel.
3. Pertinent engineering information, plot plans, and/or site drawings will be furnished, as needed, by CLH staff. It is assumed that this material will be available at or shortly after the time of ATP.
4. Noise Assessment will be performed in AGI's Irvine location. Interaction with other CLH offices, the Client, and the job site will be performed via telephone, video conference, e-mail, and/or land mail. No trips to other CLH offices, other sub-contractors' office(s), the Client's office(s), or the job site are included, except as specifically denoted above.
5. The exact distribution of personnel for the Noise Assessment function is subject to change to best meet the needs and schedule of this and other projects. Additional personnel may be used on this project on a contracted basis to supplement the AGI capability. The costs of these personnel, if used, are included in the indicated AGI fees.
6. In the event that legal action is necessary to enforce the provisions of this agreement, the parties agree that the prevailing party in said legal action shall be entitled to recover attorney's fees from the opposing party in any amount determined by the Court to be reasonable.
7. The terms of this proposed scope of work are valid for 45 calendar days from the date of issuance.


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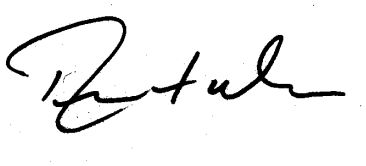
AGI looks forward to supporting CLH on this Project. Given the project's timeline, we can begin work on this Project immediately.

Please contact Mr. Robert Woo at 877-595-9988 if you have any questions regarding this proposal. Please return a signed original to our corporate office in Irvine to begin work. We look forward to working with you and your staff on this project.

Sincerely,
ACOUSTICS GROUP, INC.



Robert Woo
Principal Consultant

AGREED TO AND AUTHORIZED BY:

_____ _____
(Signature) (Date)

Name:_____ _____ _____
(Print) (Title) (Company)



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**ACOUSTICS GROUP, INC.**
**Consultants in Acoustics, Noise & Vibration**

## Rate Schedule – 2013

| Staff Classification | Hourly Billing Rate |
|---|---|
| Principal | $ 195.00 |
| Associate Principal | $ 175.00 |
| Senior Acoustical Engineer/Scientist | $ 160.00 |
| Acoustical Engineer/Scientist III | $ 150.00 |
| Acoustical Engineer/Scientist II | $ 125.00 |
| Acoustical Engineer/Scientist I | $ 115.00 |
| Engineering Intern | $ 90.00 |
| Graphics Staff II | $ 90.00 |
| Graphics Staff I | $ 80.00 |
| Word Processing Staff II | $ 75.00 |
| Word Processing Staff I | $ 65.00 |
| Production Assistant | $ 60.00 |

*Notes on Labor Rates:*

1. *Legal proceedings, including mediation, depositions, testimony, and associated preparatory meetings will be billed at twice the rates shown above.*
2. *Project-related travel time will be billed at the basic hourly rate.*

## Expenses

| Expense Type | Billing Rate |
|---|---|
| Contract photocopying & plotting | At cost + 10% |
| Postage / shipment / overnight delivery / courier | At cost + 10% |
| Travel / lodging / meals / field incidentals | At cost + 10% |
| Mileage (for reimbursable car usage) | Current Fed. Rate |
| Telephone / fax | At cost + 10% |
| Other direct costs (ODC's) | At cost + 10% |



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F 520.293.3051

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F 619.308.9334

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RECON

*An Employee-Owned Company*

November 1, 2013

David Chantarangsu
Community Development Director
City of Laguna Hills
24035 El Toro Rd.
Laguna Hills, CA 92653

Reference: **3rd Party Review; I-5 Widening from SR-78 to El Toro Road Project – Noise Study Report** (RECON Number P7313)

Dear Mr. Chantarangsu:

RECON Environmental, Inc. (RECON) is pleased to submit the enclosed scope of work and cost proposal to provide third party review services for the noise study report and noise abatement decision report for the I-5 Widening from SR-78 to El Toro Road Project.

The estimated total cost to complete these tasks is **$10,076**. This does not include expenses such as printing or reproduction. If you would like us to proceed with the work please send appropriate authorization to the attention of Diem Tran, dtran@reconenvironmental.com. Thank you and please call me or Bill Maddux at 619-308-9333, if you have any questions.

Sincerely,

Bobbi Herdes

Bobbi Herdes
Principal

BAH: dnt

Enclosure
P7313/CoverLtr.docx

# Scope of Work

## Noise Report – 3rd Party Review

The following steps will be completed as part of the third party review of the Noise Study Report (NSR) and accompanying Noise abatement Decision Report (NADR) prepared by the California Department of Transportation (Caltrans) for the I-5 Widening from State Route 73 to El Toro Road Project:

1. Obtain copies of the project NSR and NADR (electronic or otherwise) from the City. In addition to the NSR and NADR, RECON will also require a copy (electronic or otherwise) of the project traffic report and associated environmental studies prior to initiating the review of the reports. Review of these additional documents will be limited to verifying that the traffic assumptions used in the noise report match the data from these documents.

2. Upon receipt of the report RECON will discuss with staff any special concerns, constraints, or unique considerations that may pertain to the issue at hand or the response to a previous document. Clarification of these issues, prior to completion of the review, allows for an efficient review that is focused on specific concerns.

3. Submitted materials will be reviewed and a response letter prepared. The review will focus on the adequacy of the analysis and soundness of the conclusions. The process involves the following points:

    a. Evaluate the adequacy and appropriateness of the models employed in forecasting future conditions.

    b. Review the assumptions used in the modeling to assure that they appropriately reflect the proposed project as described in the project reports.

    c. RECON will confirm that assumptions used in the NSR and NADR are consistent with the federal and State standards and other technical reports previously prepared by Caltrans and other agencies, as appropriate.

    d. Review the noise impact conclusions based on state and federal standards.

    e. Evaluate the accuracy of the noise abatement feasibility analysis and confirm that proposed measures adequately address all direct and indirect traffic noise impacts.

    f. Assess the accuracy of the calculations and data used in the noise abatement allowance calculations.

    g. Assess the reasonableness conclusions and data used to support the NADR.

4. A second technical specialist will review and confirm that the report review and assessment letter adequately address the issues important for project processing. This step provides assurance that the revisions and amendments requested are reasonable and appropriate for the needs of the City.

5. Submit the draft evaluation letter to the City.

6. Prepare and submit a final evaluation letter based on City comments.

For any requested subsequent reviews, RECON would receive the amended report and follow the process outlined above to either confirm that requested modifications were made or provide additional comments as needed. It is anticipated that a single review will be completed for the technical report. Additional reviews will be completed with an additional authorization.

## Total Cost: $10,076